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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Brooks P. Goldsmith, Circuit Court Judge

PHILLIP BRYAN GLEASON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001791

JOHNSON PETITION FOR WRIT OF CERTIORARI

Kimberly Yancey Brooks
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel provided ineffective assistance of counsel where he admitted in this case that he failed to provide petitioner with the opportunity to see the text messages contained in discovery prior to petitioner's guilty plea?

STATEMENT OF THE CASE

Procedural History

Petitioner was indicted at the June 13, 2013, term of the Lancaster County Grand Jury for the offense of homicide by child abuse. App. 184-185. Petitioner was also indicted at the June 23, 2016, term of the Lancaster County Grand Jury for the offenses of unlawful conduct towards child. App. 186-189. His case was called to trial on January 30, 2017, before the Honorable Brian M. Gibbons. Christopher Welborn represented the petitioner. Solicitor Randy Newman and Deputy Assistant Solicitor Lisa Collins represented the State. App. 1.

Petitioner pled guilty to a reduced charge of voluntary manslaughter and two counts of unlawful conduct towards child. App. 5, ll. 10-21. Judge Gibbons sentenced petitioner to thirty years imprisonment for voluntary manslaughter, and four years each for the unlawful conduct towards child. All sentences were consecutive. App. 94, ll. 11-16.

Petitioner thereafter filed an Application for Post Conviction Relief on June 27, 2017. App. 96-101. The State filed a Return dated November 16, 2017.

An evidentiary hearing was convened on July 17, 2018, before the Honorable Brooks P. Goldsmith. Donae A. Minor represented petitioner. DeShawn Mitchell was the Assistant Attorney General. App. 113. Petitioner and Christopher Welborn, his trial lawyer, testified during the evidentiary hearing. App. 117-161.

Judge Goldsmith issued an Order of Dismissal dated August 25, 2018. App. 169-183. The Order concluded, "Appellant has not established any constitutional violations or deprivations that would require this Court to grant his application." App. 182.

Trial Facts

At the call of the case, the solicitor and defense counsel Welborn informed the court that petitioner wanted to plead guilty to voluntary manslaughter and two counts of unlawful contact towards child. App. 3, ll. 3-25. The court asked petitioner the standard plea colloquy questions. App. 4-9. When the court finished questioning petitioner, the solicitor gave the court a brief explanation of the facts as follows:

Petitioner, his co-defendant, April, the victim's mother, and the victim all lived together in Lancaster County. Between February 5, 2013 and March 5, 2013, petitioner watched the victim while her mother worked. The victim was five years old. During that time, petitioner sent numerous text messages to April, telling April that the victim would have bruises from where he had injured the child. He also sent April a video of the victim screaming in the shower while he told her he wanted to clean her off. It is believed the victim was injured at that time resulting in a broken clavicle. Petitioner also texted pictures to April showing the victim with a black eye and back injury which were inflicted by petitioner.

The victim died on March 5, 2013. The autopsy report reflects that the cause of death was a closed head injury caused by blunt force trauma. The blunt force trauma was a beating that resulted in a subdural hemorrhage to the brain. If there had been a trial, Dr. Ross would have testified that the injuries to the victim's scalp, head, and brain were caused by significant force. The death would have been occurred within minutes to hours of the injury. The autopsy report and pictures reflect that there were numerous bruises on many different locations on the victim. The victim also had a broken clavicle that was in the stages of healing. Dr. Ross would

have testified that the fracture to the clavicle was not a recent as the head trauma. Also the clavicle showed at least two periods of injuries to the victim. App.10-13.

After the solicitor's summary of the facts, the court accepted petitioner's guilty plea. App. 14, ll. 12-16.

The court then began the sentencing phase of the hearing. The solicitor went first, and informed the court that the child had multiple abrasions, contusions all over her face, upper chest, upper extremities, lower extremities, back, and the blunt force trauma to the head. He also stated that the coroner could not take his hand and place it on the child's body without touching a bruise. App. 18, ll. 10-16. The solicitor also informed the court that there were hundreds of pages of evidence regarding text messages, photos, and videos from petitioner's phone and computer. The solicitor then read some of the text messages to the court. App. 20-43. The court heard from family members and law enforcement officers regarding the case.

