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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Greenville County

The Honorable Deadra L. Jefferson, Trial Judge
The Honorable Robin B. Stilwell, PCR Judge

Appellate Case No. 2020-000796

WILLIE M. WILLIAMS,

Respondent-Petitioner,

v.

STATE OF SOUTH CAROLINA,

Petitioner-Respondent.

PETITION FOR WRIT OF CERTIORARI

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ISSUES ON CERTIORARI

- I. Did the PCR court err in finding Williams' defense attorneys were constitutionally ineffective for not objecting to the trial court's jury instruction on mutual combat when the PCR court's finding that Williams suffered prejudice was erroneously based on the assumption that Williams was entitled to a self-defense instruction and when the PCR court's findings as to this issue contradict its other findings?

- II. Did the PCR court err in not restricting its grant of post-conviction relief to the murder conviction only when that is the offense tried that could have been affected by the mutual combat instruction and, in the alternative, from refusing to clarify to which convictions the grant of relief was meant to apply?

STATEMENT OF THE CASE

Willie Marvin Williams is presently confined in the South Carolina Department of Corrections. During its April of 2013 term, the Greenville County Grand Jury indicted him for murder (2013-GS-23-3238), the possession of a weapon during the commission of a violent crime (2013-GS-23-3238), attempted murder (2013-GS-23-3239), and unlawful conduct towards a child (2013-GS-23-3240). W. Townes Jones, IV, Esquire, and Richard H. Warder, Esquire, represented Williams in the case and Assistant Solicitor Judith M. Munson of the Thirteenth Circuit Solicitor's Office prosecuted him. On May 13, 2013, through May 16, 2013, Williams proceeded to a jury trial with the Honorable Deadra L. Jefferson ("trial court") presiding. The jury found Williams guilty as indicted. The trial court sentenced Williams to concurrent terms of imprisonment of life for murder, five years for possession of a weapon during the commission of a violent crime, thirty years for attempted murder, and ten years for unlawful conduct towards a child.

Jones filed a timely notice of appeal. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal. Assistant Attorney General Anthony Mabry of the South Carolina Attorney General's Office represented the State. Alexander argued the trial court erred (1) in excluding a statement made by the boyfriend of Williams' deceased wife, whom Williams murdered, and (2) denying Williams' request to instruct the jury on the lesser-included offense of involuntary manslaughter. State v. Williams, Op. No. 2016-UP-215 (S.C. Ct. App. filed May 18, 2016) (per curiam). The South Carolina Court of Appeals affirmed in an unpublished opinion, finding the trial court did not abuse its discretion in admitting the boyfriend's statement and the request to instruct the jury on

involuntary manslaughter was not preserved for appellate review. The remittitur was issued on June 3, 2016.

Williams filed his application for post-conviction relief on December 28, 2016. The State filed its return on October 5, 2017, moving to dismiss some of the claims raised by Williams and for a more definite statement as to others. Williams later filed amended applications, and his two PCR actions were merged. An evidentiary hearing in the matter was held before the Honorable Robin B. Stilwell (“PCR court”) on December 18, 2019, at the Greenville County Courthouse. Williams was present at represented by C. Rauch Wise, Esquire, and the undersigned represented the State. At the conclusion of the hearing, the PCR court took the matter under advisement, asked later for proposed orders from each party. On March 31, 2020, the PCR court issued an order denying post-conviction relief to Williams on all claims raised, save for one: that Williams’ defense attorneys were constitutionally ineffective for failing to object to the trial court’s jury instruction on mutual combat. The PCR court denied the State’s motion to alter or amend the judgment, and this appeal follows.

