

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

ALBERT LAVERNE TAYLOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000126

JOHNSON PETITION FOR WRIT OF CERTIORARI

Jessica M. Saxon
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 Petitioner was denied his right to effective assistance of counsel where petitioner would not have pled guilty if plea counsel had advised him that self-defense or defense of others were viable defense?

STATEMENT

Procedural History

Petitioner was indicted for murder and possession of a weapon during the commission of a violent crime by a Pickens County grand jury on October 11, 2016. App. 65-66. On January 25, 2018, Petitioner pled guilty to murder and possession of a weapon during the commission of a violent crime before the Honorable Edward W. Miller. App. 1; App. 4 ll. 8-12. Baker Cleveland appeared on behalf of the state and Dorothy Manigualt represented Petitioner.

Judge Miller accepted the plea and sentenced Petitioner to concurrent terms of imprisonment for thirty-two years for murder and five years for possession of a weapon during the commission of a violent crime. App. 10 ll. 15-18; App. 16 ll. 13-14.

On July 12, 2018, Petitioner filed a PCR application. App. 18-24. Petitioner alleged, inter alia, that plea counsel failed to advise him of self-defense. App. 33 ll. 21-24. The State made its return on October 23, 2018. App. 25-30.

An evidentiary hearing took place before the Honorable Alex Kinlaw, Jr. on December 17, 2018. App. 32. Don A. Thompson represented Petitioner, and Janell H. Gregory appeared on behalf of the State. Id. Petitioner and plea counsel testified at the hearing.

Judge Kinlaw's Order of Dismissal was filed on January 11, 2019. He found Petitioner received effective representation. App. 55-64.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner was denied his right to effective assistance of counsel where petitioner would not have pled guilty if plea counsel had advised him that self-defense or defense of others were viable defense.

Relevant Facts

On the evening of February 17, 2016, Petitioner, along with Dennis Gibbs, Jarmari Fair and a juvenile went to Tri-City Lanes in Easley, South Carolina for Jarmari Fair to fight Bradley Burrell. App. 6 ll. 7-12. The defendants and Burrell had fought earlier that same day and then arranged this second fight via social media. App. 6 ll. 12-15. The defendants, armed with firearms, arrived at the bowling alley to find a crowd awaiting them that included Burrell and the deceased, Kequan Brown. App. 6 ll. 16-20. Burrell and Fair began arguing and were joined at some point by Brown. App. 6 ll. 23-25. Petitioner, who had remained in the vehicle up until this point, then got out, approached the group and shot Brown in the chest. App. 6 ll. 25 – 7 ll.1-3. Brown was pronounced dead at the scene. App. 7 ll. 3. The defendants left the scene, hid the weapons in Greenville County and were later arrested at a gas station in Dacusville. App. 7 ll. 4-9. A .38 revolver found with the other firearms was confirmed by SLED to be the gun used in the shooting. App. 7 ll. 9-11.

At the PCR hearing Petitioner alleged that trial counsel was ineffective for not advising him about self-defense or defense of others. App. 37 ll. 23-25. Since Petitioner felt that self-defense or defense of others were viable defenses given the facts of the case, he asserted that he would not have pled but would have gone to trial if he had been fully advised on the law of self-defense and defense of others. App. 40 ll. 11-15.

Discussion

Petitioner proved that his right to effective assistance of counsel was violated when plea counsel failed to fully address the possibility of asserting self-defense or defense of others at trial. This ineffective assistance of counsel rendered Petitioner's guilty plea unknowing and involuntary. "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S. Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 147, 1480-81 (2010) (internal quotations omitted).

At the PCR hearing Petitioner testified that he had met with appointed counsel roughly four to five times prior to entering a guilty plea but that counsel had never discussed self-defense with him. App. 37 ll. 11-25. Petitioner stated had counsel discussed self-defense with him he would have gone to trial instead of entering a plea. App. 40 ll. 3-15. While not rife with details the record does show that Petitioner was not aware that the fight had been arranged over messages on social media, a physical encounter had **already occurred** earlier that day between the parties¹ and **a crowd was awaiting them** at the bowling alley. App. 6 ll. 12-15 and 18-20.; App 36 ll. 5-10. Further, plea counsel testified that according to Petitioner the other parties

¹ In State v. Mekler, 368 S.C. 1, 626 S.E.2d 890 (2005), the evidence of deceased prior act of violence was admissible to prove that defendant had a reasonable apprehension of great bodily harm from the deceased at the time of the incident as required for self-defense or defense of others claims.

involved in the fight also had guns and he shot because he thought they were going to shoot them.² App. 45 ll. 16-20.

