

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Beaufort County

APR 08 2020

Honorable William H. Seals, Circuit Court Judge

S.C. SUPREME COURT

ADRIAN JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001660

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether trial counsel provided ineffective assistance of counsel where she failed to object to the admission of the indictments and sentencing sheets of Petitioner's prior burglary convictions to enhance his current charge to first-degree burglary where the redactions the trial court made on the indictments and sentencing sheets did not prevent the jury from learning unfairly prejudicial details of the prior crimes?

STATEMENT

During the January 2016 term the Beaufort County Grand Jury indicted Petitioner for burglary in the first degree. App. 361 – 362.

On April 18 – 20, 2016, Petitioner proceeded to trial before the Honorable Carmen T. Mullen, and a jury. App. 1. Trasi Campbell represented Petitioner. Id. Hunter Swanson represented the state. Id.

The jury found Petitioner guilty of first-degree burglary. App. 253, l. 24 – 255, l. 1. Petitioner was sentenced to twenty years' imprisonment. App. 266, ll. 17 – 21. On January 27, 2017, Petitioner filed a direct appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Jenkins, Op. No. 2017-UP-363 (S.C. Ct. App. filed Oct. 4, 2017).

On December 20, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 272 – 278. On March 12, 2019, Petitioner filed an amended PCR application. He alleged trial counsel provided ineffective assistance for failure to object to the admission of indictments and sentencing sheets of Petitioner's prior burglary convictions where the redactions the court ordered were insufficient as they did not prevent the jury from learning highly prejudicial details of the prior crimes. App. 279 – 280. The state filed its return on May 1, 2018. App. 281 – 285.

On April 2, 2019, Petitioner's PCR hearing was held before the Honorable William H. Seals. App. 286. Ashley A. McMahan represented Petitioner. Id. Benjamin Limbaugh represented the state. Id.

On September 14, 2019, Judge Seals filed an order denying Petitioner relief. App. 349 – 360. Judge Seals found trial counsel did try to challenge the admission of the indictments and sentencing sheets when she, "argued that any prejudicial information in the documents should be redacted" and found that the trial court did make redactions. App. 355 – 356.

This petition for a writ of certiorari follows.

ARGUMENT

Trial counsel provided ineffective assistance of counsel where she failed to object to the admission of the indictments and sentencing sheets from Petitioner's prior burglary convictions to enhance his current charge to first-degree burglary where the redactions the trial court made on the indictments and sentencing sheets did not prevent the jury from learning unfairly prejudicial details of the prior crimes.

Relevant Facts

On September 17, 2015, George Lawson, the complaining witness, called police when he discovered items were missing from his home. App. 38, l. 20 – 39, l. 11. Lawson alleged that Petitioner entered his home without permission and took the missing items. App. 39, l. 16 – 40, l. 1.

The sole aggravating factor used to enhance Petitioner's charges to first-degree burglary were his prior convictions for burglary. App. 68, l. 21 – 69, l. 16; S.C. Code Ann. § 16-11-311(A)(2). Petitioner would not stipulate to this prior burglary convictions. App. 71, l. 24 – 72, l. 20. Instead, trial counsel made a pretrial argument that Petitioner's convictions were only relevant to sentencing, but the trial court ultimately accepted the state's argument that the convictions were admissible pursuant to State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000). App. 68, l. 21 – 82, l. 20.

The solicitor sought to admit Petitioner's indictments and sentencing sheets as proof of his prior convictions. App. 68, l. 21 – 73, l. 21. Trial counsel objected to their admittance because they showed irrelevant and prejudicial information. App. 69, ll. 18 – 25. Judge Mullen was skeptical about using sentencing sheets, she stated "I don't think I have ever... given [the

jury] a sentencing sheet.” App. 70, l. 21 – 71, l. 10. Judge Mullen ordered that the sentencing sheets be redacted. Id.; App. 81, l. 14 – 82, l. 20.

During trial the next day, the solicitor offered the indictments and sentencing sheets from Petitioner’s prior burglary convictions as State’s Exhibit 1 and 2. App. 100, ll. 12 – 16; Supp. App. 1 – 6. Trial counsel stated she had reviewed them, and they were “just subject to my prior objections.” App. 100, ll. 17 – 18. Judge Mullen asked whether trial counsel needed to review the exhibits and she replied, “They’re fine.” R. 100, ll. 19 – 21. Judge Mullen then admitted the indictments and sentencing sheets from Petitioner’s prior convictions. App. 100, l. 22 – 101, l. 9.

