STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Brooks P. Goldsmith, Circuit Court Judge

STANLEY ALI GODBOLD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001114

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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ISSUE PRESENTED

Did plea counsel provide ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to obtain an English translation of the statement made by the alleged victim where an English translation would have shown the witness provided multiple descriptions of the actual assailant?

STATEMENT

On August 5, 2016, Amelia Gomez worked at the Quick Mart in Batesburg-Leesville. App. 4, ll. 13-17. At 6 a.m., Gomez was on the phone with her daughter. App. 4, ll. 17-19. When Gomez's phone went dead, her daughter, worried about Gomez, called her uncle. App. 4, ll. 20-23. The uncle contacted the police. App. 4, ll. 23-24. When the police arrived at the Quick Mart, Gomez claimed "two black men had come in together." App. 5, ll. 1-4. Further, Gomez claimed one of the men was armed with a gun, threatened her, and took less than $300 from the cash register. App. 5, ll. 4-7.

The police searched the surrounding area for suspects based on the information from Gomez. App. 5, ll. 8-10. During this search, the police found Petitioner and arrested him. App. 5, ll. 10-18. Later, the police also arrested Petitioner's brother and charge whim with participating in the robbery of the Quick Mart. App. 5, l. 21 – App. 6, l. 11. Petitioner's brother confessed to the armed robbery. App. 6, ll. 21-22.

On September 1, 2016, Sarah Mauldin was appointed to represent Petitioner. App. 47, ll. 18-20. In the discovery that Mauldin received from the solicitor was a statement written by Gomez in Spanish. App. 50, ll. 3-6. Mauldin never sought a translation of Gomez's statement. App. 52, ll. 1-6. Although Mauldin provided Petitioner with a copy of Gomez's statement, the statement was of no use to Petitioner because it was written in Spanish, and Petitioner could not read Spanish. App. 41, ll. 5-6; App. 53, ll. 10-18. Based upon Mauldin's failure to obtain a translation of the statement neither Mauldin nor Petitioner knew what Gomez – the only eyewitness – claimed happened. App. 54, ll. 9-23.

On November 14, 2016, a Lexington County grand jury indicted Petitioner for armed robbery. App. 100-101. When Petitioner met with Mauldin on November 29, 2016, he rejected

the state's guilty plea offer. App. 48, ll. 20-22. Petitioner and Mauldin met again on December 9. App. 49, l. 7. Mauldin conveyed the state's new plea offer, which was for Petitioner to enter a guilty plea to armed robbery in exchange for the state's recommendation of a sentencing cap of twenty years. App. 49, ll. 7-10. Petitioner accepted the offer. App. 49, ll. 11-18.

On January 10, 2017, Petitioner appeared before the Honorable Jocelyn Newman to enter a guilty plea. App. 1. Mauldin represented Petitioner, and Angela Martin represented the state. App. 1. Judge Newman accepted Petitioner's guilty plea to armed robbery and sentenced him to twenty years imprisonment. App. 10, ll. 17-21; App. 15, ll. 11-12; App. 102.

On May 22, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 20-26. Through counsel, Arthur Aiken, Petitioner amended his application. App. 33-35. The matter proceeded to an evidentiary hearing on July 31, 2018, before the Honorable Perry H. Gravely. App. 36. Aiken represented Petitioner, and Kelly Oppenheimer represented the state. App. 36. At the conclusion of the hearing, Judge Gravely denied Petitioner's claim for relief. App. 58, ll. 2-16. By an order filed September 19, 2018, Judge Gravely formally denied Petitioner relief from his conviction and sentence. App. 60-72. Aiken failed to file a notice of appeal. App. 95-96.

Therefore, Petitioner filed a second PCR application. App. 73-79. On June 28, 2019, a hearing was held before the Honorable Brooks P. Goldsmith, IV. App. 86. Ashley McMahon represented Petitioner, and Taylor Z. Smith represented the state. App. 86. Petitioner explained that he required Aiken file an appeal, but Aiken failed to do so. App. 90, l. 16 – App. 91, l. 2. Aiken admitted that he never advised Petitioner of his appellate rights. App. 95-96. Further, Aiken admitted that the letter he sent to Petitioner along with the judge's order did not explain Petitioner's appellate rights, which would have been his usual practice. App. 95-96. During the

hearing, the state "consent[ed] and concede[d]" that Petitioner "did not knowingly and voluntarily waive his right to an appeal." App. 92, ll. 4-6. By an order filed June 28, 2019, Judge Goldsmith granted Petitioner the right to file a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner served his notice of appeal on July 6, 2019. This petition for writ of certiorari follows.[1]

[1] As required by King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), Petitioner is filing a petition for writ of certiorari addressing the PCR judge's finding that Petitioner is entitled to belated review of his prior PCR application simultaneously with this petition.

