

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

DONI TERRELE ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000195

JOHNSON PETITION FOR WRIT OF CERTIORARI

Joanna K. Delany
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in concluding petitioner's guilty plea was entered freely, voluntarily, knowingly, and intelligently where it found petitioner's "testimony as to the side effects of Celexa did not indicate it caused him not to understand what he was doing or affected his ability to reason" when he gave his statements, since petitioner did testify the medication affected his ability to think clearly and to know what he was doing?

STATEMENT

A Florence County Grand Jury indicted petitioner for murder and possession of a weapon during the commission of a violent crime on July 18, 2013. App. 96 – 97. On September 15, 2014, petitioner pleaded guilty to the offenses before the Honorable Michael G. Nettles. App. 1. Scott Floyd represented petitioner and Solicitor Edgar Clements, III, represented the state. App. 1.

Petitioner was a forty-five-year-old father of three with no criminal record at the time of the decedent's death. App. 5, l. 22; App. 18, ll. 1-4. According to the solicitor, petitioner and the decedent "had a romantic relationship that had fallen on rocky times" when the decedent became interested in someone else. App. 5, ll. 17-21. After an argument, petitioner shot and killed the decedent. App. 6, ll. 6-9.

Petitioner initially fled to Myrtle Beach but quickly turned himself in to police with the help of a stranger he approached after seeing a Jesus bumper sticker on the person's vehicle. App. 6, l. 17 – 7, l. 10. Petitioner gave a confession to the Myrtle Beach police officer who detained him and to City of Florence Police Department investigators. App. 7, l. 8 – 8, l. 17.

The court sentenced petitioner to thirty-five years imprisonment for the murder. App. 26, ll. 12-16. No direct appeal was taken. On April 9, 2015, petitioner filed an application for post-conviction relief (PCR). App. 28 – 34. The state filed a return and motion for a more definite statement on September 13, 2016. App. 35 – 39.

A hearing was held before the Honorable Thomas A. Russo on August 29, 2017. App. 40. Jonathan Waller represented petitioner and Lindsey McAllister represented the state. App. 40. Petitioner's PCR counsel argued a "claim of ineffective assistance of counsel related to an

involuntary guilty plea for failure to investigate the facts and circumstances surrounding the statement given by [petitioner].” App. 43, ll. 1-5.

Petitioner said that when he confessed to the murder he was “taking [an] antidepressant called Celexa.” App. 45, ll. 14-20. Petitioner testified at the PCR hearing that the day he confessed to law enforcement, the medication affected his ability to “think clearly” and to “know what [he was] doing.” App. 52, ll. 15-25. According to petitioner, the medication had a number of adverse side effects. App. 46, l. 1- 47, l. 8. Petitioner explained the side effects included “anxiety, suicidal tendencies, thoughts, irritation, forgetfulness.” App. 46, l. 1-15.

According to petitioner, he told defense counsel about the medication’s side effects, but counsel did not investigate the matter and told petitioner that he did not feel it was relevant to any defense. App. 47, l. 14 – 48, l. 3. Petitioner said counsel never discussed the possibility of challenging the statements at trial.¹ App. 49, ll. 12-14. Petitioner said he pleaded guilty because his counsel said he had no defense. App. 51, l. 23 – 52, l. 14.

The PCR court denied petitioner relief and found his guilty “plea was entered freely, voluntarily, knowingly, and intelligently.” App. 93. The PCR court recognized that petitioner was not under the influence of any medications when he entered the guilty plea, but petitioner was under the influence of the medication Celexa at the time he gave the statements to law enforcement. App. 91 – 93.

¹ Defense counsel said that “when we were discussing whether or not to go to trial, I explain[ed] to him the *Jackson*—the procedure for *Jackson v. Denno* and how it’s up to a judge to decide whether their statements are admitted into evidence.” App. 77, ll. 7-11. However, counsel was unaware of any meritorious basis to challenge the statements other than the procedural requirement of the hearing itself. App. 78, ll. 1-10. According to defense counsel, petitioner did not ask him to investigate Celexa as a defense or say the medication affected his ability to think clearly. App. 72, l. 9 – 73, l. 6.

