STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

RICHARD LANARD SPRINKLE MAVINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001059

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether trial counsel provided ineffective assistance of counsel when he allowed Petitioner to be shown in front of the jury while still wearing shackles?

STATEMENT

During its October 8, 2012 term, the Orangeburg County Grand Jury indicted Petitioner for attempted murder, burglary in the first degree, and two counts of armed robbery. App. 724 – 731.

Petitioner proceeded to trial on April 8 – 10, 2013, before the Honorable Edgar W. Dickson. App. 1. Jillian D. Ullman and Mark Wise represented Petitioner. Id. Sarah A. Ford and B. Harrison Bell represented the state. Id.

At trial, Petitioner's defense was that he arrived at the house in question with Sean Echols and a third person to test drugs. App. 679, l. 18 – 670, l. 2. Once Petitioner saw a robbery started taking place he fled the home. App. 70, l. 3 – 71, l. 17; App. 676, ll. 15 – 19.

While in custody, Sean Echols gave a written statement to police that stated there was a third person, who was innocent, at the house during the incident. App. 312, l. 16 – 313, l. 2. However, Echols testified at trial that he lied in the written statement because he did not trust the officer who took the statement. Id. Echols testified at trial that only he and Petitioner were involved in the incident. Id.

Petitioner was found guilty of both armed robbery counts, assault and battery in the first degree, as the lesser included offense of attempted murder, and burglary in the first degree. App. 411, l. 19 – 412, l. 21.

Judge Dickson sentenced Petitioner to ten years' imprisonment for Assault and Battery in the first degree, thirty years' imprisonment for both counts of Armed Robbery, and thirty-five years' imprisonment for Burglary in the first degree. App. 424, l. 19 – 425, l. 13. Judge Dickson ran Petitioner's sentences concurrently. Id.

Petitioner filed a direct appeal on June 24, 2014. App. 516 – 526. The Court of Appeals affirmed Petitioner's convictions in an unpublished opinion on December 23, 2014[1]. App. 531 – 539; State v. Richard Lanard Sprinkle, 2014-UP-480 (2014).

Petitioner filed an application for post-conviction relief (PCR) on August 15, 2015. App. 605 – 616. Petitioner alleged his attorney was ineffective for allowing Petitioner to be placed in front of the jury while still wearing shackles. App. 659, l. 22 – 660, l. 18.

Petitioner's PCR hearing was held on February 27, 2018 before the Honorable Maite Murphy. App. 631. Jonathon Waller represented Petitioner. Id. Julie Coleman represented the state. Id.

On May 1, 2018, Judge Murphy filed an Order of Dismissal denying Petitioner's PCR allegations. App. 707 – 723. Judge Murphy found that trial counsel credibly asserted that he had no recollection of Applicant appearing in shackles and that his stated policy was to never allow his clients to be seen in shackles. App. 717.

This Petition for Writ of Certiorari follows.

[1] The Court of Appeals found that the photo ID lineup police provided the complaining witnesses was not unduly suggestive. App. 533 – 534. The Court of Appeals also found that although the trial court erred in excluding evidence regarding Echols' plea negotiations, the error was harmless. App. 535 – 536.

ARGUMENT

Trial counsel provided ineffective assistance of counsel when he allowed Petitioner to be shown in front of the jury while still wearing shackles.

Relevant Facts

The state alleged the facts as follows. On June 26, 2011, in the early morning hours, Petitioner and another man, Sean Echols, knocked on James Wright and Robert Rumph's front door. App. 158, ll. 8 – 19. They asked to use the phone inside the house. App. 159, ll. 15 – 21. They were let in under that pretense. Id. Then they proceeded to rob the complaining witnesses. Id.

Petitioner allegedly hit Wright in the head with a firearm that caused Wright to start bleeding. App. 159, l. 15 – 161, l. 4. Petitioner demanded money from Wright. App. 160, ll. 13 – 15. Petitioner and Echols proceeded to Rumph's room. App. 161, ll. 12 – 16. They wounded Rumph with a knife while demanding money from him as well. App. 161, ll. 20 – 24. Petitioner and Echols left in Rumph's car. App. 162, ll. 1 – 7.

