

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

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SEP 16 2019

S:C: SUPREME COURT

DONETELLE D. CANNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002067

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to investigate into and a develop mental illness defense on behalf of petitioner in the case.

STATEMENT

Petitioner Donetelle D. Cannon pled guilty to two counts of attempted murder during the January 2016 term of the Florence County General Sessions Court before Judge D. Craig Brown and was sentenced to an aggregate twenty-five-year prison term. 1-34. Vick Meetze represented petitioner at the plea proceeding and Assistant Solicitor John Jepertinger appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed on August 15, 2016, by the South Carolina Court of Appeals per Rule 203(a)(1)(B)(iv), SCACR.

On November 28, 2016, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 39-45. The respondent filed a Return dated April 19, 2017, requesting that a PCR hearing be held in the case. App. 47-52.

A PCR hearing was convened on February 1, 2018, at the Florence County Courthouse before Judge Michael G. Nettles. App. 54-111. On October 18, 2018, Judge Nettles issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 121-133.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to investigate into and develop a mental illness defense on behalf of petitioner in the case.

Petitioner's mother testified during the PCR hearing held in the case. Ms. Elizabeth Evans stated that her son (petitioner) received a haircut at a barbershop owned by Darwin Hamm, but departed without paying the \$10.00 he owed for the haircut; and that after this event occurred, which was around 2007,¹ she noticed that petitioner became fearful and would not leave the house and started hiding by sliding in the backseat of a car when he went outside the house. Evans explained that she responded to this by sending petitioner to Texas; however, petitioner became fearful while in Texas and declared that the barber had come to Texas and that the barber was out to get him while he was in Texas. Petitioner he returned to South Carolina in the year 2014. App. 74, 1.2- p. 75, 1.24.

Petitioner testified during the PCR hearing and explained that he was stressed out in Texas because he kept thinking that he was seeing the barber in Texas while he (petitioner) was in Texas. App. 63, 1.13-p. 64, 1.25. Petitioner stated that he told trial counsel about this, but counsel did not investigate into the events or his beliefs during the time he was in Texas. App. 65-1.1-16; App. 64, 1.8-9; App. 63, 1.4-12. Note that petitioner stated that he did not realize that he left the barbershop without paying for the haircut back in 2007. App. 63, 1.13-15.

The solicitor apprised the plea judge of the facts of the case. On September 30, 2014, petitioner was back in South Carolina. Petitioner went to the barbershop and accused the barber of trying to put a hit out on him and of going to Texas to find him. The barber denied this and wrote a note saying there was no grudge and tried to make peace with petitioner. Then, on

¹ App. 62, 1.17-p. 64, 1.9, App. 74, 1.2-4.

October 2, 2014, petitioner came into the barbershop and fired a weapon (upon the belief that the barber was reaching into his pocket for something...presumably a weapon) The barber and a man named Jimmy King, who was also inside the barbershop on that day, were both struck by petitioner's gunfire. App. 14, 1.17-p. 18, 1.25.

During the PCR hearing, trial counsel stated that petitioner started shooting when the barber reached inside his pocket to get money to buy the CDs that petitioner was selling at the time. App. 83, 1.4-13. Counsel addressed the issue of diminished capacity as follows:

I didn't...address diminished capacity in my conversations with [petitioner], I didn't believe there was any issue with regard to competency. App. 94, 1.1-5.

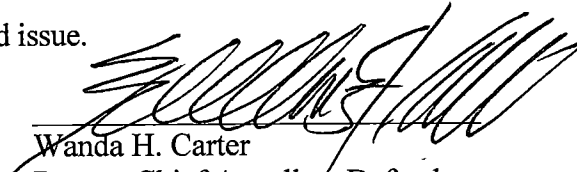
Note that during the plea proceeding, the barber spoke and explained that he was not out to get petitioner for the debt, and never thought about the debt, and even forgot about what petitioner even looked like until petitioner contacted him. App. 23, 1.15-p. 24, 1.13.

The PCR judge concluded that petitioner neither proved that counsel's performance in the case was deficient nor that he was prejudiced by counsel's representation. App. 131-133.

Based on the facts of the case, it was clear that petitioner was suffering from some mental issue(s) that might have impaired his thought process and affected his behavior. *State v. Hartfield*, 300 S.C. 469, 388 S.E.2d 802 (1990). Therefore, counsel's failure to investigate into and develop a mental illness defense or explore the concept of diminished capacity constituted deficient legal representation that was below the range of competence demanded of criminal attorneys; and but for counsel's error in this regard, there is a reasonable likelihood that petitioner's trial would have ended differently. See *Hill v. Lockhart*, 484 U.S. 52 (1985). Counsel's ineffectiveness in handling petitioner's case violated his right to competent counsel under the Sixth Amendment.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 16th 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 Lindsey McCallister, 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 Donetelle D. Cannon, #317657, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 16th day of September, 2019.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of September, 2019.



Notary Public for South Carolina
My Commission Expires: September 27, 2028.