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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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AUG 07 2019

S.C. SUPREME COURT

Certiorari to Newberry County

Honorable J. Mark Hayes, Circuit Court Judge

WILLIE MARQUIS STEVENSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002182

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in denying relief, where Petitioner pleaded guilty to assault and battery of a high and aggravated nature and armed robbery to avoid an impending drug trafficking indictment, where he repeatedly professed his innocence, told plea counsel he wanted a jury trial, and where he was coerced into pleading guilty?

STATEMENT

Petitioner was indicted by a Newberry County grand jury on July 15, 2016 for attempted murder and armed robbery. App. 70 – 73. On February 6, 2017, Petitioner pleaded guilty to the lesser-included offense of assault and battery of a high and aggravated nature as well as the armed robbery charge before the Honorable Donald B. Hocker. App. 1. Geoffrey Dunn represented Petitioner, and Taylor Daniel appeared on behalf of the state. The state recommended an eleven year concurrent sentence. App. 3 ll. 2 – 19.

The facts giving rise to Petitioner's arrest as alleged by the state were as follows: on April 2, 2016, Bryan Smith sustained a gunshot wound to the neck. App. 7 l. 2 – App. 8 l. 22. Petitioner's brother, Brandon Stevenson, was taken into custody and gave a statement implicating Petitioner. Id. Petitioner admitted being in the same area but denied shooting a gun at any point; the state indicated it would proceed at trial under an accomplice liability theory. Id.

Judge Hocker found a factual basis for the plea and accepted Petitioner's plea. App. 12 l. 20 – App. 13 l. 1. Petitioner was sentenced to eleven years concurrent on both charges. App. 18 ll. 5 – 13. He did not appeal his plea.

On December 11, 2017 he filed an application for post-conviction relief. App. 20 – 26. He averred that counsel failed to secure a preliminary hearing and forced him to plead guilty. The state made its Return on or about April 6, 2018. App. 29 – 34. Through counsel, an amended application was filed on or about June 11, 2018. App. 20 – 28.

An evidentiary hearing took place on June 20, 2018 before the Honorable J. Mark Hayes. App. 35. Ashley McMahan represented Petitioner, and Julie Coleman appeared on behalf of the state. Petitioner and plea counsel, Geoffrey Dunn, testified at the hearing. The PCR judge took

the matter under advisement at the conclusion of the hearing and issued an order four months later on October 29, 2018. App. 62 – 69. The PCR court found that Petitioner failed to establish "any constitutional violations or deprivations that would require this court to grant his application." App. 68.

This petition follows.

ARGUMENT

The PCR court erred in denying relief, where Petitioner pleaded guilty to assault and battery of a high and aggravated nature and armed robbery to avoid an impending drug trafficking indictment, where he repeatedly professed his innocence, told plea counsel he wanted a jury trial, and where he was coerced into pleading guilty.

Relevant facts

At the time of the shooting which he was not a part of, Petitioner was the primary caretaker for his two children. App. 17 ll. 20 – 23. Although his co-defendants, prior to their guilty pleas, provided statements to law enforcement that Petitioner was supposedly there, Petitioner was not armed at the time of the shooting. App. 41 ll. 3 – 23. Following his arrest, Petitioner was incarcerated at the Fairfield County jail for 228 days before bonding out. App. 13 ll. 8 – 22. Petitioner and his family retained plea counsel on April 18, 2016. App. 49 ll. 16 – 21. Counsel only visited him twice at the detention center. App. 45 ll. 3 – 7; App. 49 l. 25 – App. 50 l. 1. The two met approximately three times after Petitioner got out of Fairfield County. Id. He had requested a preliminary hearing but plea counsel forgot to file the applicable paperwork. App. 40 ll. 9 – 21.

Both of Petitioner's co-defendants pleaded guilty before he did. App. 42 ll. 4 – 12. One received less time than he did. Id. Petitioner wanted to go to trial to prove that he was not at the location where the shooting occurred. App. 42 ll. 13 – 21. He was down the street, "around the corner from what had happened" when he heard the gunshot. Id. Plea counsel, however, never discussed a trial with Petitioner. App. 42 l. 22 – App. 43 l. 21. Counsel pushed a twenty-year plea offer and then a fifteen-year deal on Petitioner, both of which he declined. Id.