After the redactions, both exhibits still contained highly prejudicial material such that trial counsel should have objected to their admission.¹ Supp. App. 1 – 6. In State’s Exhibit 1, the sentencing sheet showed Petitioner was convicted of second-degree burglary. App. Supp. App. 1. However, from looking at the indictment the jury learned Petitioner was originally indicted on the more serious charge of first-degree burglary. Supp. App. 2 – 3. This discrepancy may have caused the jury to believe that the state had been merciful to Petitioner for the past burglary convictions and that Petitioner is undeserving of their mercy on his present charges.

Far more prejudicial were the details of the allegations contained in the indictment in State’s Exhibit 1 that remained after the redactions. Supp. App. 3. The jury learned the name of the victim, that the victim was a female, and that Petitioner or his co-defendant caused her physical injury. Id. The court redacted the classification of Petitioner’s crime as violent or nonviolent. App. 81, l. 14 – 82, l. 1; Supp. App. 1. However, that did not cure the unfair prejudice to Petitioner because the jury still saw the prior conviction involved a home invasion

¹ Both State’s Exhibit 1 and 2 are included in the Record on Appeal at pages 272 through 277. The trial court’s redactions are in solid black. Supp. App. 1 – 6.

where the victim was injured. Id. Trial counsel should have objected to the admission of the indictment to have those details also redacted.

State's Exhibit 2 contained similar prejudicial details. Supp. App. 4 – 6. The jury learned the name of the victim, that she was female, and that the burglary occurred at night. Id. The indictment coupled with the sentencing sheet in State's Exhibit 2 again showed the jury that that Petitioner was indicted for first-degree burglary, but only convicted of second-degree burglary. Id. All of this information was unfairly prejudicial and trial counsel should have objected to its admission to ensure the jury did not learn of it and convict Petitioner on that impermissible basis.

At PCR, Petitioner testified that the indictments and sentencing sheets admitted to trial were not properly redacted because details of the prior convictions were still able to be read by the jury. App. 317, ll. 12 – 18. Petitioner explained that trial counsel should have objected because the indictments still showed, after redactions, that he was charged with first-degree burglary but only convicted of second-degree burglary. Id. At PCR, trial counsel testified that she made a pretrial challenge to the admissibility of the indictments and sentencing sheets. App. 330, l. 20 – 331, l. 2.

The PCR judge denied Petitioner relief ruling that the record showed that trial counsel did challenge the admission of the indictments and sentencing sheets and they were redacted; however, that finding respectfully missed the point. App. 355 – 356. Petitioner's allegation of ineffective assistance was that trial counsel should have objected to the admission of the indictments and sentencing sheets *after the redactions were made* because unfairly prejudicial details were still available for the jury to learn. Accordingly, trial counsel was ineffective for not objecting to their admission after the redactions were made.

Discussion

Trial counsel provided ineffective assistance of counsel when she failed to object to the admission of the indictments and sentencing sheets of Petitioner's prior convictions where the court ordered redactions were insufficient because they did not prevent the jury from learning details of the prior convictions that unfairly prejudiced Petitioner.

When danger of unfair prejudice resulting from the admission of evidence substantially outweighs its probative value, the evidence is not admissible. Rule 403, SCRE. The detailed information about Petitioner's prior convictions was unfairly prejudicial because it improperly attacked his character and crossed the line from proving an element of the crime into impermissible propensity evidence. Rule 404, SCRE; State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003). That unfair prejudice outweighed the probative value of the indictments and sentencing sheets such that they should not have been admitted into evidence until after more extensive redactions, as argued above, were made. Accordingly, trial counsel provided ineffective assistance of counsel when she failed object to their admission.

In James, this Court placed limits on the admission of prior convictions in burglary cases. James at 34 – 35, 583 S.E.2d at 750. The trial court allowed the state to admit seven prior burglary convictions instead of the required two. Id. This Court held that admission of so many prior convictions was unfairly prejudicial under Rule 403 and became propensity evidence. Id.

