STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

AMY BERRIDGE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001244

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in denying relief, where counsel failed to review all of the evidence in Petitioner's case with her, where counsel repeatedly suggested a plea rather than strategized for trial, where Petitioner's culpability was vastly diminished compared to her co-defendant, where plea counsel was unable to verify what discovery he shared with Petitioner, and therefore Petitioner's plea was not knowingly made?

STATEMENT

Petitioner was indicted by a Spartanburg County grand jury for murder and possession of a firearm during the commission of a violent crime. App. 154. At a plea before the Honorable J. Mark Hayes, II on September 21, 2018, Petitioner pled guilty to voluntary manslaughter under North Carolina v. Alford.[1] App. 1; App. 4 ll. 19 – 23. Steven Epps represented Petitioner, and Barry Barnette appeared on behalf of the state. The possession of a weapon charge was dismissed. Id.

The facts, as alleged by the solicitor, were that on January 6, 2018, Petitioner and co-defendant Roy Sutherland picked up Lanham "Lannie" Woods in their U-Haul vehicle and traveled to a house in Spartanburg for a drug deal. App. 10 l. 11 – App. 16 l. 7. Petitioner gave a statement to police indicating Sutherland stabbed Woods. Judge Hayes found that a substantial factual basis existed for the plea and therefore accepted it. App. 17 l. 22 – App. 18 l. 2. He found that it was made freely, voluntarily, knowingly, and intelligently. Id. The state requested deferred sentencing.

On January 31, 2019, Petitioner appeared for sentencing before Judge Hayes with the same attorneys present. Petitioner was given a thirty-year sentence, suspended upon the service of twenty-five years, followed by five years of supervision. App. 52 ll. 2 – 12.

On February 8, 2019, defense counsel Epps filed a motion to reconsider the sentence based upon the revelation that one of the victim's family members who spoke at sentencing, Sharon "Cookie" Peeler, was also the solicitor's secretary/paralegal. App. 54. Ten days later, on February 18, 2019, solicitor Barnette filed a return to the motion to reconsider. App. 57 – 58. Curiously, the state sought to mitigate the potential impropriety by pointing out how Petitioner

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[1] 400 U.S. 25 (1970).

received a benefit of pleading to a lesser-included offense. App. 58. Judge Hayes denied the motion to reconsider. App. 60 – 61.

Petitioner filed an application for post-conviction relief ("PCR") on or about July 22, 2019. App. 62. She claimed Peeler "sat in on several of [her] interviews." App. 64. On September 27, 2019, the state made its Return and Partial Motion to Dismiss. App. 71.

An evidentiary hearing was held before the Honorable William McKinnon on September 13, 2021. App. 84. Rodney Richey represented Petitioner; Chelsey Marto appeared on behalf of the state. Petitioner and plea counsel Epps testified at the hearing. At the conclusion, Judge McKinnon took the matter under advisement. App. 137 ll. 6 – 7.

An Order of Dismissal was filed on October 22, 2021. App. 139. This petition follows.

ARGUMENT

The PCR court erred in denying relief, where counsel failed to review all of the evidence in Petitioner's case with her, where counsel repeatedly suggested a plea rather than strategized for trial, where Petitioner's culpability was vastly diminished compared to her co-defendant, where plea counsel was unable to verify what discovery he shared with Petitioner, and therefore Petitioner's plea was not knowingly made.

Relevant facts

> Petitioner's PCR application sets forth a credible factual rendition:
>
> I did not kill Mr. Woods. I did not conspire to kill Mr. Woods. I did not know my co-defendant had stabbed Mr. Woods. Mr. Woods ran out of the building alive.
>
> I did not know Mr. Woods. I had no blood on me. Mr. Woods was running/alive last time I saw him.

App. 64; App. 66.