Then defense counsel Welborn informed the court that petitioner is an Iraqi combat veteran who was injured when an improvised explosive device (IED) exploded under his vehicle. He also informed the court that petitioner has a traumatic brain injury app. 54, ll. 15-25 and 55, ll. 1-23. Dr. Colbi Sutton was qualified as a expert and testified that petitioner suffers from PTSD. App. 64, ll. 9-25, 65, ll. 1-4. She also testified that he is at a low risk for committing another offense. App. 68, ll. 1-24. She also testified that at the time of trial, petitioner was on medication and was receiving treatment for PTSD. App. 81, ll. 16-18.

The court sentenced petitioner to 30 years for the voluntary manslaughter and 4 years each for the unlawful conduct charges. App. 94, ll. 12-16.

At the PCR hearing held on January 30, 2017, petitioner testified that defense counsel Welborn did not discuss or disclose any evidence related to this case with him. App. 122, ll. 11-17. He also denied ever admitting any guilt. App. 121, ll. 21-25. Petitioner also testified that he wanted to appeal and that defense counsel Welborn filed and then withdrew that appeal. App. 124, ll. 23-25 and 125, ll. 1-11. He further testified that Welborn promised him a sentence of 20 years or less and that his wife (co-defendant) would be left alone. App. 123, ll. 1-24.

Petitioner's mother Gwen testified that she was present when defense counsel Welborn promised her son 20 years or less and that his wife would be left alone. App. 132, ll. 1-6.

Defense counsel Welborn testified that he went over all of the evidence with petitioner except the text messages. Welborn also testified that petitioner had admitted to him that he had lost his temper and acknowledged responsibility for what happened to the victim. App. 155, ll. 1-21. Welborn denied promising petitioner a specific sentence. App. 37, ll. 22-25 and 38, ll. 1-5.

An order of dismissal was issued. App. 169. The order found that petitioner failed to establish any constitutional violations or deprivations that would require the Court to grant the application. App. 182.

ARGUMENT

Defense counsel provided ineffective assistance of counsel where he admitted in this case that he failed to provide petitioner with the opportunity to see the text messages contained in discovery prior to petitioner's guilty plea.

It was undisputed that defense counsel was provided with discovery and that text messages from petitioner were included in the discovery. It is also undisputed that defense counsel failed to show the text messages to petitioner prior to petitioner pleading guilty.

A defendant in a criminal case “is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.” *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012); U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984).

Where a defendant claims ineffective assistance of counsel, in the context of a guilty plea, the issues are: (1) “whether the plea was voluntarily, knowingly, and intelligently entered”; *Anderson v. State*, 342 S.C. 54, 535 S.E.2d 649 (2000); and, (2) “whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

Here, as seen, defense counsel admitted he did not show the text messages to petitioner. Counsel apparently reasoned that it was not necessary to show petitioner the text messages because petitioner acknowledged sending the texts. However, defense counsel had a duty to adequately inform petitioner to allow him to make a voluntarily, knowing, and intelligent decision. *Anderson* 342 S.C. at 57, 535 S.E.2d at 651. Defense counsel was deficient this case and under the circumstances, petitioner's guilty plea was not voluntarily, knowingly, or

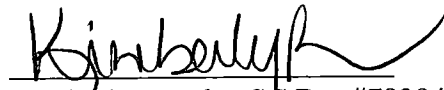
intelligently made. Further, defense counsel's actions may have affected the outcome of the plea process.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

March 28, 2019

Respectfully submitted,



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Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County Honorable

Brooks P. Goldsmith, Circuit Court Judge

PHILLIP BRYAN GLEASON,

PETITIONER

V.

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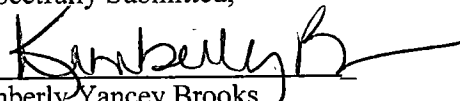
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Phillip Bryan Gleason states:

1. She was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Brooks P. Goldsmith, which was held on July 17, 2018, 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 Phillip Bryan Gleason.

Respectfully Submitted,


Kimberly Yancey Brooks
ATTORNEY FOR PETITIONER

This 28th day of March, 2019.

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The Honorable Brooks P. Goldsmith, Circuit Court Judge

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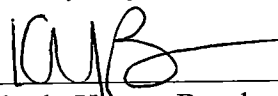
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RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on March 28, 2019, a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case were served upon Samuel Key, Esq., Asst. Attorney General, P.O. Box 11549, Columbia, SC 29211 ; and Phillip Gleason #00371334, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010.



Kimberly Yancey Brooks
Attorney for Petitioner