STATEMENT OF FACTS

In the early morning hours of July 10, 2010, Williams murdered his wife Natasha Kerns with a handgun, shot Anthony B. Wilson moments later, and endangered the lives of Kerns' minor children. Williams was estranged from Kerns, and Wilson—her new boyfriend—was staying at Kerns' home in Greenville that night after having taken Kerns and her children out to dinner. Williams and Kerns had previously lived in the home together. Kerns's car was parked behind her home and Wilson's was parked in front. Kerns was afraid of Williams. There had been two domestic incidents between Williams and Kerns at the home in the past, including one in which the police were called, and Williams moved out of that home and into his own residence in Gray Court. On June 25, 2010, Williams made another appearance at Kerns's home. Right before Kerns's murder, she had petitioned for a restraining order against Williams and for child support, and Williams had just been served with the papers. Williams was due in court in the matter the week following Kerns's murder and he was upset about having to pay child support. At the time of her death, Kerns had barricaded her front door with furniture and her back door was equipped with a security alarm. (App. 67-82, 109, 285-87, 300-01, 307-14, 340, 505, 513, 554-58, 564, 574, 669).

On the night of July 9, 2010, Williams picked up his date Cynthia Booker and Booker's aunt and drove them in his black Chrysler 300 to a club. App. 250, 518. The three were at the club until approximately 3:45 a.m., when Williams left Booker and her aunt suddenly. R. 250, 253, 524. Booker saw Williams peeling his tires on his way out of the club's parking lot, leaving her and her aunt to find their own ride home. Williams, who had been drinking alcohol, changed

clothes at another location and then drove to Kerns's home. App. 569. Upon arrival, he found Wilson's car parked in the driveway. App. 329.

That night, after dinner, Kerns and Wilson talked with the two children before going to bed. App. 288. Kerns and Williams slept in Kerns's bedroom, the young girl in a crib in Kerns's bedroom, and the young boy ("J") in his own bedroom. App. 86, 88-89. J knew something was wrong when he heard the first gunshot. App. 90. J woke up, flipped on the lights, flipped them off again, and looked out the window to see Williams' Chrysler 300 parked outside. App. 90-91. J recognized the car as Williams' because he knew it as the belonging to Williams, the father of the young girl, J's sister. App. 91. Wilson had been awakened by the barking of dogs and "some ruckus going on around the outside of the house." App. 288-90. Wilson woke Kerns, who retrieved her gun from under the bed and went towards the front of the home. App. 290-91. Wilson took the little girl to J's bedroom and put her in the bunkbed there. App. 290-91. Kerns called 911 on her cell phone, telling the operator that someone was outside, her dogs were barking, she was armed with a pistol, she and Williams were going through a divorce, and Williams was on her front porch. The 911 recording caught Kerns telling Williams to leave her home. Wilson heard Kerns near the front door before the shot was first saying something like "get away from my property, get away from my house. Wilson heard "banging on the outside" of the house and Kerns shouting. The recording showed there was then a gunshot, and that Kerns dropped her phone and collapsed on the floor in front of a picture window in her living room, where police found her body later. App. 67-82, 540. Williams had shot Williams between the eyes through the window. App. 108-09, 120-23, 262-63. After that, according to Wilson, "it went like straight silent." App. 292-93.

Williams knocked in the lower front pane of a window in a garage that had been converted into a den. The pane did not break and was later found propped against the inside wall of the den. Williams entered the home armed with his handgun. Wilson testified the intruder entered J's room where Wilson and the children were, and fired three shots, one of which rendered Wilson unconscious. The bullet had grazed his head and caused powder burns on his face and clothing. Wilson regained consciousness when J shook him. Wilson went down the hallway to find Kerns lying on her back in the front living room. He checked her for a pulse. Responding law enforcement entered the house before Wilson could get out. App. 118, 126, 174-75, 187-88, 295, 297-98, 492.

J testified he heard the first shot, saw Williams' car outside, and crawled to find his mother on the living room floor. App. 92. J testified he saw Williams standing over Kerns and shooting her either four or nine times, leaving when his ammunition was spent. App. 92-93, 101. J believed Williams was out of ammunition because Williams pointed his gun at J, with it making a sound when he tried to fire. App. 104. J saw Williams leave through the window in the den. Williams left in his Chrysler and drove to his home in Laurens County. He parked the car in his garage, pushed a lawn mower between the car and the garage door, and then closed the garage door. App. 561, 576-77.

