State of South Carolina
In The Supreme Court
Certiorari to York County

Danquavious D. Davis — Petitioner

V.

State of South Carolina — Respondent

Appellate Case NO 2018-002281

Pro Se Memorandum For Writ of Certiorari
Response

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. 140-143. The State alleged that petitioner approached a house where the decedent who was petitioner's ex-girlfriend's boyfriend 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. App Pg. 28. Petitioner was represented by Phillip Lee Smith and Harry Dest. App. Pg. 28. The state was represented by Kevin Brackett and Willy Thompson App. 28 App. Pg. 61 Judge Hall accepted petitioners 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. Pg. 101 Ln. 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 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.

The PCR Court issued an order of dismissal which denied petitioner relief. App. 173-184. 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. App. 187

Petitioner's plea to the 1st degree 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 steps outside the door. App. 100, ll. 12-13; App. 54, ll. 5-4

Counsel testified that petitioner gave numerous versions of events including alibi. App. 153, 21-23. Counsel claimed that he did discuss the elements of self defense with petitioner, in specific "that you cant 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

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.

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

Petitioner told the PCR Court that he saw his ex-girlfriends 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 in that environment. App. 135 Ln. 2-10. He explained that he carried a firearm [redacted] 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 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 13-14. Petitioner said counsel never told him that his version of the facts would provide a complete defense to the charge. App. 141, Ln. 16-18. Petitioner explained that counsel did not go over the elements of self-defense with him. App. 141 Ln. 7-9.

Counsel for petitioner testified that he did not know if he explained elements 1-4 of self-defense to petitioner but that "he certainly cannot be at fault in bringing on the difficulty" App. Pg. 162 Ln. 7-9.

Counsel for petitioner testified that with petitioners testimony from the PCR hearing, he believed would have entitled petitioner to a self-defense charge if presented at trial. Pg 162 Ln. 16-19.

Counsel for petitioner testified that he did not Advice petitioner that with petitioner's version of facts through testimony, if presented at trial he would be entitled to a self defense charge. Counsel testified that petitioner had no knowledge of such crucial information. App. Pg. 162 Ln. 16-25.

Counsel testified petitioner had informed him of those same version of events App. Pg. 162 Ln. 24-25

Counsel testified in regards to whether he explained who bore the burden of proving or disproving self defense with petitioner Counsel testified He doesn't know that he explained how that occurred. App. Pg. 163. Ln. 5-11.

Petitioner's Testimony has been proven credible and Counsels testimony is not so credible based off of Counsels own admission of testimony from the above information.

Here, there was evidence petitioners testimony as well as counsels 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.

When 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)

The PCR Court erred when it found Counsel provided effective representation where there was evidence that counsel did not completely advise the applicability of self-defense to Petitioner. App. Pg. 162 Ln. 16-25.

Even if counsel did not know the exact version of petitioners facts of the case he would of produced at trial. Counsel had an understanding of what petitioners testimony would be.

Leaving Counsel with the obligation to fully advise petitioner of self-defense and that through his testimony of his version of facts if presented at trial would have given petitioner a self defense Charge leaving the state to prove otherwise.

Plea Counsel testified he didn't know if he explained element one through four of self defense with petitioner. App Pg. 162 Ln 7-15. Plea Counsel testified that in particular he went over was petitioner in danger and was he without fault in bringing on the difficulty. App. Pg. 162 Ln 7-15.

Petitioner stated that he provided his version of facts in multiple different ways to plea Counsel Phillip Smith. By this his meaning was he told him verbally and as petitioner stated that he wrote him letters explaining his version of events, as well as asking counsel to help him with a trial strategy, also stating he needed the main piece of evidence. Petitioner never testified that he gave plea counsel different versions of facts to the case, to clear that matter up within the order of dismissal. App. Pg. 134 Ln. 12-24.

Within the order of dismissal it states that petitioner testified that he knew he could present self-defense through his testimony at trial, but that he had no Chance at proceeding to trial and asserting self-defense. It stated this was a statement from his own knowledge.

This is false information, Petitioner said counsel never told him that with his version of facts would provide a complete defense to the charge of self-defense App. 141 Ln. 16-18.

The transcript reflects that on July 1, 2015 at plea hearing the judge asked petitioner does he agree with the facts of manslaughter Petitioner stated "Not really he doesn't have a good chance, that he doesn't have a choice unless he wants to go to trial he would be facing life and he doesn't have a good chance of going to trial and fighting for self-defense." App. Pg. 54 Ln. 10-17

Petitioner stated at the PCR hearing in regards to the above statement, " that it was a statement from his own knowledge and that counsel never explained self-defense to him but self-defense was the argument he wanted to raise. In other words this was a statement of confusion and rather a lack of the knowledge of self-defense on plea counsel's behalf. App. Pg 140 Ln. 25 App. Pg 141 Ln. 1-6

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 applicants case. "McKnight v. State, 378 S.C. 33, 49, 661 S.E.2d 354, 357 (2008). The 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 plead 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 defendant would have been successful had he gone to trial.
Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 483 (2018)

Conclusion

Based on the foregoing argument Petitioner respectfully requests that a new trial is granted and proper corrections are made

Aug 1st, 2019

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