While looking at pictures of the crime scene and discussing a jury trial, Petitioner and plea counsel "got into a heated argument" which led to Petitioner leaving counsel's office. Id. Petitioner told counsel to call him to discuss a trial. Id. However, the next call by plea counsel was to discuss the retainer fees owed to him. Id.

Petitioner never learned from counsel the possible defenses he could have used at trial. App. 45 ll. 23 – 25. He elected to plead guilty after drug charges were sprung on him at the last minute. App. 43 l. 22 – App. 44 l. 23. Had Petitioner not pleaded guilty, he would have been indicted for trafficking 400 grams or more of crack cocaine. Id. Thus, Petitioner was coerced into pleading guilty on the assault and battery of a high and aggravated nature and the armed robbery charges even though he told counsel "numerous times" that he wanted a jury trial. App. 53 ll. 1 – 21.

At trial, Petitioner would have distanced himself from the drug deal gone bad by testifying that he was not there. App. 47 ll. 3 – 8. He never intended to rob or anyone, and he was not involved with the shooting. Id. According to both Petitioner and counsel, Petitioner's defense "was always that he was not at the scene of the robbery." App. 50 ll. 21 – 25. Nonetheless, counsel advised Petitioner to plead guilty. App. 53 ll. 1 – 21.

Discussion

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). To establish ineffective assistance of counsel, a PCR applicant must show: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687. To show deficient performance, an applicant must prove "counsel's representation [fell] below an objective standard of reasonableness." Id. at 688. To

demonstrate prejudice, an applicant must show "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" Smith v. State, 386 S.C. 562, 565–66, 689 S.E.2d 629, 631 (2010) (quoting Strickland, 466 U.S. at 694).

Rather than push for a plea, counsel should have discussed with Petitioner the intricacies of his case. Plea counsel failed to strategize with Petitioner, particularly about defenses available to him had the case gone to trial like Petitioner desired. With only witness testimony and photographs of the crime scene, the state would have had a weak case against Petitioner, hence the recommended sentence of eleven years on an attempted murder and armed robbery charges. Counsel's failure to participate in the representation beyond plea discussions was deficient.

On charges that could have resulted in a maximum sentence of over fifty years, plea counsel Dunn only met with Petitioner between four and six times, even though Petitioner was not in the jail the entire time. Petitioner did not receive effective assistance from his retained attorney. Due to the conduct of counsel, Petitioner was prejudiced in not having the opportunity to go forward with trial. Based on the testimony of both Petitioner and plea counsel, there is a reasonable probability that had counsel endeavored to investigate and strategize, a trial could have resulted in an acquittal.

An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59, 106

S.Ct. 366, 88 L.Ed.2d 203 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

"In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). The PCR court should also evaluate "the strength of the State's case in light of all the evidence presented to the jury." Id. Generally, "the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice." Id. However, "the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." Id. at 189, 810 S.E.2d at 844.

Petitioner maintained that he was not at the scene of the robbery. Accomplice liability may not have extended to him if he was down the street away from the shooting. He never wavered in his desire for a trial. He was coerced into pleading guilty following the threat of a trafficking charge; had counsel worked with him to structure his testimony and accompanying defenses at trial, he could have defended himself against the additional charge by clarifying his lack of proximity to the incident. There was no need to mention the possibility of him buying drugs in order to clarify that he was not involved with the shooting. If he was not nearby when shots were fired and Bryan Smith was injured, a worthy argument could have been developed at trial. The prejudice in his case manifests itself in the resulting sentence, eleven years, when he could have gone to trial as he wished and defended himself against the charges. Had he been represented by effective counsel, he would have been advised on how to do so and not coerced into pleading guilty.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari and allow further briefing on the issue raised herein.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2019.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Willie Marquis Stevenson states:

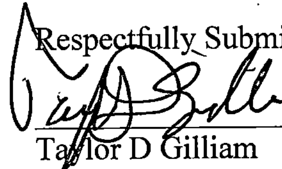
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge J. Mark Hayes, which was held on June 22, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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 him as counsel for Willie Marquis Stevenson.

Respectfully Submitted,

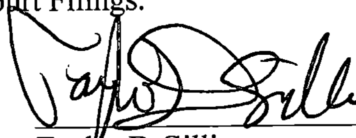


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of August, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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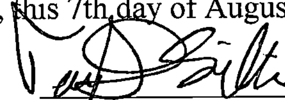
CERTIFICATE OF SERVICE

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 Willie Marquis Stevenson, #316191, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067, this 7th day of August, 2019.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of August, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027