When police arrived, they found the two children crying hysterically, and J spontaneously said, "Willie Marvin killed my mom." App. 117-18 Wilson was in the living room with a bloody towel wrapped around his head. App. 118. Kerns was lying on her back in the living room with a gunshot wound to the head. Her cell phone was near her body. There was a bullet hole in the front window between where the curtains opened. Kerns was lying below the curtains with her

feet toward the window. App. 108-09, 120-22. The window in the garage had been forced out of the frame by someone standing outside the home. App. 109-10, 120. The empty pane was wide enough for one person to crawl through. App. 109-10, 120. There was one bullet hole in J's bunkbed and two in his ceiling. App. 95, 392-401. A fired bullet was taken from a wall. There was a bloodstain on the carpet where Wilson had collapsed in J's room. Police did not find any spent casings in or outside of the home, indicating Williams had either picked up the casings or used a revolver. They never located the murder weapon, but did determine that it had been a .38 or 9mm caliber handgun and that Kerns's handgun was not the murder weapon. App. 341, 360-64, 404-17. Police entering the back sliding glass door of the home set off a burglar alarm that had not been triggered earlier when Williams entered the home through the forced out window. App. 182-83. The Greenville County Sheriff's Office requested assistance from the Laurens County Sheriff's Office in locating Williams after identifying Williams as the suspect. App. 118, 154, 315-17, 323-25, 331-33, 360-64.

Laurens County Sheriff's Deputy Joshua Garrison saw Williams driving a champagne-colored Chevrolet Tahoe on the afternoon of July 10. App. 155. Deputy Garrison activated his lights to initiate a stop, but Williams "sped off at a high rate of speed." App. 156. After a twenty-six mile car chase that reached speeds in excess of 110 miles per hours, Deputy Garrison disabled Williams' vehicle by ramming into it with the patrol car. App. 156-57. Williams was found inside the vehicle with a knife stuck in his chest and had to be airlifted for medical attention; he had tried to kill himself. App. 158.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, at 180-81, 810 S.E.2d at 839-40 (citations omitted). However, pure questions of law will be reviewed de novo without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

- I. The PCR court erred in finding Williams' defense attorneys were constitutionally ineffective for not objecting to the trial court's jury instruction on mutual combat because Williams was not entitled to a self-defense instruction and the PCR court failed to make a proper finding that Williams proved there is a reasonable likelihood that the outcome of trial would have been different had Williams' attorneys objected to the mutual combat instruction.**

The PCR court erred in finding Williams' defense attorneys were constitutionally ineffective for not objecting when the trial court instructed the jury on mutual combat. The PCR court's finding of ineffectiveness is premised upon its erroneous finding that the mutual combat instruction interfered with Williams' ability to present the defense of self-defense; however, since Williams was not entitled to a jury instruction on self-defense, the alleged infringement upon it by the mutual combat instruction would be of no matter. The PCR court's finding on this point is undercut by another of its findings that the courts of this state do not recognize the theory whereby Williams would be allowed to assert that self-defense served as a defense to his killing of Kerns when he was allegedly defending himself against the aggression of Wilson. Furthermore, the PCR court erred in finding prejudice from the decision not to object to the mutual combat instruction because Williams' defense at trial was not primarily one of self-defense, but was that of accident. This Court should grant a writ of certiorari to correct the PCR court's error so as to clarify that transferred self-defense is not a defense that criminal defense attorneys are required to raise by the reasonable norms of professional competency.

A. Williams was not entitled to a self-defense jury instruction because the self-defense maneuver he allegedly performed was, by Williams' own admission, meant to repel Wilson and cannot serve to justify the resulting death of Kerns, a third party not involved in the struggle.

Williams was not entitled to a self-defense jury instruction at trial. In order to establish self-defense, a defendant: (1) must have been without fault in bringing on the difficulty; (2) been

in actual imminent danger of losing his life or sustaining a serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining such injury; (3) show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was in imminent danger and that the circumstances were such that would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow to save himself, if the defendant's defense is based upon his belief of imminent danger; and (4) must have had no other probable means of avoiding the danger. State v. Washington, 424 S.C. 374, 411, 818 S.E.2d 459, 478 (S.C. Ct. App. 2018) (citing State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007)), aff'd in part by State v. Washington, Op. No. 27992 (S.C. Sup. Ct. filed Sep. 2, 2020) (Shearouse Adv. Sh. No. 34 at 57) (affirming the Court of Appeals' finding that the trial court did not err in refusing to give a self-defense instruction). The trial court in this case instructed the jury, without objection from the defense, as follows:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true if even during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

