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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

BRANDON HARLEY EATON,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO 2017-001973

BRIEF OF RESPONDENT

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II. The PCR judge ruled properly in granting PCR relief after finding that trial counsel was ineffective in failing to conduct proper investigations into a third-party guilt defense and other potential defenses in the case, and in failing to explain sentencing consequences.

III. The PCR judge ruled properly in granting PCR relief where trial counsel erred in failing to investigate into the issue of the voluntariness of his statement given in the case because the promise made by the police to the respondent that he would be released and allowed to go home after he confessed was an improper inducement for his statement.

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[2] Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017).

STATEMENT

Respondent Brandon Harley Eaton pled guilty to one first degree criminal sexual conduct charge emanating from Spartanburg County and a second first degree criminal sexual conduct charge emanating from Laurens County. The respondent's plea proceeding was convened on August 7, 2013, at the Spartanburg County General Sessions Court before Judge Roger L. Couch. The respondent was represented by Geddis Anderson at the plea proceeding and Assistant Solicitor Susan Reese appeared on behalf of the state. Judge Anderson sentenced the respondent to two concurrent twenty-year prison terms. The respondent did not enjoy the benefit of a direct appeal in his case.

On July 18, 2014, the respondent filed a PCR application with the Spartanburg County Office of the Clerk of Court in effect referencing his Spartanburg County conviction. The petitioner filed a return dated November 18, 2014, requesting that a PCR hearing be held in response to the PCR action filed by the respondent. A PCR hearing was convened on January 12, 2016, at the Spartanburg County Courthouse before Judge R. Ferrell Cothran, Junior. The respondent was present at the hearing and represented by J. Brandt Rucker, and Assistant Attorney General Alicia A. Olive appeared on behalf of the state. Judge Cothran granted post-conviction relief to the respondent per an Order dated June 8, 2017, and an Amended Order dated July 11, 2017, and an Order dated August 28, 2017.

Petitioner appealed Judge Cothran's grant of PCR relief to the respondent and filed a petition for writ of certiorari on October 17, 2017. This brief follows per this Court's Order dated August 3, 2018, that granted petitioner's petition for writ of certiorari.

STANDARD OF REVIEW

In reviewing a PCR court's decision, this Court will uphold the PCR court's findings if there is any evidence of probative value to support them. Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007). However, if the PCR court's conclusions are controlled by an error of law or are unsupported but the evidence, then this Court must reverse the decision. Edwards v. State, 392 S.C. 449, 710 S.E.2d 60 (2011).

QUESTION I

The PCR judge ruled properly in granting PCR relief when the record established that trial counsel erred in failing to obtain a competency evaluation for the respondent prior to the plea proceeding in order to perfect a mental illness defense, which counsel admitted was error, because the respondent was limited mentally and educationally and received disability checks for ADHD and bi-polar disorder and the requisite showing under Ramirez[3] had been satisfied as there was a reasonable probability that the respondent was incompetent at the time of the plea.

At the plea proceeding, the solicitor apprised the plea judge of the facts that led to the criminal sexual charge against the respondent. Apparently, certain events occurred between April 2011 through May 2011 while the respondent was living with the minor's family in Spartanburg, South Carolina. The respondent was the minor's uncle, and after the minor was diagnosed with Trichomoniasis and Chlamydia and Genital Warts from the HPV virus, she stated that she was "dating" the respondent and that the respondent put "his penis in her monkey...[and] her bottom" and that he had put her mouth on his penis. App. p. 18, l. 7 – p. 22, l. 25. The respondent, who was 16 years of age when these events occurred, told police that he put his penis between the minor's legs. App. 21, lines 16-21.

During the PCR hearing, the respondent testified that he has been treated for bipolar disorder and that he received disability for that, and that he experienced developmental delays when he was a child, all of which was information provided to trial counsel prior to the plea proceeding. App. 57, l. 5 – p. 58, l. 8; App. 63, l. 11-12. The respondent stated that he stopped school at the ninth grade and that it "takes [him] some time" to read. App. 61, l. 14-16.

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[3] Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017).

The respondent's mother, Cantessa Norwood, testified at the PCR hearing and explained that the respondent had developmental delays in childhood and was slower and more childish than most children his age, and that he (the respondent) received a disability check for ADHD and bi-polar disorder, after a state doctor diagnosed him with the same. App. 77, l. 3 – p. 79, l. 3.

Trial counsel testified at the PCR hearing and admitted he was negligent in not having the respondent evaluated (mentally/psychologically), and that he should have had the respondent evaluated prior to the plea, and that this would have shed light on the voluntariness of the respondent's plea would have come into play and also the voluntariness of the confession as well. App. 83, l. 20 – p. 84, l. 2; Tr. 95, l. 11 – p. 96, l. 3; p. 97, l. 2-6.

Note that at the plea proceeding, the solicitor apprised the plea judge of the respondent's statement confessing that "he (the respondent) did not really understand why he had done those things." App. 21, lines 16-21.

