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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

ANTWAN LYDELL GADDIST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001608

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in ruling petitioner's guilty plea was voluntary where trial counsel's failure to create a record and preserve important issues for appeal, because of what counsel described at PCR as "hostile" environment in the courtroom, effectively forced petitioner to take a guilty plea mid-trial?

STATEMENT

On August 10, 2011, a Richland County grand jury indicted petitioner for homicide by child abuse. App. 1178-79. On January 31, 2014, pretrial motions were heard before the Honorable James R. Barber, III. Petitioner's case was called to trial on February 3, 2014, before Judge Barber, and a jury. App. 1. Tracy Pinnock, Eric Staggs, and Douglas Strickler represented petitioner. App. 1. Luck Campbell, Joanna McDuffie, and Nicole Simpson, assistant solicitors, represented the state. App. 1. Mid-trial, on February 7, 2014, petitioner pled guilty. App. 999. Judge Barber sentenced petitioner to twenty-three years' imprisonment. App. 1020.

Defense counsel filed a notice of appeal from the guilty plea on February 10, 2014. App. 1022. On April 2, 2014, the Court of Appeals dismissed the appeal. *State v. Gaddist*, No. 2014-000239 (S.C. Ct. App. filed on April 2, 2014). App. 1028.

Thereafter, petitioner filed an application for PCR on October 28, 2014. App. 1029. An evidentiary hearing was held before the Honorable G. Thomas Cooper on July 20, 2017. Jonathan Waller represented petitioner and Jessica Kinard, assistant attorney general, represented the state. App. 1040.

On November 10, 2020, Judge Cooper signed an order denying PCR. App. 1115-77. The court found that, despite petitioner's and counsel's testimonies at PCR that petitioner was effectively forced to plead guilty, petitioner failed to present a persuasive reason to reject petitioner's statements at his plea hearing. App. 1142-48.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in ruling petitioner's guilty plea was voluntary where trial counsel's admitted failure to create a record and preserve important issues for appeal, because of what counsel described at PCR as "hostile" environment in the courtroom, effectively forced petitioner to take a guilty plea mid-trial.

Relevant facts

The state alleged on May 23, 2011, petitioner violently shook his girlfriend, Miesha Miller's, toddler causing injury to her brain which resulted in the child's death on May 26, 2011. App. 1009. At the time of the incident, petitioner was living with Miller, their school aged daughter, and Miller's seventeen-month-old twins from another relationship. App. 220, ll. 11-16; 282, ll. 12-17. At trial Miller testified her older daughter left for school that morning and she got to work around 11 a.m., leaving the twins and petitioner in the apartment alone. Around noon Miller noticed her phone showed she had missed calls from petitioner. Miller called petitioner back and he told her the child was not breathing. App. 284-89. Miller called 911, emergency workers responded and transported the child to the hospital. App. 290-92. Upon arrival at the hospital, the child had a pulse but was not breathing on her own. App. 540, l. 20-541, l. 3. Subsequent tests revealed no brain function and the child was removed from life support and pronounced dead May 26, 2011. App. 555, ll. 9-11; 571, ll. 2-3; 575, ll. 1-11. The treating physician, Doctor Elizabeth Mack, opined at trial, that the child died from non-accidental trauma. App. 565, ll. 10-23.

At the conclusion of the state's case, petitioner pled guilty and was sentenced to twenty-three years' imprisonment. App. 998.

At the PCR hearing petitioner testified that while Douglas Strickler and Eric Staggs were his attorneys, he had not spoken with them as often as Tracy Pinnock and considered Pinnock to be his attorney. App. 1056. Petitioner stated that prior to his trial he and Pinnock discussed his case and what the state would need to prove for a jury to find him guilty. App. 1046. He said Pinnock went over some of the medical records pertaining to his case and the defense hired two expert witnesses to testify on his behalf regarding medical information in the case. App. 1048; 1051.

After the state rested its case petitioner met with defense counsel Pinnock and she relayed to him that the trial judge told her that if petitioner continued with trial and was found guilty he would receive a sentence of life in prison, but if he pled guilty that day he would receive a lesser sentence of between twenty and twenty-five years. App. 1053. Petitioner was "disturbed" by what defense counsel told him because he thought the trial judge should be neutral. App. 1053-54. Petitioner testified that he had less than half an hour to discuss with counsel his choice to plead guilty that day. App. 1065-66.

Petitioner's testimony at PCR was confusing regarding the timeline of events. He mentioned that another consideration in his decision to plead guilty was the fact he was forced to choose between challenging the admission of phone calls he made after his second interview with police and presenting expert testimony in his case. App. 1057-60; 1064-65; 1068; 1143. From the record and from Pinnock's testimony at PCR it appears the decision not to challenge that evidence was made during pretrial motions the week before trial.[1] App. 1095-96.

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1 Pinnock testified, at PCR, there had been issues with scheduling the trial for months and the date selected for trial was a date certain and travel arrangements had already been made for the defense's experts. During pretrial motions the issue regarding suppression of the phone calls came up. The trial judge declined to hear the issue, ruling that he did not have jurisdiction and that the issue would need to be raised at The Court of Appeals. Pinnock said, it was her

Petitioner admitted he understood what it meant to plead guilty but that he felt he had no choice because he was unable to challenge the admission of the phone calls and felt pressured to plead guilty instead of continuing on with trial . App. 1066.