App. 644-45. The PCR court correctly noted that the courts of this state have not recognized the theory of "transferred self-defense." App. 919. In State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977), this Court highlighted that some other jurisdictions recognize the theory, which "absolve[s] a defendant who injures an innocent third party while attempting to defend himself from bodily harm," but declined to declare the theory viable in this state; our appellate courts

have not recognized the theory since. When considering Williams' claim that his defense attorneys should have argued that his alleged self-defensive acts in response to Wilson's aggression should have served to absolve him of guilt for killing bystander Kerns, the PCR court correctly found that the theory of transferred self-defense is not recognized and that the defense attorneys were to no fault in not raising that argument. However, the PCR court erroneously accepted at face value the contradictory assumption that Williams was entitled to the self-defense instruction when considering whether the instruction was interfered with by the mutual combat instruction.

If Williams was not entitled to a self-defense instruction with regard to Kerns' murder on one page of the PCR court's order, he cannot be entitled to the instruction with regard to Kerns on a different page of the order. And since Williams was not entitled to the self-defense instruction, it is of no constitutional matter that his attorneys did not object to the mutual combat instruction. To allow the PCR court's grant of relief to Williams to stand on the basis that the mutual combat instruction interfered with the unwarranted self-defense instruction would be to allow Williams to enjoy a windfall. See Lockhart v. Fretwell, 506 U.S. 364, 366 (1993) (holding that the petitioner's sentencing proceeding was not rendered unreliable or fundamentally unfair when his attorney had failed to make an objection based upon authority that was subsequently overruled and that, to hold otherwise, criminal defendants would be granted "a windfall to which they are not entitled.").

B. Williams has failed to prove that there is a reasonable likelihood the outcome of trial would have been different had his attorneys objected to the mutual combat instruction because, his defense at trial was primarily one of accident and not self-defense, which would have undercut any effect the mutual combat instruction would have had in the jury's deliberation.

The PCR court also erred in its finding that Williams' attorneys were constitutionally ineffective for not objecting to the mutual combat instruction because Williams failed to prove that he suffered prejudice from the lack of an objection. In order to establish that his attorneys were constitutionally ineffective, Williams had to prove that their performance fell below an objective standard of reasonableness and that he was prejudiced as a result. Thompson v. State, 423 S.C. 235, 239, 814 S.E.2d 487, 489 (2018). In order to establish prejudice, Williams had to prove that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. (citing Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989)). Williams failed to meet that burden. The PCR court adopted Williams' reliance upon State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003), but that case is distinguishable from this one and does not support the PCR court's finding of prejudice. In Taylor, this Court found that the trial court had improperly instructed the jury on mutual combat. Id. at 235, 589 S.E.2d at 5. However, this Court explained that the question of whether a defendant was engaged in mutual combat is significant because a defendant so engaged may not rely upon self-defense. Id. at 232, 589 S.E.2d at 3 (citation omitted). In finding that Taylor had suffered prejudice due to the trial court's charging mutual combat, this Court noted that Taylor "relied entirely on self-defense at trial." Id. at 235, 589 S.E.2d at 5. This Court cited in support of its finding of prejudice recent cases in which it recognized the importance of not impeding a defendant's ability to argue he acted in self-defense when the defense was central to his strategy at trial. Id.