Despite petitioner's testimony that he was under the influence of the medication Celexa, and that the medication affected his ability to think clearly and know what he was doing when he gave the incriminating statements to law enforcement, the court stated in its order of dismissal: "[petitioner's] testimony as to the side effects of Celexa did not indicate it caused him not to understand what he was doing or affected his ability to reason . . ." App. 93.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in concluding petitioner's guilty plea was entered freely, voluntarily, knowingly, and intelligently where it found petitioner's "testimony as to the side effects of Celexa did not indicate it caused him not to understand what he was doing or affected his ability to reason" when he gave his statements, since petitioner did testify the medication affected his ability to think clearly and to know what he was doing.

Petitioner testified at the PCR hearing that the day he confessed to law enforcement, the medication affected his ability to "think clearly" and to "know what [he was] doing." App. 52, ll. 15-25. The appropriate scope of appellate review in PCR cases is "any evidence" of probative value is sufficient to support the PCR judge's factual findings. *Webb v. State*, 281 S.C. 237, 238, 314 S.E.2d 839, 839 (1984); *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Here, there was no evidence to support the PCR court's finding that: "[petitioner's] testimony as to the side effects of Celexa did not indicate it caused him not to understand what he was doing or affected his ability to reason . . ." when he confessed to law enforcement, given petitioner's testimony otherwise. App. 93.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

"In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional

norms; and (2) counsel's deficient performance prejudiced the applicant's case." *McKnight v. State*, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008) (citing *Strickland*, 466 U.S. at 687). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill*, 474 U.S. at 58.

Petitioner said counsel never discussed the possibility of moving to suppress his confessions on the grounds of involuntariness. App. 49, ll. 12-14. It is "axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, and even though there is ample evidence aside from the confession to support the conviction." *Jackson v. Denno*, 378 U.S. 368, 376 (1964) (internal citation omitted).

"Equally clear is the defendant's constitutional right at some stage in the proceedings to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession." *Id.* at 376-77. The use of a defendant's confession offends due process if his will has been overborne and his capacity for self-determination critically impaired. *Schneekloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973).

Counsel was deficient when he failed to investigate whether the medication Celexa rendered petitioner's incriminating statements involuntary. Counsel was also deficient when, according to petitioner, he failed to advise petitioner that the statements could be challenged at trial.

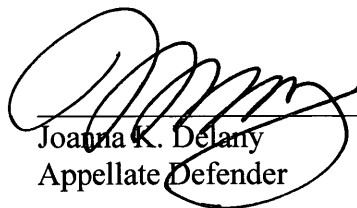
To establish prejudice when challenging a guilty plea, a PCR applicant must prove "there is a reasonable probability that, but for, counsel's errors, the defendant would not have pled guilty, but would have gone to trial." *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49

(2004). “The crux of the inquiry is whether counsel’s ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial.” *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

Petitioner testified that he pleaded guilty rather than proceed to trial because plea counsel said he had no defense. App. 51, l. 23 – 52, l. 14. This advice deprived petitioner of “a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Hill*, 474 U.S. at 56. Petitioner was therefore prejudiced by counsel’s deficiency because he established a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty, but would have gone to trial. *Strickland*, 466 U.S. at 694; *Harden*, 360 S.C. at 405, 602 S.E.2d at 49.

CONCLUSION

Based on the foregoing argument, petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.


Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of December, 2018.

STATE OF SOUTH CAROLINA

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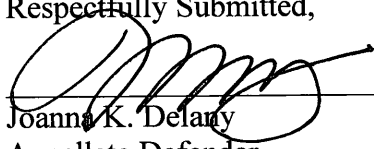
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Doni Terrele Anderson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Thomas A. Russo, which was held on August 29, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process. Therefore, counsel requests that the Court relieve her as counsel for Doni Terrele Anderson.

Respectfully Submitted,


Joanna K. Delany

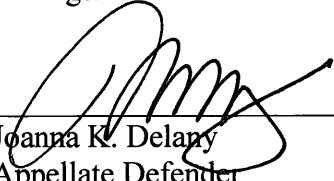
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of December, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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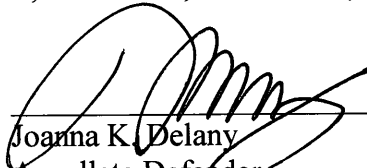
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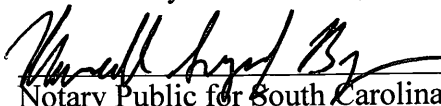
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Doni Terrele Anderson, #361471, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 28th day of December, 2018.


Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 28th day of December, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028