ARGUMENT

Plea counsel provided ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to obtain an English translation of the statement made by alleged victim where an English translation would have shown the witness provided multiple descriptions of the actual assailant.

Relevant facts

During the PCR hearing, Petitioner explained that plea counsel never discussed the statement written by the alleged victim with him prior to his guilty plea. App. 41, ll. 1-4. The statement was written in Spanish, a language that Petitioner does not read. App. 41, ll. 1-6. Subsequent to his conviction, Petitioner received a translation of the statement. App. 41, ll. 7-9. Petitioner explained the alleged victim provided "two different descriptions of the actual individuals who she claimed robbed her." App. 41, ll. 13-25. An English translation "would have shed light on who was the ... individual who actually robbed the place." App. 42, ll. 2-6. In short, the English translation "would have cast doubt on whether [Petitioner] committed the crime or whether somebody else did." App. 42, ll. 7-10. Petitioner was unequivocal that if he had an English translation of the alleged victim's statement, then he would not have pled guilty. App. 42, ll. 11-14.

Plea counsel admitted she never obtained an English translation of the statement written by the alleged victim in Spanish. App. 52, ll. 1-4; App. 53, ll. 19-22. Plea counsel further admitted that she had "no earthly idea" what the alleged victim said about the robbery. App. 54, ll. 9-13. As a result, she could not compare the alleged victim's statement to law enforcement with any of the other evidence in the case. App. 54, ll. 18-23. She was unaware whether Appellant spoke or read Spanish when she provided him with a copy of the statement. App. 53,

ll. 5-18. Plea counsel determined it was not necessary to obtain a translation based on other evidence in the case. App. 52, ll. 4-6. She simply was not concerned about the statement in Spanish. App. 52, ll. 7-8.

At the conclusion of the presentation of evidence at the hearing, PCR counsel argued Petitioner was entitled to relief because plea counsel failed to obtain a translation of the alleged victim's statement from Spanish to English and Petitioner testified he would not have pled guilty if he had a translation. App. 57, l. 19 – App. 58, l. 1. However, the PCR judge refused to grant Petitioner relief. First the PCR judge indicated he was "not sure that any translation of the letter ha[d] been clearly established." App. 58, ll. 5-6. Further, he determined that even if the letter had been translated, Petitioner failed to show "any prejudice, especially the overwhelming evidence of the brother's statement and based on the testimony of the attorney representing him at the time." App. 58, ll. 6-10. Thereafter, the PCR judge quoted the portion of the guilty plea transcript in which Petitioner admitted to the robbery. App. 58, ll. 11-16.

The PCR court concluded plea counsel was not deficient in failing to obtain an English translation of the statement made by Gomez, the only eyewitness to the robbery, because of Petitioner's "solemn admission of guilt at the plea." App. 67. Next, the PCR court found Petitioner "failed to establish any resulting prejudice from this alleged deficiency, as [Petitioner] failed to present any concrete evidence of the victim's translated statement at the evidentiary hearing." App. 67. According to the PCR court, Petitioner's "bare assertions as to what the victim's translated statement said, without more, do not give rise to the level of proof required for [Petitioner] to meet his burden." App. 68. Thus, the PCR judge denied Petitioner relief from his conviction and sentence.

Discussion

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel extends to the plea bargaining process. Lafler v. Cooper, 566 U.S. 156, 162 (2012); Missouri v. Frye, 566 U.S. 133, 141 (2012); Padilla v. Kentucky, 559 U.S. 356 (2010); Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); Robinson v. State, 422 S.C. 78, 85, 810 S.E.2d 32, 36 (2018). A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

In the context of a guilty plea, a petitioner must show that counsel was ineffective and that there is a reasonable probability but for counsel's errors, he would not have pled guilty. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994).

"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. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (internal quotations omitted).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 243-244 (1969); see also Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d 264, 265 (1982) overruled on other grounds State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975).