Unlike Taylor, Williams' primary defense at trial was not self-defense; rather, it was that of accident. Jones testified at the PCR hearing that the defense relied more upon their argument that Kerns's death was an accident than upon an argument that her death was justified due to Williams' acting in self-defense when engaging with Wilson in front of the home. Williams' testimony at trial was that, when he engaged with Wilson, "the gun went off, pow." App. 536. Williams did not testify that his hands were even on the firearm when it allegedly discharged and killed Kerns. App. 536. The trial court initially denied Jones's request for an instruction on accident, but later agreed to give the instruction because "[Williams] testified the gun went off accidentally" App. 581-82, 601. The trial court again reiterated its understanding of Williams' testimony, which was that the fatal shot to Kerns was an accident. App. 602-03. During his closing argument, Warder argued to the jury that Kerns's death was "not a case of murder. This [was] a case of a terrible accident that resulted out of a fight." App. 616. In accordance with the wishes of the defense attorneys, the trial court instructed the jury that Williams was raising the defense of accident, and that the burden was on the State to prove beyond a reasonable doubt that Kerns's death was not an accident. App. 647-48. In Taylor, this Court was concerned that burden-shifting caused by an improper jury charge on mutual combat when self-defense was central to a defendant's defense shifted the burden of proof from the State to the defendant. In this case, though, Williams has not proven that any such burden shifting impeded his ability to assert his main defense, that of accident; this is especially true since the trial court's instruction to the jury on accident informed the jury that the State had to prove beyond a reasonable doubt that Kerns's death was not an accident.

This Court should grant the petition for a writ of certiorari in order to review the PCR

court's finding that Williams' attorneys were constitutionally ineffective for not objecting to the mutual combat instruction because the self-defense instruction that was allegedly impeded by the mutual combat instruction was not warranted and the PCR court's findings as to that claim conflict with its other findings, and because Williams failed to establish that there is a reasonable likelihood that the outcome of his trial would have been different had the objection been made.

II. The PCR court erred in denying the State's motion to alter or amend the judgment because its order granting post-conviction relief is vague in that it does not specify to which of Williams' convictions the PCR court's grant of relief applies and the grant, if it is allowed to stand, should be limited to the murder conviction only.

Williams was convicted of murder as to Kerns (2013-GS-23-3238), attempted murder as to Wilson (2013-GS-23-3239), unlawful conduct towards a child as to J (2013-GS-23-3240), and possession of a weapon during the commission of a violent crime as to murder (2013-GS-23-3238). App. 680-89. The PCR court found Williams' defense attorneys were constitutionally ineffective for not objecting to the jury instruction on mutual combat began it negated the self-defense instruction. App. 912-13. The PCR court that Williams met his burden of proof "with respect to the Mutual Combat charge." App. 913. The PCR court included in its order that "[t]he conviction of . . . Williams is overturned and a new trial granted" App. 921. The PCR court's findings do not make it clear whether it meant to order that Williams be granted a new trial for one conviction or multiple convictions. Respondent moved to alter or amend the judgment, in accordance with Rule 59(e), SCRCP, requesting the PCR court limit its grant of relief to the murder conviction only if it declined to reverse the grant or, in the least, clarify to which of Williams' convictions the grant of post-conviction relief was meant to apply. App. 922-24. The PCR court denied that motion in a cursory fashion without providing any clarification or

limitation. App. 932.

The trial court's jury instruction on mutual combat was concerned only with the murder of Kerns. The mutual combat instruction, in its entirety, was:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, **the killing of the victim would not be self-defense**. This is true if even during the combat the Defendant feared death or serious bodily injury. However, **if before the killing is committed**, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

App. 644-45 (emphasis added). The trial court's instruction was explicitly concerned only with whether Williams' ability to lay claim to self-defense with respect to "the killing of the victim" would be negated by his having engaged in mutual combat. Since Kerns was the only person involved in Williams' heinous rampage who died, the instruction could be referring to none other. The instruction linked the applicability of mutual combat and self-defense to the murder of Kerns only, the mutual combat instruction could not have had any effect whatsoever on the other offenses for which Williams was convicted. The PCR court's order granting post-conviction relief, perhaps because of the other errors identified in this petition, was vague and did not explain which of Williams' convictions were supposedly achieved at the expense of his constitutional rights. The PCR court's order denying the State's motion to alter or amend did not shed light on its findings or correctly restrict its grant of relief to the only relevant conviction. For this reason, this Court should grant the petition for a writ of certiorari and reverse the PCR court's findings and grant of relief.

CONCLUSION

For all of the foregoing reasons, this Court should grant a writ of certiorari and reverse the PCR court's erroneous findings.

Respectfully submitted,

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