STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

CHARLES GARY SINGLETARY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002041

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find plea counsel ineffective for failing to have Petitioner evaluated to determine criminal responsibility and capacity to conform?

STATEMENT

In August of 2014, the Sumter County Grand Jury indicted Petitioner, Charles Gary Singletary, for murder, attempted murder, assault and battery second degree and possession of a weapon during the commission of a violent crime, indictment #2014-GS-43-0714. On April 12, 2016, Petitioner appeared before the Honorable W. Jeffrey Young and pled guilty to murder, attempted murder and assault and battery second degree. The State dismissed the weapon charge. Calvin Hastie represented Petitioner at the plea. John P. Meadors prosecuted the case. Pursuant to negotiations with the State, Judge Young sentenced Petitioner to forty (40) years for murder, thirty (30) years concurrent for attempted murder and three (3) years concurrent for assault and battery second degree. Petitioner did not appeal.

On March 27, 2017, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on October 10, 2017. On July 25, 2018, an evidentiary PCR hearing was held before the Honorable Kristi F. Curtis. Lance S. Boozer represented Petitioner at the PCR hearing. Julie Coleman represented the State. In a written order signed October 18, 2018, Judge Curtis denied relief and dismissed the application. A timely notice of intent to appeal was served on November 15, 2018. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find plea counsel ineffective for failing to have Petitioner evaluated to determine criminal responsibility and capacity to conform.

Petitioner pled guilty to fatally shooting Joshua Brown, shooting Timothy Hodge and assaulting Hodge's mother, Margaret Charles. Petitioner frequently spent the night at the house where Hodge lived with his mother and father. As plea counsel told the judge, "Your Honor, as you've heard, this is such a tragedy. Here are three young boys who knew each other since they were in kindergarten. We stand here today, we have three families that are destroyed. The question is why? And I still haven't gotten an answer yet." (App. p. 21,lines 12-17).

According to the State, prior to the shooting Hodge accused Petitioner of taking his headphones. (App. p. 8, lines 11-18). When confronted by Hodge, Petitioner denied taking the headphones and, according to the State, pulled a gun. (App. p. 8, line 22 – p 9, lines 1-8). Despite the misunderstanding over the headphones, Hodge allowed Petitioner to again spend the night. (App. p. 10, lines 1-13). On this evening Joshua Brown also spent the night with Hodge and the three young men all slept in Hodge's bedroom. (App. p. 10, lines 6-10).

During the guilty plea the prosecutor told the judge:

> Sometime earlier that next morning Timothy Kyle Hodge hears a loud static radio just like, boom, it had busted. At that point he come out of the room, feels something in his left part of his head, it's right beside his eye, is running out of the room. Mr. Singletary is chasing him out of the room. At that point Ms. Margaret Charles – raise your hand. Margaret comes from her bedroom and she said that she heard some loud static and all, and she sees Mr. Singletary chasing her son, Mr. Hodge. At that point she gets in an altercation with Mr. Singletary; and he's admitted to, he hit, if I can – Mr. Hastie has seen this picture. Those are results of when he hit Ms. Charles in the ear as she was struggling with him as he was going through the house trailer, Judge.

(App. p. 10, lines 14 – p. 11, lines 1-4).

Earlier in the plea the following colloquy took place:

THE COURT: Are you taking any medications that would cloud your judgment?

THE DEFENDANT: Sir?

THE COURT: Are you taking any medications that would cloud your judgment?

THE DEFENDANT: No, sir.

THE COURT: Are you aware of any physical, emotional, or nervous condition that would keep you form understanding what is happening today?

MR. HASTIE [PLEA COUNSEL]: May I speak with him?

THE COURT: Yes, sir.

(Attorney Hastie confers with defendant.)

THE DEFENDANT: No sir.

(App. p. 5, lines 10-22).

