ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED
JUL 10 2019
S.C. SUPREME COURT

DONQUAVIOUS DASHON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002281

JOHNSON PETITION FOR WRIT OF CERTIORARI

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred when it found counsel provided effective representation where there was evidence that counsel did not discuss the applicability of self-defense, since petitioner said he only shot the decedent because he thought the decedent was going to shoot him first?

STATEMENT

A York County Grand Jury indicted petitioner for the offenses of murder, first degree burglary, and possession of a weapon during the commission of a violent crime. App. 190 – 193. The state alleged that petitioner approached a house where the decedent—who was dating petitioner's ex-girlfriend—was playing video games, and that petitioner pistol-whipped and shot the decedent when he came to the door. App. 46, l. 16 – 48, l. 4.

On July 1, 2015, petitioner appeared before the Honorable Daniel D. Hall and entered a plea of guilty to the lesser-included offense of voluntary manslaughter, first degree burglary, and possession of a weapon during the commission of a violent crime.[1] App. 28. Petitioner was represented by Philip Smith and Harry Dest. App. 28. The state was represented by Kevin Brackett and Willy Thompson. App. 28; App. 61. Judge Hall accepted petitioner's pleas and deferred sentencing.

On July 13, 2015, the parties reconvened for sentencing before the Honorable John C. Hayes, III. App. 61. The court sentenced petitioner to concurrent terms of imprisonment of forty years for first degree burglary, thirty years for voluntary manslaughter, and five years for possession of a weapon during the commission of a violent crime. App. 101, ll. 13-19.

Petitioner timely filed an application for post-conviction relief (PCR), and the state made its return. App. 105 – 115; App. 116 – 122. On April 16, 2018, a hearing was held before the Honorable Roger E. Henderson. App. 123. Jeremy Thompson represented petitioner and Justin

---

1 Petitioner entered pleas of guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime, but his plea to the burglary was entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). App. 55, ll. 9-12; App. 57, ll. 16-19. It was disputed whether petitioner entered the house. The state maintained petitioner "busted in" the door, while petitioner said he did not enter the house and instead shot from the doorway. App. 100, ll. 12-13; App. 54, ll. 5-9.

Hunter represented the state. App. 123. PCR counsel explained that petitioner was proceeding on the allegation of "ineffective assistance of counsel for failing to effectively completely advise [petitioner] of his ability to present a defense of self-defense if he went to trial." App. 127, ll. 12-16.

Petitioner told the PCR court that he saw his ex-girlfriend's car at a known "drug house" and that he approached the house to make sure his ex-girlfriend—who was the mother of his child—did not have his child in that environment. App. 135, ll. 2-10. He explained that he carried a firearm for protection, and said that when the decedent answered the door, he shot the decedent because the decedent appeared to be reaching for a weapon. App. 137, l. 8 – 138, l. 3.

Petitioner testified that he wanted a new trial and explained that he would not have pleaded guilty if he knew that he could have presented self-defense. App. 145, ll. 9-10; App. 150, ll. 13-19. Petitioner said counsel never told him that his version of the facts "would provide a complete defense to the charge." App. 141, ll. 16-18. Petitioner also explained that counsel did not go over the elements of self-defense with him.[2] App. 141, ll. 7-9.

The PCR court issued an order of dismissal which denied petitioner relief. App. 173 – 189. The order cited counsel's testimony that "he explained self-defense" to petitioner and the order stated that during the plea hearing, petitioner told the plea judge that he and counsel "had discussed possible defenses that might have been beneficial."[3] App. 187.

This petition for writ of certiorari follows.

---

2 In contrast, counsel testified that petitioner "gave numerous versions" of events including alibi. App. 153, ll. 21-23. Counsel claimed that he did discuss the elements of self-defense with petitioner, including that "you can't be at fault for bringing on the difficulty." App. 156, ll. 6-10. According to counsel, self-defense "didn't comport with what the other witnesses from inside the home described." App. 157, ll. 7-12.

3 The PCR court also found that counsel's testimony was credible and petitioner's testimony was not credible. App. 187.

ARGUMENT

The PCR court erred when it found counsel provided effective representation where there was evidence that counsel did not discuss the applicability of self-defense, since petitioner said he only shot the decedent because he thought the decedent was going to shoot him first.

Petitioner said counsel did not explain the applicability of self-defense to his case—this prejudiced petitioner by keeping crucial information from him that should have informed his decision of whether to plead guilty or exercise his right to trial.

"[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt." *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). There are four elements of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Bixby, 388 S.C. 528, 553-54, 698 S.E.2d 572, 585-86 (2010).

Here, petitioner testified at the PCR hearing that he did not bring on the difficulty but merely knocked on the door, and said that he shot the decedent because he thought the decedent was reaching for a gun to shoot him. If petitioner had been properly informed of the elements of self-defense by his counsel, he would have known that by giving his version of events at trial, the state would have been forced to disprove self-defense.

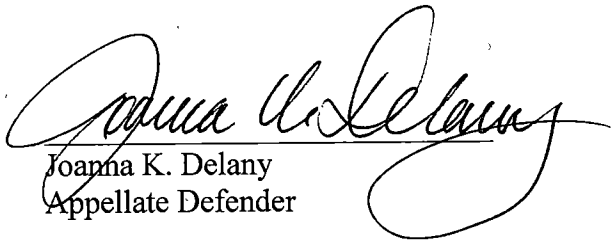
The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). "In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel 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). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

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).

Here, there was evidence—petitioner's testimony—that counsel failed to discuss self-defense with petitioner. Counsel's failure to discuss a self-defense strategy was deficient performance. Petitioner was prejudiced because he established that, but for, counsel's errors, he would not have pleaded guilty but would have gone to trial. *Strickland*, 466 U.S. 688; *Harden*, 360 S.C. at 408, 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 10th day of July, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

DONQUAVIOUS DASHON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Donquavious Dashon Davis 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 Roger E. Henderson, which was held on April 16, 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 Donquavious Dashon Davis.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of July, 2019.

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."

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 10th day of July, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

DONQUAVIOUS DASHON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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 Janell Gregory, 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 Donquavious Dashon Davis, #364690, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 10th day of July, 2019.

Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 10th day of July, 2019.

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