Wright told police that he recognized Petitioner. App. 160, ll. 1 – 9. Police provided a photo identification line up to Wright and Rumph. Wright identified Petitioner, but Rumph did not. App. 226, l. 21 – 28, l. 1; App. 231, ll. 1 – 5.

The state's case rested entirely on witness testimony. There was no physical evidence that linked Petitioner to the house or car in question. App. 359, l. 24 – 360, l. 5. During deliberations, the jury needed to rehear testimony from the trial. App. 395, l. 19 – 403, l. 15.

Petitioner was found guilty of: both armed robbery counts, assault and battery in the first degree, as the lesser included offense of attempted murder, and burglary in the first degree. App. 411, l. 19 – 412, l. 21.

At Petitioner's evidentiary hearing, he testified that during his trial the judge asked Petitioner to stand up and turn around towards the jury to determine if any of the jurors recognized him. App. 659, l. 22 – 660, l. 18. Petitioner complied and turned towards the jury, while still wearing shackles at that time. Id. Petitioner was in civilian clothes but remained shackled with, "the belly chain and everything." Id. Petitioner testified that he did not say anything to this attorneys at trial about being in front of the jury while restrained because Petitioner did not know that it was improper. App. 660, ll. 19 – 20. Petitioner thought it must be normal procedure because his lawyers were allowing it. Id.

Trial counsel, Mark Wise, also testified at Petitioner's evidentiary hearing. App. 664, l. 24. He stated that he did not recall if or how Petitioner was restrained at trial. App. 668, ll. 8 – 18. Wise concluded that Petitioner *must not* have been in shackles because, "it would have been consistently my policy to not let a client appear in court in shackles." Id.

On May 1, 2018 Judge Murphy filed an Order of Dismissal that stated Petitioner had failed to meet his burden of proving that trial counsel was ineffective for allowing him to be put in front of the jury in shackles because Wise "credibly" had no recollection of whether Petitioner was wearing shackles or not. App. 717. Although Wise only testified about his general trial procedure and did not testify to anything specific to Petitioner's trial, that testimony was compelling enough to refute Petitioner's PCR allegation. Id.

Discussion

Petitioner was prejudiced because the jury saw him in open court with restraints on because showing Petitioner in that manner had an implicit adverse effect on the jury's perception of Petitioner's character.

The United States Supreme Court has held that under the United States Constitution the

criminal process presumes a criminal defendant is innocent until proved guilty. See Bell v. Wolfish, 441 U.S. 520, 533 (1979) (quoting Coffin v. United States, 156 U.S. 432 (1895)).

In Illinois v. Allen, 397 U.S. 337 (1970), the United States Supreme held, "*[N]o person should be tried while shackled and gagged except as a last resort.*" Id. at 344 (emphasis added). The Allen Court explained that the sight of shackles would likely have a significant effect on the jury's feelings about the defendant and the use of the restraints represented "an affront to the very dignity and decorum of judicial proceedings." Id. The Allen Court further noted that shackles greatly reduce a defendant's ability to communicate with counsel. Id.

In Deck v. Missouri, 544 U.S. 622, 626 (2005), the United States Supreme Court stated, "The law has long forbidden the routine use of visible shackles during the guilt phase [of a criminal trial]; [however,] it permits a State to shackle a criminal defendant only in the presence of special need." Id. (emphasis added). The Deck Court found that "a basic element of the 'due process of law' protected by . . . the Fifth and Fourteenth Amendments to the Constitution prohibit[s] the use of physical restraints visible to the jury *absent a trial court determination, in the exercise of its discretion*, that [the restraints] are *justified by a state interest specific to a particular trial.*" Id. at 629 (emphasis added). The Deck Court also noted:

> [J]udges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, *which includes the respectful treatment of defendants*, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty or criminal punishment.

Id. at 631 (emphasis added).

The Deck Court emphasized that "[t]he appearance of the offender during the penalty phase in shackles . . . *almost inevitably implies to the jury, as a matter of common sense, that court authorities consider the offender a danger to the community*" and that shackling "*almost*

inevitably affects adversely the jury's perception of the character of the defendant." Id. at 633 (emphasis added). The Court found the visible shackling of Deck unconstitutional because the record contained no reasoning from the trial court regarding why Deck was shackled. Id. at 634. Because there was no on the record finding by the trial court, the Deck Court held that "the defendant need not demonstrate actual prejudice to make out a due process violation." Id. at 635. Rather, "[t]he State must prove 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." Id. (citing Chapman v. California, 386 U.S. 18, 24 (1967).

In Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), this Court addressed an issue similar to the issue presented in the instant case. In Humbert, the defendant wore a prison jumpsuit, shackles, and a prison identification bracelet with his mugshot during his trial. Id. at 334, 548 S.E.2d at 863. The Humbert Court determined that trial counsel was deficient in allowing the defendant to proceed to trial dressed in prison clothing, but held that the defendant was not prejudiced by trial counsel's deficient performance based upon the "overwhelming evidence" against him. Id. at 338, 548 S.E.2d at 865-866.

In the present case, the evidence against Petitioner was not overwhelming. There was no physical evidence that connected Petitioner to the incident. App. 359, l. 24 – 350, l. 5. The only evidence that connected Petitioner to the incident was the testimony from Sean Echols and James Wright.

At trial, Wright admitted to drinking liquor prior to the incident. App. 181, ll. 10 – 18. Echols testified that he and Petitioner were the only two people who entered the house, but his testimony contradicted a prior written statement he made to police. App. 264, ll. 19 – 21. In that

prior statement to police, Echols admitted that there was an innocent third party that came along with him to the house during the incident. App. 292, ll. 3 – 8.

Petitioner made an oral statement to police, prior to trial, that aligned with Echols' initial statement to police. Petitioner stated he was the innocent third party at the house, under the impression they were there to test drugs, and that he fled once he saw the robbery start. App. 679, ll. 28 – 24. During trial, Echols asserted that he was lying when he made that initial statement to police and that only he and Petitioner were involved. App. 291, l. 13 – 293, l. 20.

During deliberations the jury needed clarification from the judge regarding some definitions and requested to rehear the testimony from Wright, Rumph, and Echols. App. 395, l. 19 – 403, l. 15. Moreover, the jury came back with a mixed verdict. App. 411, l. 13 – 412, l. 21. Therefore, the evidence against Petitioner was not overwhelming, and his appearance in front of the jury wearing restrains was not harmless.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, the Petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). "First, a defendant must show that counsel's performance was deficient." Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 118, 386 S.E.2d at 625. Therefore, where ineffective assistance of counsel is alleged, the applicant 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, 466 U.S. at 692.

The state's case rested entirely on the accounts by Wright, Rumph, and Echols regarding the details of the incident. Thus, in the credibility battle at trial, the perception of Petitioner's character and credibility in front of the jury was paramount to his defense.

Trial counsel let Petitioner stand in front of the jury with restraints on, thereby allowing the jury to perceive that Petitioner must be a violent criminal who needed to be restrained at trial. App. 659, l. 22 – 660, l. 18. The implicit message impressed upon the jury by seeing Petitioner restrained improperly influenced the jury into believing the state's witnesses over Petitioner, the man in shackles on the other side of the courtroom.

At PCR, trial counsel did not definitively deny that Petitioner was in restraints in front of the jury. He testified that Petitioner, "would not have been in shackles," because it was trial counsel's general practice to not allow his clients to be seen by the jury while in restraints. App. 668, ll. 1 – 14. However, trial counsel could not remember specifically whether Petitioner was restrained in front of the jury. App. 668, ll. 15 – 18.

The PCR court erred when it found that trial counsel's lack of recollection of the details of Petitioner's case was "credible" testimony sufficient to refute Petitioner's testimony, that specifically recalled the details of his case. App. 717. Moreover, there was never a state interest presented, by the trial court or the PCR court, as justification for shackling Petitioner in his trial, as required by Deck. Deck v. Missouri, 544 U.S. 622, 629 (2005)

Therefore, trial counsel provided ineffective assistance of counsel when he allowed Petitioner to be in front of the jury while still wearing restraints because that impliedly communicated to the jury that Petitioner was a violent criminal that needed to be restrained. Deck, at 633. That deficient performance by trial counsel prejudiced Petitioner because the evidence the

state presented was not overwhelming and the state's case boiled down to a credibility battle between Petitioner and the state's witnesses.

CONCLUSION

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

Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of December, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Christian Saville, 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 Richard Lanard Sprinkle Mavins, #172425, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 5th day of December, 2018.

Victor R. Seeger

Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of December, 2018.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028.