

RECEIVED

Jun 21 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Polly Hindman, Petitioner

v.

The State, Respondent

Appellate Case № 2020-000678

Appeal From Greenville County

Denial of Petition for Writ of Certiorari

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Polly Hindman hereby requests that this Court re-hear this matter based upon the following:

In denying the Petition for Writ of Certiorari this Court failed to consider the grossly inadequate representation Polly Hindman had at her trial in Greenville County. Her trial counsel simple failed to investigate and produce the testimony of Wesley M. James, the funeral director, who clearly and unequivocally testified Ms. Hindman paid out of her own account pre-paid funeral expenses for her half sister Bettie Riddle. App. at 351 - 385. In denying the application for Post Conviction Relief, the PCR Judge found, "It was not necessary for counsel to call this witness at trial, who presumably would have offered the same testimony as he did in his deposition, because the evidence was already before the jury during Applicant's trial." App. at

396. In finding that the testimony of the funeral director and the check from Polly Hindman's personal checking account to be cumulative, ignores this totally independent evidence is not cumulative. In denying the Petition for Writ of Certiorari this court unfortunately ignored a prior holding of the United States Supreme Court as to cumulative testimony. In *Skipper v. South Carolina*, 476 U.S. 1, 8, (1986) United States Supreme Court recognized witnesses independent from family members are so different that they cannot be considered cumulative witnesses. The Court held "The evidence petitioner was allowed to present on the issue of his conduct in jail was the sort of evidence that a jury naturally would tend to discount as self-serving. The testimony of more disinterested witnesses—and, in particular, of jailers who would have had no particular reason to be favorably predisposed toward one of their charges—would quite naturally be given much greater weight by the jury."

The testimony of the funeral director and the checks from the account of Polly Hindman do more than create a jury issue as to guilt. They are conclusive evidence that the Ms. Hindman is actually innocent of the charges in question. The facts beyond dispute developed at the PCR hearing established that Ms. Hindman pre-paid for the funeral expenses for her half sister. These funds were spent for the direct benefit of Ms. Riddle and therefore were not stolen by Ms. Hindman. The issue as to the funeral expense being for the benefit of Ms. Riddle would no longer be a jury issue. No reasonable jurist could conclude that the failure to present this evidence was not prejudicial to Ms. Hindman.

Trial counsel never gave an explanation for not introducing documents that prove Ms. Hindman's actual innocence. He testified he was aware of the documents that would prove her innocence. App. at 50, 1 25 to 51, 1 2. He admitted his defense was she was re-paid for the

funeral expense. App. at 54, ll 7-8. He admitted the prosecuting attorney had said there was no proof the money was spent on funeral expenses except the word of Ms. Hindman. App. at 59, ll 2-13. He admitted he had in his possession, but not introduced at trial, documents that would “clearly and unequivocally” established Ms. Hindman pre-paid for Ms. Riddle’s funeral expense.” App. at 334, ll 17-18. Failure to introduce evidence in the possession of an attorney that would “clearly and unequivocally” established the actual innocence of their client, truly makes a mockery of the adversarial process. His defense for not introducing the checks establishing the innocence of his client was that the state had the checks also. App. at 337, ll 5-17. Even if his statement is true, he was ineffective as a matter of law in not introducing the checks.

After Ms. Hindman filed a Rule 59 Motion, the PCR judge slightly modified his position and stated that the testimony of the funeral director “[W]ould not have provided any rebuttal evidence to the State’s argument that Applicant was guilty of the indicted offense through her actions with regard to the power of attorney and deed.” App. at 407. This implied a finding that the testimony of the funeral director was credible. If the testimony of the funeral director through the deposition is credible, then trial counsel was ineffective in not presenting it. He admitted he failed to even interview the funeral director. App. at 334, ll 16, to 335, l 1.

No evidence of abusing the power of attorney to obtain money was ever presented to the jury. While there was an attempt, through the power of attorney, to add Ms. Norris’ name to the account of Ms. Riddle, the bank did not permit this. No evidence in this case supports the claim that Ms. Hindman ever used a power of attorney for Ms. Riddle. No money was lost through the power of attorney. As to the deed, the State never argued the deed was used to defraud Ms.

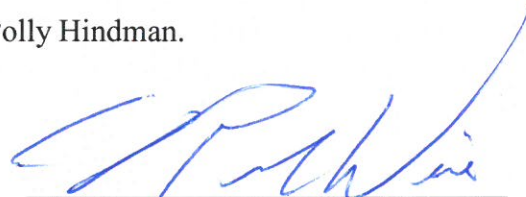
Riddle. The deed was placed in the name of Ms. Norris. The undisputed testimony was the Ms. Riddle deeded the property to Ms. Norris. In her will, Ms. Riddle had left the house to Ms. Norris. App. at 46, 1 14 to 47, 1 6. The fact that Ms. Norris paid taxes on the home she owned from Ms. Riddle's account is not a crime by Ms. Hindman.

The trial lawyer was ineffective in failing to produce evidence that did more than create a doubt. The evidence would have clearly exonerated Ms. Hindman of improperly taking substantial monies from Ms. Riddle. While Ms. Hindman was given a probationary sentence, this fact should not impact the decision of this court. Ms. Hindman should not have a felony conviction on her record. The ineffectiveness of trial counsel in withholding evidence that exonerated Ms. Hindman is the reason she has this felony.

CONCLUSION

For the foregoing reasons, this court should re-hear this matter and grant the Petition of Writ of Certiorari and reversed the conviction of Polly Hindman.

June 21, 2022



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
S.C. Bar № 6188
rauchwise@gmail.com
(864) 229-5010

Attorney for Polly Hindman

RECEIVED

Jun 21 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari - PCR - Common Pleas
Appeal from Greenville County
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No 2020-000678

Denial of Petition for Writ of Certiorari

Polly M. Hindman Petitioner,

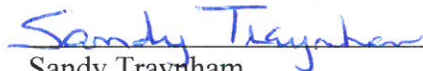
VS

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Sandy Traynham, hereby Certify that I am the Secretary for Attorney for the
Petitioner in the above entitled case. That on June 21, 2022, I did send via US Mail and e-mail, a
copy of the Petition for Rehearing to Taylor Zane Smith, S.C. Attorney General's Office, PO Box
11549, Columbia, SC 29211-1549 and email: tsmith@scag.gov

June 21, 2022


Sandy Traynham
Secretary

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Petitioner

RECEIVED

Jun 21 2022

SC Court of Appeals

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010

June 21, 2022

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Hindman vs. The State, Appellate Case No. 2020-000678

Dear Ms. Kitchings:

I am enclosing herewith for filing the Petition for Rehearing together with the Certificate of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C Rauch Wise

C. Rauch Wise

CRW/slt
Enclosure

cc Taylor Zane Smith