

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Jun 29 2020
S.C. SUPREME COURT

Certiorari to York County

Honorable William A. McKinnon, Circuit Court Judge

CHRISTOPHER D TISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001723

JOHNSON 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

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Trial counsel erred in failing to explain the operation of the sex
offender registry to petitioner because petitioner believed his
placement on the sex offender registry ended when his probation
sentence ended. 3

CONCLUSION 5

PETITION TO BE RELIEVED AS COUNSEL 6

ISSUE PRESENTED

Trial counsel erred in failing to explain the operation of the sex offender registry to petitioner because petitioner believed his placement on the sex offender registry ended when his probation sentence ended.

STATEMENT OF THE CASE

Petitioner Christopher David Tison pled guilty per Alford v. North Carolina¹ to contributing to the delinquency of a minor and first-degree assault and battery during the July 2016 term of the York County General Sessions Court before Judge John C. Hayes, III. Petitioner was sentenced to imprisonment for a period of three years, suspended upon the service of three years probation for contributing to the delinquency of a minor, and seven years suspended, upon service of three years probation for first degree assault and battery. App. 1-12.

On June 11, 2018, the respondent filed a Return and Motion to Dismiss on the ground that the petitioners' claim that he had no knowledge of placement on the sex offender list forever was not a genuine issue of material fact for review under S.C. Code Ann. {17-27-70. App. 20-24. A Conditional Order of Dismissal was issued on June 14, 2018, by Judge Daniel D. Hall echoing the reasons for dismissal stated in the Return and Motion to Dismiss. App. 26-29. On June 29, 2018, petitioner filed a Response to the Return and Motion to Dismiss. App. 30-37. Also, on June 29, 2018, petitioner filed an Amended PCR application alleging that counsel failed to properly investigate into his case. App. 38-39. The respondent filed an Amended Return dated July 10, 2018, requesting that a PCR hearing be held in the case. App. 40-45.

A PCR hearing was convened on August 14, 2019 at the York County Courthouse before Judge William McKinnon. App. 47-141. Petitioner was present at the PCR hearing and represented by William G. Yarborough, and Assistant Janell H. Gregory appeared on behalf of the state. On September 3, 2019, Judge McKinnon issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 143-162.

Petitioner appealed McKinnon's Order of Dismissal. This petition follows.

¹ 400 U.S. 25 (1970).

ARGUMENT

Trial counsel erred in failing to explain the operation of the sex offender registry to petitioner because petitioner believed his placement on the sex offender registry ended when his probation sentence ended.

Petitioner was accused of giving alcohol to a minor and digitally penetrating her shortly thereafter. App. 10, 1.6-p.11, 1.4. During the PCR hearing, petitioner testified that he believed that his placement on the sex offender registry as a result of his Alford pleas meant that his name would not remain there after his probation sentence ended. Also, petitioner testified that he was not advised clearly as to how his military career and Veterans status would be affected by his Alford pleas and by his placement on the sex registry. App. 59, 1.9-p.63, 1.6; App. 72, 1. 18 - p. 74, 1.11; App. 77, 1.1-p. 79, 1.20; App. 81, 1.1-9. Petitioner stated he would have elected a jury trial and in effect chanced a possible acquittal if he had known of the sex registry requirements. App. 79, 1.15-25; App. 81,1.1-9.

Trial counsel testified during the PCR hearing and admitted that he did not engage with petitioner about the status of his military career as a result of his Alford pleas, but explained that the sex registry was part of the plea bargain deal and that he did not advise that the sex registry placement would ever end. App. 103, 1.4-p. 109, 1.25; App. 112, 1.1-p. 114, 1.18.

Note during the plea proceeding where the plea judge commented on his discretion regarding the registry and that **if** he did “so find...[then it would result] in [his] being placed on the sex offender registry.” App. 6, 1.15-18. During the PCR hearing, trial counsel stated he did not understand or know why the judge made that comment (App. 106, lines 6-23); and trial counsel went on to explain the judge’s comment the comment about the matter as follows:

PCR Counsel:...I think [petitioner] ha[d] a right to rely on what the Court tells him...so there was obviously was some confusion as to that...[as] [petitioner] did not understand the registry

Court: So your claim is ineffective assistance....so it's clearly a negotiation with the sex offender registry...what do you think [trial counsel] should've done?

PCR Counsel: [Counsel] could've asked the judge at that point to stop just to clear up the record

Court: But...I mean how would [that] have help[ed] his client?

PCR Counsel: Well, I mean that that way [petitioner] understands...

App. 132, 1.7-p.133, 1.2

Ultimately, the PCR judge ruled that petitioner failed to establish any deficiency on behalf of counsel as counsel testified he informed petitioner that he would have to be on the sex offender registry for life. App. 156-157

In the case at bar, there was confusion regarding the possibility and duration of petitioner's placement on the sex registry, and regardless of counsel's position that he informed petitioner about the timeframe of his placement on the sex registry, apparently counsel failed to explain this sufficiently to petitioner's clear understanding about the matter. In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Here, counsel erred in failing to explain to petitioner the sex registry requirements under S.C. Code Ann. 23-3-430-480. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for this error by counsel, a

reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, counsel for petition requests that this Court grant petitioner's 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 29th day of June, 2020.

RECEIVED

Jun 29 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable William A. McKinnon, Circuit Court Judge

CHRISTOPHER D TISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher D Tison states that:

1. She is Deputy Chief 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 William A. McKinnon, which was held on August 14, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

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

Therefore, counsel requests that the Court relieve her as counsel for Christopher D Tison.

Respectfully Submitted,

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of June, 2020.

RECEIVED

Jun 29 2020

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/Wanda H. Carter

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

This 29th day of June, 2020.