

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 26 2020

S.C. SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RICARDO DARGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001557

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in advising petitioner to end his trial and plead guilty to the lesser offense of voluntary manslaughter after the trial judge denied immunity at the close of a pre-trial Castle Doctrine hearing because the jury had already been selected for trial and there was evidence in existence in the case to support self-defense, the defense of accident, and the lesser offense of involuntary manslaughter if he had he elected to continue with his jury trial.

STATEMENT

Petitioner Ricardo Dargan pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime¹ and three counts of distribution of crack cocaine during the October 2016 term of the Sumter County General Sessions Court before Judge Robin B. Stillwell and was sentenced to imprisonment for an aggregate period of twenty years. App. 71-90. Petitioner was represented by Timothy Lee Griffin at the plea proceeding, and Assistant Solicitor Bronwyn M. McElveen appeared on behalf of the state. Petitioner appealed, but the case was dismissed due to trial counsel's failure to properly execute the notice of appeal.

On July 5, 2017, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 92-106. The respondent filed a return dated June 1, 2018, requesting that a hearing be held in response to petitioner's PCR action. App. 107-114.

A PCR hearing was held on July 30, 2019, at the Sumter County Courthouse before Judge Brooks P. Goldsmith. App. 116-193. Petitioner was present at the hearing and represented by James K. Falk, and Assistant Attorney General Janell H. Gregory appeared on behalf of the state.

On August 28, 2019, Judge Goldsmith issued an Order of Dismissal (which was filed on September 6, 2019) therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 195-212. Petitioner appealed. This appeal follows.

¹ Petitioner was indicted on a murder charge, but pled guilty to voluntary manslaughter. App. 219-220.

ARGUMENT

Trial counsel erred in advising petitioner to end his trial and plead guilty to the lesser offense of voluntary manslaughter after the trial judge denied immunity at the close of a pre-trial Castle Doctrine hearing because the jury had already been selected for trial and there was evidence in existence in the case to support self-defense, the defense of accident, and the lesser offense of involuntary manslaughter if he had he elected to continue with his jury trial.

The case at bar came about after petitioner and David Clea were involved in a street race where the winner would take \$1,000.00. Petitioner and Clea contributed \$500.00 each to the total. When petitioner asked Clea for money after the race ended, a struggle between the two ensued and a gun that belonged to Clea surfaced. The two struggled over the gun, and the gun fired. Clea ended up with a gunshot wound. Before petitioner pled guilty, a jury was selected in anticipation of a trial, and a Castle Doctrine (Immunity) pre-trial hearing was held. The state alleged that the shooting took place in front of state's witness Heyward's residence and that petitioner produced a weapon there, but petitioner denied this. App. 79, l. 13 – p. 69, l. 25.

During the pre-trial hearing, petitioner described the events as they unfolded in the case. Petitioner testified that on the night in question, he and Clea were arguing over the money that Clea owed him, and that although he and Clea were car racing and he (petitioner) lost the race, there was still money that Clea owed him apparently regardless of the outcome of the race. Petitioner stated that even though he and Clea had been drinking, it was Clea who produced a gun after the race as they argued. Petitioner stated that he believed he was in danger so he grabbed the wrist of Clea's hand that held the gun because he knew Clea would shoot him. Petitioner stated that after he grabbed Clea's wrist, the gun started going off into the ground. Petitioner added that he never had a gun in his possession on that night. Petitioner explained that

as the two of them tussled over the gun, it was Clea who was shot in the leg. Petitioner stated that he asked for the money Clea owed him, and that the fight ensued after Clea said he (petitioner) would get the money in blood and then Clea pulled out a gun, and that it was Clea who said “I got something for you.” Petitioner stated that Clea was trying to shoot him with the gun and that he (petitioner) was trying to grab the gun by the back and force it into the ground. App. 36, 1.14-p.44, 1.12.

Thomas Wilson stated that he went away before the shooting started. Wilson admitted that he did not witness the shooting, but stated that he did witness the two men arguing and that he saw petitioner with a gun. App. 48, 1.15-p.52, 1.11.

Marcia Heyward testified at the pre-trial hearing and explained that after petitioner lost the race, he wanted his money back; but when Clea refused to pay, then petitioner pulled out a gun and started to shoot, and ultimately Clea was shot. App. 53, 1.21-p. 61, 1.7.

