

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County
R. Knox McMahon, Circuit Court Judge

S.C. Supreme Court

RODDREGUS WELLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212848

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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ISSUE PRESENTED

Trial counsel erred in allowing petitioner to enter a plea to burglary in the case because there was insufficient proof beyond a reasonable doubt that he was guilty of burglary.

STATEMENT

Rodregus Wells pled guilty to armed robbery, second degree burglary, assault and battery with intent to kill, and two counts of kidnapping during the November 2006 term of the Richland County General Sessions Court before Judge L. Casey Manning. Petitioner was sentenced to imprisonment for an aggregate period of eighteen years. App. 1-33. Kana R. Johnson represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

On June 20, 2007, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 35-39. The respondent filed a return dated August 24, 2007, requesting that a hearing be held in response to petitioner's PCR action. App. 40-49.

A PCR hearing was held on August 5, 2008, at the Richland County Courthouse before Judge J. Michelle Childs. App. 50-65. Petitioner was present at the hearing and represented by Russell Brown. On September 28, 2008, Judge Childs issued an order of dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 67-76. Petitioner did not enjoy the benefit of an appeal of Judge Child's Order of dismissal in the case.

On August 11, 2009, petitioner filed a second PCR action requesting an Austin¹ appeal of his first PCR case. App. 77-81. The respondent filed a return and motion to dismiss contending that this PCR application was successive and untimely filed. App. 82-90. On August 15, 2012, Judge R. Knox McMahon issued an Order of granting petitioner request for a bleated PCR appeal per Austin. Petitioner appealed Judge McMahon's order. This petition follows.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

ARGUMENT

Trial counsel erred in allowing petitioner to enter a plea to burglary in the case because there was insufficient proof beyond a reasonable doubt that he was guilty of burglary.

During the plea proceeding, the solicitor apprised the trial judge of the facts that led to the offenses charged against petitioner in the case. On the day in question, Brandon Wells, whom McClain knew, and petitioner, whom McClain did not know, appeared at his (McClain's) home. McClain invited both Wells and petitioner inside his home where they smoked marijuana. Alberta Powell was in McClain's house at that time. At some point while smoking, petitioner pulled out a .22 caliber rifle, ordered everybody to lie down on the kitchen floor of the house, and then asked McClain to surrender his money. When petitioner realized that McClain attempted to hide his money, petitioner grabbed the money and shot McClain. Thereafter, Wells and petitioner fled. App. 24, l. 4- p. 26, l. 25. Ultimately, Wells confessed to police and admitted that he knew petitioner was going to rob McClain and that they went there for the express purpose of robbing McClain. App. 27, l. 18-p. 28, l. 6. Apparently, Wells and petitioner were brothers. App. 1. l. 17.,

During the PCR hearing, petitioner testified that trial counsel failed to analyze discovery materials and that had she done so, she would have noticed the lack of evidence (particularly on the burglary charge) in the case. Petitioner stated that he would have been acquitted based on the sufficiency of the evidence had he exercised his right to a trial by jury. App. 54, l. 7-25. App. 55, lines 18-22. Petitioner added that counsel did not discuss applicable defenses or explain the elements of the offenses charged against him in the case. App. 58, lines 6-10.

Trial counsel testified during the PCR hearing and explained that petitioner told her that he was guilty and wanted to plead guilty and that as a result, they did not discuss available defenses in the case. App. 59, lines 9-13; App. 60, lines 15-18; App. 62, lines 11-13; App. 64, lines 4-6.

The PCR judge ruled that “there [was] no merit to [petitioner’s] assertion that if [petitioner] had seen the evidence (discovery) he would not have pled, but gone to trial,” and that trial counsel did not render deficient legal representation in the case. Ap. 72-75.

In the case at bar, there was indeed insufficient evidence establishing that petitioner committed second degree burglary (non violent) to the extent that petitioner did not enter McClain’s home without consent. To the contrary, McClain opened the door and invited petitioner and Wells into his home. Note that during the plea proceeding, appellant explained to the trial judge that he did not enter McClain’s house without consent. The colloquy between petitioner and trial judge regarding this matter follows:

Defendant: Yes, Sir.

The Court: You’re pleading guilty to burglary because you broke into the house, is that correct?

Defendant: I didn’t break into the house but I entered the dwelling with the intent to doing a crime.

The Court: Well, you went through the doorway?

Defendant: Yes, sir.

The Court: You were in the house. You weren’t supposed to be in there?

Defendant: I mean, he offered me in but I had an intention to do a crime.

Ms. Shipley: Your, Honor, if I may explain. It was – it’s under the inveigle premise.

The Court: All right. So you knew Mr. McClain?

Defendant: My little brother knew him.

The Court: All right. So you go to the door, they invite you in but you go in with the intent to commit a crime while you’re in there?

Defendant: Yes, sir.

App. 17, l. 25-p.19, l. 1.

S.C. Code Ann §16-11-312 mandates that one is guilty of second degree burglary (non violent) if he or she “enters a dwelling without consent and with intent to commit a crime.” Clearly, there was no evidence in the record establishing that petitioner entered McClain’s residence without consent. Also, note that the solicitor in the case admitted that McClain “invited them (Wells and petitioner) in and they sat down in his (McClain’s) living room.” App. 24, lines 2-21. Note further

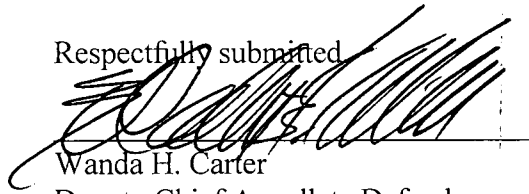
that during the guilty plea proceeding, petitioner insisted that “[he] didn’t break into the house” and that “[McClain] offered [him] in.” App. 18, l. 3; App. 18, l. 11.

The due process clause requires the prosecution to prove beyond a reasonable doubt every element of the offense charged against him. Jackson v. Virginia, 443 U.S. 307 (1979). Trial counsel erred in allowing petitioner to plead guilty to second degree burglary (non-violent) because the element of entering into a dwelling “without consent” did not exist in the case. Counsel’s error in allowing petitioner to plead guilty to a crime for which there was insufficient proof constituted deficient representation and but for the error, petitioner’s burglary conviction would not have occurred. Counsel’s ineffective assistance in this regard violated petitioner’s right to competent legal counsel guaranteed under the Sixth and the Fourteenth Amendments to the United States Constitution and article 1, §14 of the South Carolina State Constitution. See Hill v. Lockhart 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of April, 2013.

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RODDREGUS WELLS,

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CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Roddregus Wells, #319086, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 15th day of April, 2013.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of April, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.