Eric Staggs testified, at PCR, that he was second chair for Pinnock in petitioner's trial. App. 1075. Staggs explained his role in in the defense was to handle the pretrial *Jackson v. Denno*,[2] hearing regarding a statement petitioner made to police the day after the incident. Staggs testified that the defense hired an expert to testify about coercion and false confessions in relation to petitioner's statement to police. App. 1076-77. Staggs memory of petitioner's trial was that, "the entire tenor of that trial was incredibly hostile" and the defense "had a very difficult time making a record." App. 1079, ll. 19-22.

Regarding the comments of trial judge relayed to petitioner by Pinnock, Staggs recalled that the morning of the guilty plea the attorneys had a conference with the trial judge where the judge asked what the state's final offer was. Staggs testified that the judge did not explicitly state that if the trial continued, he would sentence petitioner to life but said, there "was certainly a tacit understanding that, that was the likely outcome." Staggs recalled that after the conference Pinnock met with petitioner for "a brief period of time" and relayed the judge's attitude regarding continuing with trial to petitioner. App. 1080-81.

Tracy Pinnock testified that she believed the state prosecuted petitioner in this case because was the only adult present in the residence with the child when 911 was called. The state's theory was that this was a "shaken baby" case. However, the state was not calling it

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understanding that if the defense challenged the admission of the phone calls at The Court of Appeals, the trial court would not grant them a continuance, nor would the trial court allow them to call their witnesses out of order. App. 1095. Therefore, the defense had to choose whether to present expert testimony at trial or challenge the admission of the recordings. App. 1096.

2 378 U.S. 368 (1964).

"shaken baby" because that was not what the medical evidence reflected. App. 1084-85. Pinnock hired Dr. Plunkett as an expert for the medical evidence in the case and Dr. Frumpkin as an expert in false confessions for the defense. App. 1085. Pinnock testified there were ample medical records for the twins, one of whom was the deceased child, which showed a history of potential intentionally inflicted injuries before petitioner was in the picture or began living with the family. The defense's theory was that the abuse had been going on prior to petitioner being around and Pinnock planned to present a third-party guilt defense at trial. App. 1086.

Pinnock agreed with Staggs that the atmosphere at trial was hostile. She stated, "my feeling about that trial is that not only were we battling the state, we were battling the bench." Pinnock admitted that the atmosphere at trial affected her ability to make effective arguments and objections at trial. App. 1101, ll. 13-24. She also said things at trial were going "extremely poorly" and that she felt it was "borderline almost personal throughout," which affected her ability to represent petitioner properly. App. 1104, ll. 16-25. Pinnock testified that the trial judge told her in an off the record discussion that they were not going to be allowed to put up a third-party guilt defense and that she failed to get that ruling on the record. App. 1105, 1-20; 1106, ll. 5-13; 1109-10; 1112, l. 18-1113, l. 3.

Pinnock said that there were plea offers relayed to petitioner early in the case, but the main goal had always been preparing for trial. App. 1104. Pinnock testified that at the close of the state's case during the conference with the trial judge prior to petitioner's plea "he pretty much told us that if we continued going forward, that if the jury came back with a guilty verdict . . . he was going to hurt him pretty bad on sentencing, but if he . . . pled that day, that he'd give him less than the [state's] offer was." App. 1099, ll. 4-11. Pinnock went as far as to say she did not think petitioner had a meaningful choice regarding whether to plead guilty and that he was

forced to plead guilty. App. 1107; 1109.

Discussion

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" *Hill v. Lockhart*, 474 U.S. 52, (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25 (1970)).

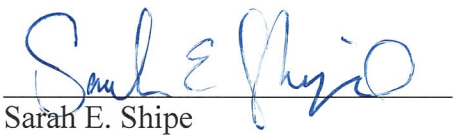
Here petitioner's guilty plea was not entered voluntarily where trial counsel admittedly failed to preserve for appeal important issues, specifically the court's ruling that it would not allow petitioner to present the defense of third-party guilt. Counsel's errors along with the discussion mid-trial, that clearly things were not going well, and if petitioner continued with trial he would most certainly be convicted and receive a life sentence was so coercive that petitioner was effectively forced to plead guilty. Trial counsel's testimony at PCR reflects that for numerous reasons she felt that she was not able to represent petitioner to the best of her ability.

Pinnock's testimony is corroborated by co-counsel Staggs' testimony that the atmosphere at trial was so hostile that it affected their ability to create a record.

Although, the plea transcript alone may reflect a voluntary guilty plea, a review of the entire record reveals petitioner's guilty plea was not voluntarily tendered due to coercion.

CONCLUSION

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



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This 23rd day of April, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwan Lydell Gaddist 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 G. Thomas Cooper, which was held on July 20, 2017, 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 Antwan Lydell Gaddist.

Respectfully Submitted,

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of April, 2021.

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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."

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This 23rd day of April, 2021.