Because of her lack of culpability, Petitioner wanted to go to trial. App. 91 l. 18 – App. 92 l. 16. She asked her attorney multiple times about taking the case to trial. Id. In response, counsel suggested she rethink her desire because her co-defendant Sutherland got a life sentence following a trial. Id. Sutherland is the person who actually stabbed Woods. App. 93 l. 1 – App. 94 l. 12. Nonetheless, counsel continually intimidated her into thinking she would receive a life sentence if she went to trial. App. 97 l. 23 – App. 99 l. 10. She was coerced into pleading based upon the advice of counsel.

Petitioner testified at the PCR evidentiary hearing that she never saw the discovery in her case. App. 94 ll. 19 – 22. She further indicated that counsel did not "discuss the information the State had in the case." App. 95 ll. 4 – 6. Counsel did not explain accomplice liability to

Petitioner either. App. 101 l. 17 – App. 102 l. 13. At the PCR hearing, counsel was unprepared to answer questions about the discovery he gave to Petitioner. App. 108 ll. 6 – 16.

The Order of Dismissal contained a conclusion that this allegation was without merit. App. 150 – 151. According to the PCR judge:

> This Court finds Applicant's allegation that Counsel failed to review the evidence with her is without merit. Testimony at the PCR hearing indicates the relevant discovery was shown to Applicant prior to the plea. Applicant conceded she was provided a copy of the discovery by Solicitor Barnette. Counsel credibly testified that he brough all printed materials into the jail with him to discuss with Applicant, but did not share the image of Applicant with a cut on her arm.

App. 150.

Discussion

The PCR court's finding that Petitioner received discovery from the solicitor is without evidentiary support. Petitioner's testimony outright refuted the PCR court's conclusion that she received *any* of the relevant discovery:

> Q: Did talking about the evidence in the case ever come up in that?
>
> A: I asked him several times for the evidence, like what - - and he would always tell me it was just too much for me to see. It was too much for me to see. He never brought a laptop for me to look at. He never brought anything into the jail. He never brought any kind of - - anything. They only thing that I ever saw was from Barry Barnette, the solicitor, and that was stuff off my Facebook page that he had printed out.
>
> Q: **And so you were shown the discovery by Barry Barnette?**
>
> A: **I was not shown the discovery at all.**

App. 103 ll. 4 – 17 (emphasis added).

"An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." Wiggins v. Smith, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (citation omitted). "To

establish deficient performance, a petitioner must demonstrate that counsel's representation 'fell below an objective standard of reasonableness.'" Id. (quoting Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). "[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 534, 123 S.Ct. 2527 (quotations and citation omitted). In assessing prejudice, appellate courts "reweigh the evidence in aggravation against the totality of available mitigating evidence." Id. Prejudice is established where "there is a reasonable probability that at least one juror would have struck a different balance." Id. at 537, 123 S.Ct. 2527 (citation omitted). A "reasonable probability" is less than a preponderance of the evidence but still "a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 693–94, 104 S.Ct. 2052.

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208-09 (1985). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The appellate court must affirm the PCR court's decision when its findings are supported by any evidence of probative value. Cherry v. State, supra. However, the appellate court will not uphold the findings of the PCR court if there is no probative evidence to support those findings. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

Petitioner wanted to go to trial. Her attorney, however, was frightened of the possible outcomes. Instead of "seeing ghosts" related to the co-defendant's trial and focusing on what could go wrong, he should have strategized about how to differentiate Petitioner's case from Sutherland's. This process would have entailed reviewing discovery with Petitioner and discussing possible trial strategies and defenses. Instead of vigorous, zealous advocacy, Petitioner received poor advice: plead guilty. This decision was made without the full knowledge of the discovery in her case. Had counsel provided discovery to her, the two of them could have established differences between her case and Sutherland's.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court to grant certiorari and allow further briefing.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of June, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Amy Berridge states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge William A. McKinnon, which was held on September 13, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Amy Berridge.

Respectfully Submitted,

Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of June, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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