

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Orangeburg County

Honorable Robert E. Hood, Circuit Court Judge

LEROY GLOVER, JR.

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S.C. SUPREME COURT
PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000812

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

1. Did the PCR judge correctly find that Petitioner did not freely and voluntarily waive his right to a direct appeal and is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)?
2. Did the PCR judge err in refusing to find trial counsel deficient for failing to properly object to the admission of a letter sent to the prosecutor, that included a purported confession by the co-defendant, Petitioner's brother, when the confession could not be authenticated?

STATEMENT

In November of 2013, the Orangeburg County Grand Jury indicted Petitioner, Leroy Glover, for murder, indictment #2013-GS-38-1624. (App. pp. 770-771). On September 14, 2015, Petitioner, with his co-defendant and brother, Jason Glover, proceeded to jury trial before the Honorable Maite Murphy. Eduardo Curry represented Petitioner at trial. Michael Culler and Glen Walters represented the co-defendant. Donald N. Sorenson prosecuted the case. The jury found the co-defendant not guilty but found Petitioner guilty. Judge Murphy sentenced Petitioner to life in prison. (App. p. 772). The notice of intent to appeal was not properly filed.

On January 25, 2016, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 773-779). The State filed a return on January 11, 2017. (App. pp. 780-785). On May 23, 2017, an evidentiary hearing was held before the Honorable Robert E. Hood. Jonathan D. Waller represented Petitioner at the PCR hearing. Ruston W. Neely represented the State. In a written order signed November 13, 2017, Judge Hood granted relief pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), but denied relief on all other grounds. (App. pp. 831-838). PCR counsel did not receive a copy of the order until May 15, 2019. A timely notice of intent to appeal was served on May 15, 2019. This petition for writ of certiorari and separately filed brief pursuant to White follow.

ARGUMENTS

- 1. The PCR judge correctly found that Petitioner did not freely and voluntarily waive his right to a direct appeal and is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).**

In the PCR application Petitioner asserts that trial counsel was ineffective for failing to file a request for a direct appeal. (App. p. 775). Petitioner testified at the PCR hearing that he asked trial counsel to file an appeal. (App. p. 796, lines 18-20). During the PCR hearing trial counsel testified that he thought he filed the notice of intent to appeal but was not sure what happened. (App. p. 818, lines 4-18). A copy of a notice of intent to appeal was marked as State's exhibit #3. (App. p. 829). The notice is dated by trial counsel and time stamped by the Orangeburg County Clerk of Court for September 21, 2015. It does not appear that the notice was filed with the Appellate Court. Petitioner requested a direct appeal. The notice of intent to appeal, however, was not properly filed with the appellate court. Petitioner did not waive his right to a direct appeal. The PCR judge correctly found that Petitioner was entitled to a belated direct appeal pursuant to White.

- 2. The PCR judge erred in refusing to find trial counsel deficient for failing to properly object to the admission of a letter sent to the prosecutor, that included a purported confession by the co-defendant, Petitioner's brother, when the confession could not be authenticated.**

Petitioner and his brother, Jason Glover, were charged in the fatal shooting of Richard Michael Carter, Senior. The two men were tried together. Jason initially admitted to an investigator that he shot Carter. (App. p. 472, line 2 – p. 473, lines 1-24). During the cross-examination of the investigator Jason's attorney, outside of the presence of the jury, raised concerns about his ability to introduce a letter that was sent to the prosecutor purporting to be a confession by Jason. (App. p. 478, line 7 – p. 479, p. 480, lines 1-23). The State agreed to

stipulate that the letter was received by the solicitor's office through the United States Postal Service on January 7, 2014. (App. p. 480, lines 4-19). Counsel for Petitioner objected to the admission of the letter because it could not be authenticated. (App. p. 480, line 25 – p. 481, lines 1-25). The judge ruled stating, "And certainly I think that creates a question of fact for the jury to determine. In regards to the stipulation by the solicitor, I think that cures your problem as far as being able to enter it into evidence." (App. p. 482, lines 11-14). Counsel for Petitioner noted his objection for the record. (App. p. 482, line 17). The letter, however, was not admitted in evidence at this time in the trial. The State did not move to have the letter admitted in evidence. Counsel for the co-defendant later moved to admit the letter in evidence.