In the application for post-conviction relief Petitioner alleged that plea counsel was ineffective for, "Failure to properly address issues involving mental health." (App. p. 38). It appears that the PCR hearing had been continued previously because Petitioner had "some issues that day of not understanding what was going on in court." (App. p. 55, line 23 – p. 56, line 1). At the PCR hearing Petitioner testified "I'm currently now on Perphenazine, Remeron, and Cogentin for schizophrenia." (App. p. 59, lines 8-9). Petitioner testified that he was in special needs classes in school and was diagnosed with schizophrenia after he was incarcerated. (App. p. 63, lines 10-24). Petitioner testified that he started taking medications the second month of incarceration. (App. p. 63, lines 22-24). Petitioner admitted that he did not tell the judge about the medications because when the judge asked if he was taking any medications that would cloud your judgment, he thought the judge was asking about drugs and alcohol. (App. p. 63, line 22 – p. 64, p. 65, lines 1-12).

When plea counsel was asked at the PCR hearing if he had concerns about criminal responsibility, plea counsel testified, "Certainly not criminal responsibility. I guess if I had any regret just listening to him today and knowing about his, like schizophrenia and stuff – if I had any regret, I probably – I should have got him evaluated, even if he had been evaluated before. Get him evaluated again, but as you can see, some of it was very clear in telling me what he want done and what he don't want. I don't want a trial. I want you to get the best deal for me that you can. And that's pretty much what our conversations were about." (App. p. 85, lines 1-9). Plea counsel admitted that he knew Petitioner's brother suffered from mental illness. (App. p. 88, lines 6-8). Plea counsel admitted that he was not aware that Petitioner was on medication. Petitioner testified that he was prescribed medication while in jail waiting to resolve these charges. (App. p. 63, lines 22-25). Plea counsel admitted that he was aware of a situation at the jail where Petitioner was either evaluated or placed on suicide watch. (App. p. 92, lines 9-14). Plea counsel admitted that Petitioner told him that he was hearing voices at some point. (App. p. 92, lines 17-19).

In the order of dismissal the PCR judge wrote:

> After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea counsel credibly testified there was no indication that Applicant suffered from a mental illness, and he was unaware that he was on medication on the day of the plea. Regardless, Applicant testified at the guilty plea that he was not on medication and that he understood what he was doing, so Plea Counsel did not have reason to question his competency or the voluntariness of his plea.

(App. p. 106). The PCR judge erred. Plea counsel admitted that there were several indicators that Petitioner suffered from a mental illness. Plea counsel should have been aware of the medications Petitioner was prescribed presumably during the course of the representation. During the guilty plea the judge did not ask if Petitioner was taking any medications. Instead,

the judge asked if Petitioner was taking any medications that would cloud his judgment. Petitioner reasonably believed that the judge was asking about illegal drugs or alcohol, not prescription medications.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339

S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). Plea counsel was ineffective in failing to have Petitioner evaluated to determine criminal responsibility and capacity to conform. Alternative courses of action were not available to Petitioner as a result of plea counsel's failure to explore mental health defenses.

"An accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts." State v. Law, 270 S.C. 664, 667, 244 S.E.2d 302, 304 (1978). "This is the McNaughten insanity defense defined in S.C. Code 17-24-10." Davenport v. State, 301 S.C. 39, 39, 389 S.E. 2d 649, 649 (1990). S.C. Code §17-24-10 provides, "It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong."

S.C. Code §17-24-20 provides, "A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements

of the law. Plea counsel was ineffective in failing to have Petitioner evaluated. Although there is no evidence from the PCR record of subsequent mental health evaluations, Petitioner still proved prejudice.

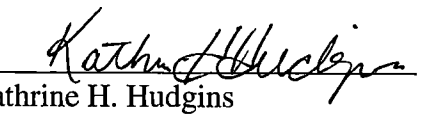
In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

> In order to establish prejudice when challenging a guilty plea, a defendant 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. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

There is a reasonable probability that, but for counsel's failure to have Petitioner evaluated, Petitioner would not have pled guilty and would have insisted on going to trial.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue. Alternatively, this Court should remand the case so that Petitioner can be evaluated for criminal responsibility and capacity to conform.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of September, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the 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 Petition for Writ of Certiorari and a copy of the Appendix have been served on Charles Gary Singletary, #367755, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 5th day of September, 2019.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019