The James Court relied on the United States Supreme Court's reasoning in Old Chief v. United States, 519 U.S. 172 (1997). In Old Chief, the Court held that when a defendant's status was an element of an offense, the "issue [was] not whether the concrete details of the prior crime should come to the jurors' attention, but whether the name or general character of that crime [was] to be disclosed." Id. at 190. The Court further explained that inclusion of particular details

of the prior conviction was impermissible because the jury only needed to know the defendant's prior convictions fell within a class of crimes that established the status element of the current charges. Id.

In State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002), the Court of Appeals held that the admission of Simmons' prior convictions for second degree burglary did not prejudice him. The state sought to admit Simmons' prior convictions for burglary to enhance his current charge to first-degree burglary. Id. at 349, 573 S.E.2d at 860. Simmons was willing to stipulate that the alleged crime occurred at nighttime as alternative means for enhancing his charges. Id. at 355, 573 S.E.2d at 863. The Court of Appeals held the admission of Simmons' prior convictions was proper because the state did not admit, "detailed, particular information about the prior burglaries and/or house breaking convictions." Id. at 357, 573 S.E.2d at 864.

Similarly, in State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000), this Court held that the admission of Benton's prior convictions was proper to enhance his charges to first degree burglary. However, this Court warned that to prevent conviction on an improper basis, "Particular information regarding the prior crimes should not be admitted." Id. at 156, 526 S.E.2d at 230 – 231.

Under Strickland v. Washington, 466 U.S. 668 (1984), when the ineffective assistance of counsel is alleged as a ground for relief in a post-conviction relief action, Petitioner must show that: (1) "his counsel's performance fell below an objective standard of reasonableness," and (2) "he was prejudiced by counsel's deficient performance." Rollison v. State, 346 S.C. 506, 552 S.E.2d 290, 292 (2001) (citing Strickland, 466 U.S. 668; Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000)). To succeed on an ineffective assistance of counsel claim, Petitioner must overcome the "presumption that counsel's conduct falls within the wide range of reasonable

professional assistance.” Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003) (quoting Strickland, 466 U.S. at 689). Petitioner must also demonstrate that he was prejudiced by trial counsel's deficient performance in that absent trial counsel's deficient performance, the result of the proceeding would have been different. Strickland, 466 U.S. at 694.

Petitioner's defense theory was that he was given permission by Lawson to remove the items from his property. App. 334, l. 7 – 335, l. 6; App. 339, ll. 16 – 23; App. 342, ll. 14 – 24. Petitioner stipulated that he was the person on Lawson's security camera video who was seen taking items from Lawson's property. App. 84, l. 7 – 85, l. 9. Thus, Petitioner's trial was a credibility battle between Petitioner and Lawson as to whether Lawson gave Petitioner permission to take the aforementioned items.

The indictments and sentencing sheets admitted in Petitioner's case improperly provided particular information about his prior convictions and put the finger on the scale of the credibility battle between Petitioner and Lawson. Supp. App. 1 – 6. State's Exhibits 1 and 2 showed precisely the type of “particular information” that the decisions in Simmons and Benton prohibited. Id.; Simmons, at 357, 573 S.E.2d at 864; Benton, at 156, 526 S.E.2d at 230 – 231.

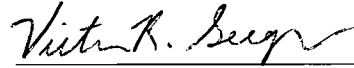
Here, the jury learned that Petitioner's prior convictions included a violent home invasion that resulted in the physical injury of the female victim and his other burglary conviction included entering a second female victim's home at night. Supp. App. 1 – 6. Moreover, the jury learned that Petitioner was twice accused of the far more serious crime of first-degree burglary, but both times he was only convicted of second-degree burglary. Id.

Accordingly, the danger of unfair prejudice from admitting the redacted indictments and sentencing sheets substantially outweighed their probative value. The admission of the severely prejudicial details of Petitioner's prior convictions put a finger on the scale of the credibility

battle between Petitioner and Lawson. For these reasons, trial counsel provided ineffective assistance of counsel when she failed to object to the improper admission of the redacted indictments and sentencing sheets because the insufficient redactions did not prevent the jury from learning unfairly prejudicial details of Petitioner's prior convictions.

CONCLUSION

By reason of the forgoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 6 day of April, 2020.