Jason's testimony at trial differed from the statement he initially gave to the investigator. At trial Jason claimed that Petitioner shot Carter in a back room of Petitioner's trailer while Jason was in the living room playing games. (App. p. 620, line 1 – p. 621, lines 1-21). According to Jason, his only involvement was in helping to dispose of the body. (App. pp. 621-626). Jason denied writing the confession sent to the solicitor's office in January of 2014. (App. p. 675, lines 15-21). According to Jason, the handwriting was his brother's. (App. p. 675, lines 22-25). The January 2014, confession letter was marked as Defense Exhibit number one and admitted into evidence **without objection**. (App. p. 676, lines 1-9). Jason's attorney called a hand writing expert as a witness. The witness opined that the January 2014, confession letter, signed by Jason Glover, was written by Petitioner. (App. p. 682, lines 9-22).

During the PCR hearing when trial counsel was asked about his failure to object to the admission in evidence of the January 2014, confession letter signed by Jason Glover, trial counsel testified, "Well, at that point, we had questioned the letter. I thought the letter itself may have been in for the authentication not for the truthfulness or veracity. That would be for the

jury who are the triers of the fact. And so, my objection would be duly noted. We talked about how it was gonna come in regard to that but not the truthfulness, or the authentication of it would've been something that the jury would have to make that determination.” (App. p. 809, line 25 – p. 810, lines 1-8).

In the order of dismissal the PCR judge wrote:

Counsel was not deficient because he properly preserved his objection to the introduction of the alleged confession of Applicant’s codefendant. Tr. 480-482. Counsel also had the trial court note his objection for the record. Tr. 482, l. 17. Applicant argued Counsel’s later statement rescinded his objection. “[W]e would agree to that stipulation that the solicitor got that by U.S. mail and turned it over to us.” Tr. p. 607, 18-19. This Court disagrees and believes Counsel properly preserved his objection for appellate review. Counsel stipulated only that the letter was received by the solicitor’s office, a fact he did not challenge during his objection. Tr. 481, l. 15-17. During his objection, Counsel challenged the letter based on its lack of foundation and the impossibility of determining the statement’s author. Tr. 481. This Court find Counsel’s stipulation did not rescind his timely objection. Accordingly, Counsel was not deficient for failing to preserve his objection because the objection was preserved.

(App. p. 836). The PCR judge erred. The objection was not preserved for appellate review. Trial counsel, during the State’s case when Jason’s lawyer raised some concerns about the admission of the letter, initially objected to the admission of the letter. (App. p. 480, line 25 – p. 481, lines 1-25). Later, however, when Jason’s lawyer moved to have the January 2014, confession letter, signed by Jason, admitted in evidence, trial counsel failed to object. (App. p. 676, lines 1-9). At the PCR hearing Petitioner did not argue that the stipulation rescinded the objection. Instead, Petitioner argued that trial counsel failed to contemporaneously object to the admission of the letter when it was offered in evidence. (App. p. 809, lines 12-24). Trial counsel was ineffective by failing to properly object to the admission of the letter.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

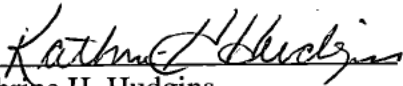
Trial counsel was deficient in failing to object when Jason’s lawyer moved to have the January 2014, confession letter, signed by Jason, admitted in evidence. Earlier, when the letter was first discussed, trial counsel properly objected because the letter could not be authenticated. Trial counsel simply failed to object when the letter was offered in evidence. Petitioner was prejudiced by counsel’s deficient performance.

In the order of dismissal the PCR judge found no prejudice writing, “Further, this Court finds the letter’s exclusion would not have changed the result of the trial. The State’s evidence against Applicant, without the letter, proved his guilt beyond a reasonable doubt. This Court finds there is not a reasonable probability the jury would have decided Applicant’s case differently without the letter.” (App. p. 836). The letter in addition to Jason’s testimony that he did not write the letter, that his brother wrote the letter and the testimony from the expert that

Petitioner wrote the letter was highly prejudicial. Through the improper admission of the letter, counsel for Jason was able to argue in closing argument that Petitioner tried to set his brother up by sending Jason's purported confession to the solicitor. (App. p. 702, lines 9-13). There is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. The jury found Jason, who initially admitted to shooting Carter, not guilty.

CONCLUSION

This Court should grant the petition on both issues, allowing the belated appeal presented in issue one and allowing further briefing on issue two.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of January, 2020.

STATE OF SOUTH CAROLINA
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Honorable Robert E. Hood, Circuit Court Judge

LEROY GLOVER, JR.

PETITIONER


V.

STATE OF SOUTH CAROLINA,

RESPONDENT

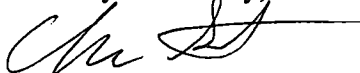
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Sara Gunton, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Leroy Glover, #314746, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 9th day of January, 2020.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of January, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: September 30, 2029