The PCR judge ruled that trial counsel was ineffective based on the following findings:

> Based on the transcript, and the testimony of the [respondent] there are real questions about his mental capacity...[and] because of the seriousness of the crime, and the [respondent's] uniformly acknowledged limited capacity, a reasonable attorney would have asked for a mental evaluation in the case...and the results of the mental evaluation could have affected the outcome of the plea. App. 121; App 144; App 150.

Clearly, the respondent had mental issues that made him leave school at the 9th grade and were apparently severe enough for him to receive a disability check, after having been diagnosed by a state doctor as having ADHD and bi-polar disorder. Also, it was evident that the respondent was a slow learner who had developmental delays. Certainly, the respondent's mental state had a bearing on whether his plea was given voluntarily and whether his statement was given

voluntarily, both of which should have been issues that counsel should have investigated into prior to the plea. A mental illness defense could have been perfected in the event of a trial.

Due process prohibits the conviction of one who is mentally incompetent. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Additionally, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466, U.S. 668 (1984). Specifically, with respect to cases where mental issues exist, counsel has a duty to investigate, prepare, and present evident of mental illness on behalf of the defense. In Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017), the Court held that when establishing ineffective assistance of counsel in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea, and once such a reasonable probability has been established then prejudice is also demonstrated. See also Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004). In Ramirez, plea counsel was found ineffective in failing to request an additional competency evaluation for the defendant where he was on notice that the defendant suffered from retardation and had problems interacting with him.

Compare Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), where the Court found that counsel was ineffective in failing to present the psychiatrist who testified at trial and explained all the defendant's extensive medical records and information in support of the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis to testify at the penalty phase in order to preclude a death sentence. Also, compare Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand the investigations into the defendant's background with sufficiency in order to learn of the defendant's diminished mental capacity and childhood abuse, rape, and molestation in order to show his impaired mental and psychological state. Compare further, Davenport v. State, 301 S.C. 39, 389

S.E.2d 649 (1990), where the Court held that counsel was ineffective in failing to develop an insanity defense when the state's psychiatrist diagnosed the defendant as legally insane. Finally, in the federal court cases of People v. Coroma, 80 Cal. App. 3d 684, 145 Cal. Rptr. 899 (1st Dist. 1978); Ramseyer v. Glodgett, 853 F. Supp. 1239 (WD. Wash. 1994), and Hull v. Hyler, 190 F.3d 88 (C.A. 3PA, 1999), the courts found counsel ineffective in failing to investigate into evidence establishing their clients' mental incompetence.

Clearly, in the case at bar, counsel's failure to secure a mental evaluation of the respondent as an investigation into the viability of a mental illness defense, which obviously existed in the case, constituted deficient legal representation that was below the range of competence demanded of criminal attorneys in violation of the Sixth Amendment. Pejudice existed as a result. See Hill v. Lockhart, 484 U.S. 52 (1985), and Ramirez v. State, supra, and Matthew v. State, supra. But for counsel's error in this regard, a reasonable likelihood exists that the outcome of the case would have been different.

QUESTION II

The PCR judge ruled properly in granting PCR relief after finding that trial counsel was ineffective in failing to conduct proper investigations into a third-party guilt defense and other potential defenses in the case, and in failing to explain sentencing consequences.

During the PCR hearing, the respondent testified that counsel failed to prepare a defense based on the fact that his medical records revealed that he had no STDs (chlamydia) even though the prosecutrix was diagnosed with having chlamydia. In addition, the respondent testified that accusations were made assigning George Brown (sister's boyfriend) as the perpetrator who molested the minor because he lived in the house, which in turn meant that third party guilt was an issue in the case. App. 63, l. 15 – p. 65, l. 25; App. 74, l. 14 – Tr. 76, l. 12.

Trial counsel testified with respect to his investigations conducted in the case and admitted that he did advise that a ten year sentence would likely be received in the case. App. 33, l. 6-13. In addition, counsel was apparently unaware of the medical report in the respondent's favor and stated that had he known about it, then it would have cast "a different light on [the] case." App. 83, l. 14-17; Tr. 85, l. 24 – p. 87, l. 12.

Note that the child advocacy center videotapes, which counsel stated he reviewed "summarily" revealed that the prosecutrix referred to a man named George Brown as one who sexually penetrated and raped her. Furthermore, counsel admitted that he did not talk to George Brown and that he probably didn't thoroughly review the assessment summary. App. 92, l. 9 – p. 94, l. 25; Tr. 100, l. 9 – p. 101, l. 4. Note that the respondent gave a statement denying penetrating the minor (said he only put his penis between her legs), but the medical expert explained that penetration was necessary to contract the minor's diseases, which in turn added credibility to third party guilt assignee Burns as the perpetrator in the case. Moreover, the respondent testified that counsel failed to review the Child Advocacy Center videotape and did not review any of the discovery materials with him prior to the plea.

The PCR judge ruled that counsel's representation with respect to the failure to investigate into the impact of the allegations made against another suspect in connection with the prosecutrix in the case constituted deficient representation. App. 151.

