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Jul 27 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Honorable William H. Seals, Circuit Court Judge

AARON ALONZO BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001377

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
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ISSUE PRESENTED

Did the PCR court err in finding counsel was not ineffective for failing to provide or review discovery with petitioner before his guilty plea where petitioner testified if he had seen the discovery, he would have insisted on going to trial?

STATEMENT

On January 24, 2016, officers responded to a shots fired complaint. When officers arrived, they found Liston Phillips distressed, apparently shot in the back of his head in his car. Shortly after EMS arrived Phillips was pronounced dead. App. 6, ll. 1-18.

A witness came forward and told law enforcement they saw petitioner after the incident and petitioner told them he shot Phillips. App. 7, ll. 1-3. Petitioner was arrested and gave multiple statements to police. Petitioner told police he and another person got into Phillips' vehicle intending to rob him. When petitioner pulled out a gun and asked for money Phillips reached for his own gun and the car lurched causing petitioner to accidentally shoot Phillips in the back of the head. App. 7, l. 14-8, l. 6. Police never recovered any guns related to the incident. App. 8, ll. 7-9.

On July 21, 2016, a Marion County grand jury indicted petitioner for murder. App. 88. On May 12, 2017, petitioner pled guilty in before the Honorable Michael G. Nettles, to voluntary manslaughter. Vick Meetze represented petitioner and Todd Tucker, assistant solicitor, represented the state. App. 1. The state recommended a sentence cap of twenty-five years imprisonment. App. 4. Judge Nettles sentenced petitioner to twenty-five years imprisonment. App. 18.

Thereafter, petitioner filed an application for PCR on July 17, 2017. App. 21-27. On March 5, 2019, an evidentiary hearing was held before the Honorable William H. Seals, Jr. App. 41. Jonathan Waller represented petitioner and Samuel Key, assistant attorney general, represented the state. App. 41.

At the evidentiary hearing, petitioner testified that he had not seen all the discovery in his case before he pled guilty. After petitioner pled guilty, he received the forensic results from the

scene, which revealed there was no physical evidence placing him in the decedent's car. App. 48, ll. 14-20; 50, ll. 21-25; 52, l. 25-53, l. 12; 59, ll. 3-18. Petitioner insisted that had he been able to review the additional discovery received by counsel he would not have pled guilty but would have insisted on going to trial. App. 50, ll. 17-18; 57, ll. 10-16

Counsel Meetze admitted petitioner told him he wanted to go to trial but stated that was before the state made any plea offer to petitioner. App. 61, l.15-62, l.12. Meetze also conceded he may not have shown petitioner the forensics results in his case before the plea because the reports were dated May 2, 2017, only ten days before petitioner's guilty plea on May 12, 2017. App. 65, ll. 18-25. However, Meetze claimed petitioner quickly agreed to plead guilty when the state offered the lesser-included offense, voluntary manslaughter with a recommended cap of twenty-five years. App. 64, ll. 20-25.

On July 30, 2019, Judge Seals signed an order denying PCR. App. 80-87. The judge found the plea transcript and counsel's "credible testimony" established petitioner's plea was freely and voluntarily made. App. 85. The judge further found petitioner's assertion that counsel failed to provide or review discovery with him was not credible and wrote that it was contradicted by petitioner's testimony at the evidentiary hearing. App. 85

This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred by finding counsel was not ineffective for failure to provide or review forensic results with petitioner before his guilty plea rendering petitioner's plea not voluntarily, intelligently, freely, or knowingly made.

Where a defendant enters a guilty plea upon counsel's advice, the voluntariness of the plea depends on whether the advice was within the range of competence demanded of attorneys in criminal cases. *Hill v. Lockhart*, 474 U.S. 52 (1985). The two-part standard adopted in *Strickland v. Washington*, 466 U.S. 668 (1984) for evaluating claims of ineffective assistance of counsel—requiring that the defendant show that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different—applies to guilty plea challenges based on ineffective assistance of counsel. *Id*. In order to satisfy the second, or "prejudice," requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Id*.

Counsel was deficient for failing to provide or review certain discovery materials with petitioner. Petitioner testified at PCR that he did not receive any of the forensic results in his case until after he pled guilty. Counsel admitted that petitioner may not have seen those results because the earliest counsel could have received the discovery from the state was ten days before petitioner's guilty plea.

Petitioner testified that, according to the forensic results, police did not find any of his DNA or fingerprints at the scene. Petitioner also testified, and the guilty plea hearing transcript confirms, the police never recovered a murder weapon in this case. Petitioner was prejudiced by

counsel's failure to fully review the discovery in his case with him because had he seen the total lack of physical evidence tying him to the scene petitioner would have insisted on going to trial instead of pleading guilty. *See Hill v. Lockhart*, 474 U.S. 52 (1985).

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of July, 2020.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Alonzo Brown states:

1. She is 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 H. Seals, which was held on March 5, 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 Aaron Alonzo Brown.

Respectfully Submitted,

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of July, 2020.

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/ Sarah E. Shipe
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Appellate Defender

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This 27th day of July, 2020.