

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Edward W. Miller, Circuit Court Judge

BRENT C. MCLAUREN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000632

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

RECEIVED

Jan 22 2021

S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT OF CASE 2

ARGUMENT

Trial counsel erred in failing to object to petitioner’s motion to
appear pro se because the motion was arguably one to obtain
counsel of his choice for trial..... 3

CONCLUSION..... 6

PETITION TO BE RELIEVED AS COUNSEL 7

ISSUE PRESENTED

Trial counsel erred in failing to object to petitioner's motion to appear pro se because the motion was arguably one to obtain counsel of his choice for trial.

STATEMENT OF CASE

Petitioner Brent C. McLauren, Jr., was convicted of grand larceny and entering a bank with the intent to commit robbery per jury trial held during the May 2015 term of the Pickens County General Sessions Court before Judge John C. Hayes, III. Petitioner was found guilty and sentenced to imprisonment for an aggregate period of thirty years. App. 17-508. Petitioner appeared pro se at trial (with John W. Dejong, Esquire, as standby counsel) and Assistant Solicitor Brandi Batson Hinton appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed.

On August 26, 2018, petitioner filed a PCR application in the case. App. 510-520. The respondent filed a return dated March 22, 2019. App. 521-529.

A PCR hearing was convened on October 22, 2019, at the Pickens County Courthouse before Judge Edward W. Miller. App. 531-550. Petitioner was present at the hearing and represented by Rodney W. Rickey, Esquire, and Assistant Attorney General Taylor Z. Smith appeared on behalf of the state.

On January 31, 2020, Judge Miller issued an Order of Dismissal in the case. App. 552-565. Petitioner appealed Judge Miller's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to petitioner's motion to appear pro se because the motion was arguably one to obtain counsel of his choice for trial.

At trial, Tracy Batson testified that she was working as a teller at SunTrust Bank in Pickens, South Carolina, on January 14, 2014, when a man wearing a black hoodie and jeans entered the bank, came to her teller window, and handed her one note requiring her to give him money in the denominations he listed on the note, and another note asking for money also from the drive through teller at the same time. Both tellers followed instructions and surrendered the money to this man. App. 178, 1.19-p. 194, 1.10. A police investigation led to petitioner as the perpetrator. Apparently, two younger men who had given petitioner a ride to the bank, unbeknownst to them, assisted petitioner on that day.

During the PCR hearing, petitioner testified in effect that he was not pleased with trial counsel's investigations into his case, and that counsel was not prepared for trial; and that as a result, he had to try his own case pro se at trial. App. 541, 1.11-p.542, 1.13; App. 545, 1.8-15.

Trial counsel testified at the PCR hearing and admitted that petitioner was unhappy with his legal services, and that when petitioner was told he could not in effect have his own lawyer, then the result was self-representation. App. 548, lines 5-8.

At the pre-trial hearing, defense counsel stated that petitioner's original motion was a motion to relieve counsel. App. 3, 1.21-p. 4, 1.1. Petitioner stated the following prior to trial:

The Court:...[D]o you wish to have an attorney or proceed pro se.

Petitioner: I'm going to go ahead on and proceed pro se. If I was out, I would naturally hire the attorney of my choice. I can't do that because I still have the \$155,000 bond. App. 57, 1.1-7.

Also, petitioner mentioned the following regarding counsel at the pre-trial hearing:

Court: [A]n attorney has been appointed to you through the Pickens County public defender's office.

Petitioner: If I may be heard on that issue after you get done. App. 7, 1.4-9.

The PCR judge ruled that there was no controlling case law in which trial counsel has been found to have been ineffective based upon an applicant's decision that he had no choice other than to represent himself at trial due to the performance of trial counsel. App. 556-558.

In the case at bar, petitioner was unhappy with trial counsel's investigations, and it is inferred based on the record that petitioner obviously desired counsel of his own choosing couched in his motion to relieve counsel. The Sixth Amendment does not confer an absolute right to be represented by one's preferred attorney; however, although the right to an attorney of one's choosing is not unlimited, the Sixth Amendment gives some protections to a criminal defendant's selection of retained counsel by weighing the defendant's right to freely choose counsel against the need to maintain the highest ethical standard of ethical responsibilities and the government's interest in relieving counsel. State v. Sanders, 341, S.C. 386, 534 S.E.2d 696 (2000), citing to Wheat v. United States, 486 U.S. 153 (1988) and United States v. Cunningham, 672 F.2d 1064 (2nd Cir. 1982).

Therefore, because petitioner's actual request was to be awarded counsel of his own choice, which was in effect denied, trial counsel erred in failing to allow the trial judge to misconstrue the matter as a waiver of counsel issue and a request proceed pro se.. The denial of petitioner's motion was in effect a denial of a motion of counsel of his choice. In evaluating whether the trial judge abused his discretion in denying the defendant's motion for substitute counsel, the court may consider factors such as an inquiry into the defendant's complaint and

whether the attorney client conflict was so great that it resulted in a total lack of communication, and thereby an adequate defense. State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991) citing to United States v. Gallop, 838 F.2d 105 (4th Cir. 1988) Here, none of these factors were considered. Clearly, it was error for counsel to miss what was apparently inferred from the record as petitioner's request of counsel of his choice to be misinterpreted as a waiver of counsel, which in turn meant that petitioner did not voluntarily waive his right to counsel and proceed with pro se representation at trial.

The confusion over whether this pretrial issue was a motion to relieve counsel, or a pro se motion, or a choice of counsel motion meant that petitioner's ultimate waiver of the right to counsel was not a voluntary waiver. For example, note further the following colloquy regarding these matters during the pre-trial hearing:

Court: You understand that it is inherently dangerous for a person to represent himself without the benefit of having an attorney in a criminal charge; do you understand this?

Petitioner: I would answer that question by saying in some cases, that's true. Not always, but, yes, I agree with what you're saying. App. 7, lines 4-20.

The ultimate test of whether a defendant made a voluntary waive of the right to counsel is determined by whether the accused understood the waiver and then knowingly and voluntarily waived his right to counsel. State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2015); Faretta v. California, 422 U.S. 806 (1975).

In the instant case, petitioner did not voluntarily waive his right to counsel's representation at trial and as a result was tried in violation of the Sixth and Fourteenth Amendments.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the 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 22nd day of January, 2021.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 22 2021

S.C. SUPREME COURT

—————
Certiorari to Pickens County

Honorable Edward W. Miller, Circuit Court Judge
—————

BRENT C. MCLAUREN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————
PETITION TO BE RELIEVED AS COUNSEL
—————

Counsel for Brent Christopher McLauren 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 Edward W. Miller, which was held on October 22, 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 Brent Christopher McLauren.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of January, 2021.

RECEIVED

Jan 22 2021

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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 22nd day of January, 2021.