As an initial matter, the PCR judge erred in concluding plea counsel was not deficient in failing to obtain an English translation of the statement made by the alleged victim because of Petitioner's "solemn admission of guilt at the plea." App. 67. If the test for determining whether plea counsel provided ineffective assistance were as simple as looking at whether a defendant made a "solemn admission of guilt at the plea," then no one who entered a guilty plea would be entitled to relief based upon ineffective assistance of counsel. The correct test for determining whether plea counsel's performance was deficient, as stated by this Court and the United States

Supreme Court, is whether plea counsel's representation fell below an objected standard of reasonableness. The PCR judge erred by applying the wrong test to determine whether plea counsel's performance was deficient.

Applying the correct test reveals plea counsel's deficient performance in failing to obtain a translation of the statement to law enforcement by the alleged victim written entirely in Spanish. Without question, a trial attorney "'has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (quoting Strickland, 466 U.S. at 691). "[C]ounsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment." Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Id. at 265, 763 S.E.2d at 634 (quoting Ard v. Catoe, 372 S.C. 318, 331-332, 642 S.E.2d 590, 597 (2007)).

Although attorneys are not required to investigate every conceivable defense no matter how unlikely the effort would be to assist the defendant, the decision not to investigate must be reasonable. Wiggins v. Smith, 539 U.S. 510, 533 (2003) (holding counsel's decision not to extend their investigation fell short of prevailing professional norms in light of their failure to retain a forensic social worker to prepare a social history report, which was standard practice in the state at the time, and their failure to investigate all reasonably available mitigating evidence); see also Von Dohlen v. State, 360 S.C. 598, 605, 602 S.E.2d 738, 742 (2004) (holding trial counsel's investigation concerning Von Dohlen's mental state was not reasonable despite the fact that counsel made "some effort" where the defense psychiatrist testified during post-conviction

proceedings that had he been provided with the additional medical and psychiatric records that post-conviction counsel uncovered, he would have testified Von Dohlen suffered from "'major depressive episodes with severe symptoms of anxiety and possible prepsychotic features'").

Neither plea counsel nor Petitioner could evaluate the strength of the state's case without an understanding of what the alleged victim claimed happened. Plea counsel's failure to obtain a translation of the statement was deficient performance as it signified a failure to investigate a key piece of evidence – perhaps, the single most important piece of evidence. Instead, plea counsel was unconcerned with the inscrutable evidence because she was convinced of Petitioner's guilt based on the statement given by his brother to law enforcement, which implicated Petitioner and was self-interested.

Furthermore, plea counsel's failure to obtain the translation was prejudicial to Petitioner. As he indicated during the PCR hearing, Petitioner would not have entered a guilty plea if he had reviewed a translation of the statement and learned the alleged victim gave different descriptions of the alleged assailant. Whether the prejudice prong applies to this matter is open to debate. Addressing a similar situation, the Pennsylvania Supreme Court held prejudice was presumed where a trial lawyer failed to obtain a translator for his client who was unable to understand the trial. Commonwealth v. Diaz, 183 A.3d 417, 423 (Pa. 2018). The Court explained that a person who needs a translator and is denied one is constructively absent from his trial. Id. Thus, when a lawyer fails to ascertain a client's need for a translator to understand the criminal proceedings, the client suffers per se prejudice. Id. Therefore, whether prejudice were presumed because Petitioner was unable to evaluate the evidence against him due to trial counsel's failure to obtain an English translation of the alleged victim's statement to law enforcement or whether Petitioner were required to show prejudice in that he would not have entered a guilty plea because the

alleged victim's statement contained two different descriptions of her assailant, Petitioner is entitled to relief.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit briefing on the issue presented. In the event this Court grants the petition and dispenses with further briefing, Petitioner respectfully requests this Court reverse the PCR court, hold plea counsel provided ineffective assistance, vacate Petitioner's convictions, and remand for a new trial.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
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STANLEY ALI GODBOLD,

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V.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Stanley Ali Godbold states:

1. She is an 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 Brooks P. Goldsmith, which was held on June 28, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for George A. Jones.

Respectfully Submitted,

Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

This 31st day of December, 2019.

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CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson Petition for Writ of pursuant to Austin v. State and a copy of the Appendix, in this case has been served on Taylor Z. Smith, 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 Stanley Ali Godbold, #371009, at Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010, this 31st day of December, 2019.

Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 31st day of December, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: March 10, 2025