At the close of the pretrial hearing, the trial court judge denied immunity relief in response to petitioner’s Castle Doctrine. App. 65, 1;6-p.66, 1.25.

During the PCR hearing, petitioner testified that Clea owed him more than what the race money totaled as there was a prior dealing before the race that included three times the money Clea owed him. Petitioner stated that Clea brought the gun to the fight, and they struggled and the gun went off; and in effect that Wilson’s and Hayward’s testimony had not been accurate. Hayward and Wilson gave conflicting and disputed testimony as juxtaposed to petitioner’s testimony. App. 120, 1.20-p.131, 1.8. Petitioner stated that his trial attorney presented the offer of a plea deal after the immunity hearing ended in the denial of relief via the Castle Doctrine. App. 131, 1.12-20; App. 132, 1.21-p.133, 1.3. Petitioner stated that since he turned down the first fifteen-year plea bargain and then ended up with an aggregate twenty-year sentence after he pled

guilty to the charges, then he should have continued on with the trial in his case because he wanted to prove his innocence. App. 132, 1.9-20, App. 135, 1.4-13; App. 136, 1.14-p.137, 1.23. Petitioner maintained that he never brought a gun to the scene. App. 139, 1.15-20.

Trial counsel testified during the PCR hearing and stated that he believed that there was little chance for a self-defense charge per the denial of immunity under the Castle Doctrine. App. 151, 1.7-p.156, 1.21. Apparently, counsel believed in the possibility of receiving involuntary and voluntary manslaughter instructions in the event that the case had gone to trial, but stated that he did not explore an accident defense. App. 159, 1.20-p.160, 1.16.

The PCR judge ruled that counsel challenged the state's case via the immunity hearing, which in effect clarified and supported the state's theory of the case and thus, petitioner failed to establish his burden of proving prejudice along with his claims against counsel. App. 205-206.

Conflicting testimony is no reason to abandon defenses in a case. Although Hayward and Wilson gave different accounts regarding the possessor of the gun, petitioner testified that he did not arm himself with a gun, but rather it was Clea who brought the gun to the fight. It appeared as though counsel believed the eyewitnesses more than his own client. App. 163, 1.9-p.165, 1.19. Nonetheless, counsel neglected to consider three important points of law, i.e. that the law to be charged is determined from the evidence presented at trial (State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989)), and that a jury can believe or disbelieve evidence in whole or in part (State v. Johnson, 236 S.C.207, 113 S.E.2d 540 (1960)), and that the state has to disprove elements of self-defense (State v. Wiggins 330 S.C. 538, 500 S.E.2d 489 (1998)). Therefore, trial counsel erred in summarily deciding that since the trial judge denied immunity under the Castle Doctrine, then there was little chance that a self-defense charge or any other defense charge, such as an

accident charge, or lesser charge would be granted because petitioner's testimony would have supported the same.

In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Also, depending on the circumstances, words accompanied by hostile acts may establish self-defense and one has a right to act on appearances. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Moreover, when a one claims self-defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 4 89 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012). Based on petitioner's account, clearly it is likely that he would have received a self-defense charge had he chosen to continue with his jury trial.

Also, since petitioner was acting lawfully in self-defense, then a charge of involuntary manslaughter would also have been supported by the evidence and likely charged had he chosen to continue with his jury trial. Involuntary manslaughter is the unintentional killing of another without malice while engaged in a lawfully activity (self-defense) with reckless disregard for the safety of others. State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004); State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011).

Furthermore, petitioner would likely have received a charge on the law of accident had he opted for a trial. In order for a homicide to be excusable on the ground of accident, it must be shown that the killing was unintentional, and that the defendant was acting lawfully, and that due care was exercised in the handling of the weapon. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999).

Trial counsel's forfeiture of the presentation of all of petitioner's defenses at trial and the possibility of receiving lesser charges where a jury had already been selected in the case due to the rejection of his pre-trial denial of immunity request via the Castle Doctrine constituted error and deficient representation under the Sixth Amendment; and but for this ineffective legal assistance, a reasonable probability exists that petitioner would have continued on with this jury trial option and there was a reasonable probability that the outcome of his case would have been different.

CONCLUSION

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

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of May, 2020.