Again, counsel has a duty to conduct adequate investigations in a criminal case. Strickland v. Washington, 466 U.S. 668 (1984). Third party guilt was a potential defense in the respondent's case. In State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000), this Court imposed limitations on third party guilt admissibility evidence to the extent that evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are

inconsistent with the defendant's guilt and said evidence must raise a reasonable inference as to the defendant's guilt. In Holmes v. South Carolina, 547 U.S. 319 (2006), the Supreme Court held that the defendant is allowed to introduce evidence of third party guilt regardless of the strength of the state's case of the evidence offered by the accused as to the commission of the crime by another person is limited to such facts as are inconsistent with his own guilt and that raise a reasonable inference or presumption as to his own innocence. See State v. Rice, 375 S.C. 302, 662 S.E.2d 409 (2008); and Miller v. State, 379 S.C. 108, 665 S.E.2d 596 (2008). In Miller, the issue was whether trial counsel was in effective in failing to adequately present via thorough cross-examination on a third party guilt defense, but in Miller, counsel at least raised the issue whereas in the instant case counsel failed to investigate into a third party defense based on the allegation that George Brown was a possible perpetrator coupled with the fact that the respondent was not diagnosed with the same sexually transmitted disease that the prosecutrix had, which was chlamydia. Counsel's failure to develop a third party guilt defense in the case and a defense on the sufficiency of the evidence attack in light of a lack of medical proof of guilt constituted deficient legal representation of the respondent in the case in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985).

In addition, the respondent was promised that he would receive a ten year sentence by counsel, but he received a twenty-year sentence instead. In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597 524 S.E.2d 623 (1994). During the PCR hearing, the respondent testified in effect that he did not have enough time to talk with trial counsel prior to the plea proceeding, and that he understood counsel's advice to mean that he was not going to get much prison time. App. 59, l. 21 – p. 61, l. 6. The respondent's mother testified at

the PCR hearing and stated that trial counsel promised that a sentence of ten years would be the prison time that the respondent would receive in exchange for his plea, but that a twenty-year sentence was handed down instead. App. 79, l. 11-17. Counsel was ineffective in failing to explain sentencing consequences as well.

QUESTION III

The PCR judge ruled properly in granting PCR relief where trial counsel erred in failing to investigate into the issue of the voluntariness of his statement given in the case because the promise made by the police to the respondent that he would be released and allowed to go home after he confessed was an improper inducement for his statement.

During the PCR hearing, the respondent testified that he only gave the police a statement in effect via the inducement that he could get the ankle monitor and go home if he confessed, and that he was "under the influence" when he gave a statement to police, and that he didn't understand what he was signing when he signed the confession. App. 58, l. 13 – p. 60, l. 2; App. 71, lines 17-25. Clearly, the respondent's limited mental capacity and his mental illness issues also rendered him incapable of giving a voluntary statement. App. 71, l. 9-25. The respondent answered these questions during the PCR hearing regarding this issue as follows:

> Q. You were promised something in return for your statement
>
> A. Yes, sir. App. 58, lines 22-24.
>
> Q. Did you admit to doing....what he was alleging you did?
>
> A. Yes, sir. App. 67, l. 3-5
>
> Q. Where did you admit that you did it simply to get the ankle monitor.
>
> A. I was just trying to get home. I'm young. App. 67, lines 13-20.

According to the PCR testimony of Contessa Norwood (mother), trial counsel did not discuss challenging the statement with the respondent. App 79, l. 18-23. Also, during the PCR hearing, counsel admitted that a challenge to the statement might have been successful. App. 88, l. 5-12

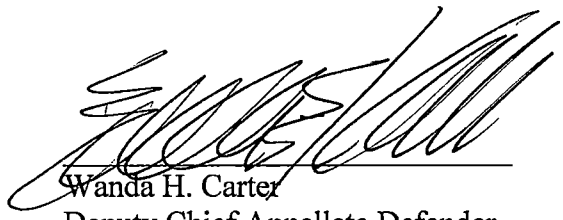
The PCR judge ruled that trial counsel performed incompetently in failing to investigate into matters surrounding the voluntariness of the respondent's statement given to police in the case. App. 121-122; App. 144–145; App.150–151.

In hindsight, PCR counsel stated that he believed that a meritorious challenge to the respondent's statement should have been waged in the case. A statement induced by a promise of leniency is involuntarily given if it so connected with the inducement as to be a consequence of the promise. State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987). In Peake, the defendant's statement was induced by the police officers' promise not to seek the death penalty. Whether or not a statement is voluntarily given is based on the totality of the circumstances. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

Clearly, the respondent's statement in question would likely have been suppressed but for counsel's ineffectiveness in failing to raise this issue via his investigations into this issue prior to the plea. See Sixth Amendment and Hill v Lockhart, supra.

CONCLUSION

Due to holding in Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984), which outlined the standard of the existence of "any evidence of probative value" in determining whether to uphold the PCR judge's ruling as the scope of review in PCR cases, counsel would request that this Court uphold the grant of PCR relief to the respondent in the case based on the above raised arguments.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR RESPONDENT

This 4th day of September, 2018.

STATE OF SOUTH CAROLINA

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BRANDON HARLEY EATON,

RESPONDENT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent in the above referenced case has been served upon Jordan Cox, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Respondent has been served on Brandon Harley Eaton, #356444, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 4th day of September, 2018.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me
this 4th day of September, 2018.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.