Those facts combined with Petitioner's state of mind at the time of the incident would have given rise to a self-defense or defense of others charge which could have resulted in an acquittal. "Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative or bystander if that friend, relative or bystander would likewise have had the right to take the life of the assailant in self-defense." State v. Long, 325 S.C. 59, 64, 480 S.E.2d 62 (1997).

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). When a defendant challenges a conviction on the ground that counsel was ineffective, the question becomes, "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result," Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686; see Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Pursuant to Strickland v. Washington, a court will conduct a two-prong test when determining whether trial counsel's assistance was ineffective. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Strickland, 466 U.S. at 687. Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (quoting Strickland, 466 U.S. at 688).

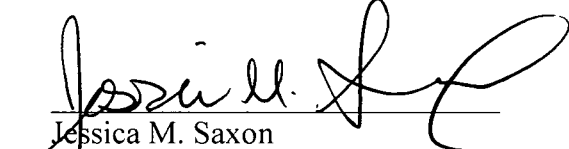
² While there are no facts in the record to indicate anyone but Petitioner and his co-defendant's were armed, this fact would be germane to Petitioner's state of mind in a self-defense or defense of others claim.

Second, the applicant must show that counsel's "deficient performance prejudiced the defendant to the extent that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 688). In Lockhart the court clarified that the result of the proceeding difference requires the defendant to show that there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial.

The PCR court dismissed Petitioner's testimony, finding it was not credible, and instead rested its decision solely on the testimony of plea counsel. Plea counsel testified that she did discuss self-defense with Petitioner. App. 46 ll. 19-24. However, at no point in the record does it show where plea counsel discussed defense of others with Petitioner. A claim of defense of others is so closely related to a claim of self-defense that plea counsel's failure to discuss that defense with him, given the facts of the case, falls below the objective standard of reasonableness in criminal matters and therefore counsel was ineffective. Had Petitioner been properly advised of the possibility of self-defense or defense of others he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56 (1985).

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's writ of certiorari to allow full briefing on this issue.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of September, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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ALBERT LAVERNE TAYLOR,

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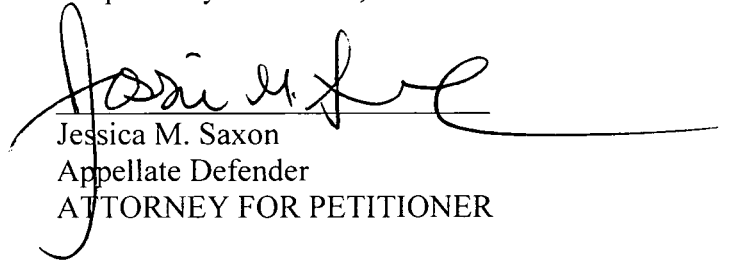
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Albert Laverne Taylor 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 Alex Kinlaw, which was held on December 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 Albert Laverne Taylor.

Respectfully Submitted,

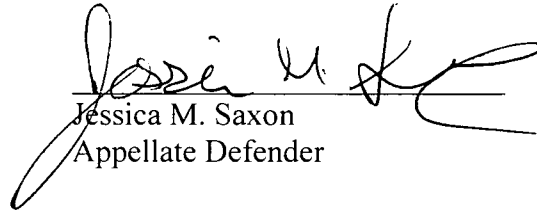


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of September, 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."



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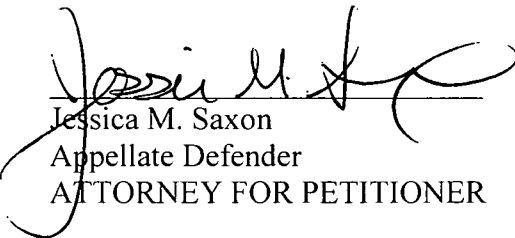
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RESPONDENT


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 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 Albert Laverne Taylor, #375218, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 3rd day of September, 2019.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of September, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027.