

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

Appellate Case No. 2021-000774

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S.C. SUPREME COURT

Tellaferro Randolph,Petitioner,

v.

State of South Carolina,Respondent.

REPLY BRIEF

Elizabeth A. Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

Attorney for Petitioner

ARGUMENT

I. Trial counsel rendered ineffective assistance of counsel when he did not obtain and share all relevant discovery in this murder case and when his client maintained his innocence and only pleaded pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

Respectfully, Petitioner submits this Reply brief to address Respondent's arguments in its Return to Petitioner's Petition for a Writ of Certiorari.

In its order of dismissal, the PCR court held that trial counsel's advice was "well within the range of competence required of defense attorneys." App. 87. In addressing Petitioner's claim of ineffectiveness, the court made the following findings of facts:

Applicant testified he wanted and never received a ballistics and autopsy report. Applicant further testified he had no proof that a ballistics or autopsy report existed. Counsel testified he never received the autopsy report and there was no ballistics report. Counsel stated Applicant wanted to plead guilty and the autopsy report would have been obtained before Applicant went to trial, had he wished to go to trial. Counsel also testified Applicant's story was that he never filed (sic) a bullet and the gun was never recovered. Therefore, there was no critical evidence that could have been obtained from the autopsy. Counsel provided Applicant with the State's discovery evidence and explained it to Applicant. This Court finds Counsel's actions and advice were not deficient nor was Applicant prejudiced by Counsel's alleged deficiency. This Court finds Applicant knew he had not seen a ballistics report or autopsy report when he pleaded guilty and it did not affect the voluntary, intelligent, and knowing nature of Applicant's guilty plea.

App. 86.

It is clear from the Solicitor's presentation of the case to the plea judge that information contained in the ballistics report and autopsy report would have been critical to Petitioner's decision to plead guilty. According to the solicitor, he initially discounted the statement of one of the witnesses who claimed one the victims had a firearm in his hand because it was inconsistent with other witness statements obtained from the victim's friends. App. 13 ("Initially, I didn't put too much stock into Mr. Jamison's statement because obviously I had six witness statements to the

contrary. Mr. Jamison also has a very significant prior record and I also believed he was, I guess, more bias towards the defendant than he was towards the victim's family"). The solicitor, however, revised his opinion once crime scene investigators identified a .25 caliber shell casing at the scene of the shooting. App. 13. Then, law enforcement also discovered that one of the victims had GSR present on his hands. App. 14. The victim of the ABHAN, Mr. Davis, turned over his .25 caliber gun to law enforcement and they confirmed that his gun was fired at the scene that night. App. 14.

Under the facts of this case, Petitioner had a critical need to review the autopsy and ballistics reports in this case to knowingly and voluntarily enter into a guilty plea. As the solicitor even informed the court: "The forensic evidence in this case said one thing, the statements said another." App. 22.

South Carolina Rules of Criminal Procedure, Rule 5(a)(1)(C) provides:

Upon request by the defendant, the prosecution **shall permit** the defendant to inspect and copy books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and **which are material to the preparation of his defense** or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant (emphasis added).

The State had an affirmative obligation to provide Petitioner with his full discovery, including the ballistics report and autopsy report. Trial counsel rendered ineffective assistance of counsel by failing to insist that he be provided with that information before his client pleaded guilty. This case was obviously not one of overwhelming guilt since the State agreed to allow Petitioner to plead under *North Carolina v. Alford*.¹ The State's case was clearly weak. It was especially

¹400 U.S. 25 (1970) (acknowledging an accused may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even though he is unwilling to admit participation in a crime).

necessary then for the State to provide Petitioner with all the evidence in its possession so Petitioner could make an informed decision to forfeit his Constitutional right to a trial. The PCR court committed an error of law by finding trial counsel did not perform deficiently. As an inmate who was detained at the detention center, Petitioner was reliant on his lawyer to obtain all the relevant documents from the State and share them with him. Trial counsel even conceded that he had not obtained the autopsy report at the time of Petitioner's guilty plea. App. 64. Trial counsel's conduct fell well below professional norms, and Petitioner was prejudiced by his counsel's substandard performance. *Strickland v. Washington*, 466 U.S. 668 (1984). The PCR court committed an error of law, and this Court should grant Petitioner's petition for a writ of certiorari and reverse Petitioner's conviction. See *Jordan v. State*, 406 S.C. 443, 752 S.E.2d 538 (2013); *Goins v. State*, 397 S.C. 568, 726 S.E.2d 1 (2012).

CONCLUSION

This Court should grant Petitioner's petition for a writ of certiorari.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
SC Bar # 72555
2725 Devine Street
Columbia, South Carolina 29205
(803) 445-1333
elizabeth@franklinbestlaw.com

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