

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 30 2020

S.C. SUPREME COURT

Certiorari to Sumter County

Honorable George M. McFaddin, Circuit Court Judge

JAMISON D. HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000942

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in denying relief, where plea counsel failed to explain a ballistics report to Petitioner, where the report was provided in discovery immediately before Petitioner's plea, and where Petitioner believed the report exonerated him?

STATEMENT

On December 1, 2016, a Sumter County grand jury indicted Petitioner on four offenses: unlawful carrying of a pistol, possession of a weapon during the commission of a violent crime, and two counts of attempted murder. App. 75 – 76. On July 21, 2017, Petitioner appeared before the Honorable R. Ferrell Cothran, Jr. for a plea. App. 1. Willie H. Brunson represented Petitioner; John P. Meadors appeared on behalf of the state. The two weapons offenses were dismissed as part of the plea, and the state recommended a concurrent sentence on the two attempted murder charges. App. 3 ll. 1 – 12.

The facts giving rise to the indictments as alleged by the state were as follows: On July 17, 2016, Petitioner exchanged gunfire with two security guards at Studio 378 in Sumter County. App. 7 l. 1 – App. 11 l. 15. Both guards, wearing bulletproof vests, were hit by bullets. Id.

The plea judge found a factual basis existed for the plea and also found that it was freely and voluntarily entered into. App. 11 l. 23 – App. 12 l. 2. As a result, the plea judge accepted the plea. Id. Judge Cothran sentenced Petitioner to eighteen years on each of the attempted murder offenses, concurrent. App. 25 ll. 11 – 15.

In May 2018, Petitioner filed a timely application for post-conviction relief. App. 27. It contained allegations of ineffective assistance of counsel, including the claim that Petitioner was misinformed by counsel of both his rights and the evidence against him. App. 28. The state filed its Return on August 16, 2018. App. 32 – 36.

An evidentiary hearing was held before the Honorable George M. McFaddin, Jr. on November 16, 2018. Timothy L. Griffith represented Petitioner, and Benjamin Limbaugh appeared on behalf of the state. Petitioner and plea counsel testified at the hearing. At the conclusion of the hearing, Judge McFaddin denied relief. App. 65 ll. 12 – 21. An Order of Dismissal was signed in 2019. App. 67 – 74.

This petition follows.

ARGUMENT

The PCR court erred in denying relief, where plea counsel failed to explain a ballistics report to Petitioner, where the report was provided in discovery immediately before Petitioner’s plea, and where Petitioner believed the report exonerated him.

Relevant facts

Only two issues were addressed in the PCR court’s Order of Dismissal: 1) “Misinformed by counsel of rights and evidence;” and 2) “Sentenced on possibility instead of actuality.” App. 73. The findings of law and conclusions of fact section for the former cited no case law. The latter was dismissed at the conclusion of the PCR evidentiary hearing after no testimony was elicited regarding the contention. App. 65 ll. 5 – 21. Notably, the Order of Dismissal also contained the following sentence, seemingly out of place: “Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Michael Nelson and Melisa Gay.”¹ App. 70.

Plea counsel was retained to represent Petitioner. App. 54 ll. 19 – 21. Upon the advice of counsel, Petitioner pled to the two attempted murder charges. App. 43 ll. 10 – 23. The primary claim of ineffective assistance of counsel raised by Petitioner at the evidentiary hearing was that plea counsel mishandled a ballistics report. App. 45 ll. 2 – 17. Although the report was not made an exhibit at the PCR hearing, Petitioner testified the report showed that the bullet fragments in one of the security guard’s bulletproof vests did not match the type of bullet from

¹ As previously mentioned, Petitioner was represented at his **plea** by Willie H. Brunson. The undersigned assumes the Order of Dismissal was drafted by counsel for Respondent. Immediately before the PCR testimony is summarized, the following language can be seen in the Order of Dismissal: “Respondent reserves the right to amend this Return upon receipt of relevant information.” App. 68.

the gun found in Petitioner's possession. Id. Petitioner was unaware of the report at the time of his plea. App. 45 ll. 14 – 22.

Petitioner testified that had he known about the existence of the ballistics report, he would not have pled guilty. App. 47 ll. 3 – 25. Following the exchange of gunfire, Petitioner was unconscious; he was hospitalized for multiple days afterwards. App. 52 ll. 5 – 13. He could not recall with specificity the particular facts surrounding the shootings; it naturally follows that he had to rely on the SLED ballistics report. App. 52 l. 14 – 53 l. 11.

Plea counsel characterized the ballistics report as “very critical” and validated Petitioner's testimony that the report was not received during the early stages of discovery. App. 60 l. 19 – 62 l. 18. According to the evidence located at the scene, Petitioner was in possession of a .38 special. Id. Based on plea counsel's testimony, the ballistics report showed that the two security guards' vests were struck with bullets from a .38 or a .357 caliber weapon. Plea counsel testified that following receipt of the ballistics report, Petitioner decided to enter his guilty plea. App. 62 l. 19 – 63 l. 3. As mentioned above, the ballistics report was not made an exhibit at the PCR hearing.

Discussion

In order to establish ineffective assistance of counsel, a PCR applicant must establish trial counsel's performance fell below an objective standard of reasonableness and, “the deficient performance prejudiced the [applicant] 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’.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625, (1989), quoting Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674, 698

(1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Id.

The appellate court must affirm the PCR court's decision when its findings are supported by any evidence of probative value. Cherry v. State, supra. However, the appellate court will not uphold the findings of the PCR court if there is no probative evidence to support those findings. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

Petitioner’s testimony at the PCR hearing seemingly demonstrates a misunderstanding of the ballistics report. Had plea counsel discussed with Petitioner the report in greater detail, Petitioner likely would have fully understood the evidence against him. In doing so, Petitioner would have been able to make an informed decision about whether to pursue a trial or elect to plead. Because plea counsel failed to adequately explain the ballistics report, Petitioner received ineffective assistance of counsel.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant certiorari to allow further briefing.

s/Taylor D. Gilliam
Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of December, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamison Daudi Holmes states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on November 16, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jamison Daudi Holmes.

Respectfully Submitted,

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of December, 2020.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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/Taylor D. Gilliam

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Appellate Defender

South Carolina Commission on Indigent
Defense

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This 30th day of December, 2020.