

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

COREY BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001347

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 finding trial counsel effective where counsel failed to research the background of Petitioner's testifying co-defendant which showed an arrest for prostitution but no disposition of the charge and therefore counsel could not know whether the co-defendant could have been impeached with the charge?

STATEMENT OF THE CASE

On August 7, 2015, Mindy Slotin went to the Imagination Station, the toy store owned by her husband Mark, so that Mark could take a lunch break. When she arrived at the store Mr. Slotin was assisting two customer who had been in the store for quite some time. App. 165, ll. 1-21. The couple eventually picked out a toy which Mr. Slotin offered to wrap. The couple then left the store to continue shopping, telling the Slotins they would be back to pick up and pay for the toy they had selected. App. 166, ll. 7-11.

The couple left the store, presumably to continue their shopping. Mr. Slotin left to get lunch. Approximately fifteen minutes later, the couple returned to the store. Mrs. Slotin was there by herself at this point. App. 166, ll. 11-25. As the couple walked toward the counter, Mrs. Slotin told them the toy was ready to go, and the man stated he wanted to ask her husband about another toy. He moved toward a section of the store that was obscured by a display and Mrs. Slotin followed him. Once there, he appeared to inquire about a toy, and as Mrs. Slotin replied she was struck in the head. When she looked up from the ground, the man was pointing a gun in her face. App. 167, ll. 1-17.

The man bound Mrs. Slotin's hands with duct tape and took her rings from her fingers. He then walked her to the cash register with the gun at her back. While walking to the cash register, he told his female companion to lock the door to the store, and she did. App. 167, l. 18-App. 168, l. 5. After opening the cash register for the man, Mrs. Slotin was taken into a storage room. There the man bound her ankles with duct tape, bound her arms to her body, and placed duct tape over her mouth. He instructed her to lay down on her stomach and not make a sound. App. 168, ll. 6-17. Once alone, Mrs. Slotin managed to free herself from the duct tape and exit

the store through a back door. She ran to a neighboring store where a customer called 911. App. 168, l. 19-App. 169, l. 2; App. 224-225.

Forensic investigators with the Spartanburg Police Department responded and processed the scene. App. 227, l. 13-App. 228, l. 14; App. 251, ll. 3-19. They were able to collect thirty-three various fingerprints from areas and items in the store. Nine of those fingerprints were of sufficient quality to be analyzed. The fingerprints found on the bottom of the cash register drawer belonged to Petitioner. Fingerprints taken from the toys belonged to Sandra Pearson. App. 270, l. 11-App. 271, l. 17

In October 2015, the Spartanburg County grand jury indicted Petitioner for one count of kidnapping, one count of armed robbery, one count of possession of a weapon during the commission of a violent crime, and one count of assault and battery of a high and aggravated nature. App. 486-491. Petitioner's co-defendant, Sandra Pearson, was charged in the incident. Pearson pled guilty armed robbery prior to Petitioner's trial, but her sentencing was deferred pending her testimony against Petitioner. App. 205, l. 15-App. 206, l. 16; App. 210, ll. 8-16.

The State, represented by Barry Barnette, called the case to trial on July 11, 2016, before the Honorable R. Keith Kelly and a jury. Petitioner was represented by Roger Poole and Paul Neely. App. 1. After a three-day trial Petitioner was found guilty of the lesser-included assault and battery first degree and guilty as indicted on the remaining charges. App. 365, l. 20-App. 366, l. 14. Judge Kelly sentence Petitioner to an aggregate¹ term of thirty-five years incarceration. App. 374, l. 24-App. 375, l. 11.

¹ Petitioner received five years on the weapon charge, consecutive to thirty years on kidnapping, thirty years on armed robbery, and ten years on assault and battery. App. 374, l. 24-App. 375, l. 11.

Petitioner appealed his convictions and sentences. The South Carolina Court of Appeals affirmed his convictions in an unpublished opinion. State v. Brown, Op. No. 2018-UP-391 (S.C. Ct. App. filed Oct. 24, 2018). Both a petition for rehearing and a petition to the Supreme Court of South Carolina were denied. The remittitur was issued on March 18, 2019. App. 386.

Petitioner filed an application for post-conviction relief on August 20, 2019. In the application Petitioner alleged, *inter alia*, that his trial counsel was ineffective for failing to investigate the background of Pearson and properly impeach her at trial. App. 377-App. 384. The State filed a return on November 25, 2019. App. 385-App. 399. An evidentiary hearing was convened on September 15, 2021, before the Honorable William A. McKinnon. Petitioner was represented by Rodney Richey. The State was represented by Chelsey Marto. App. 400-401. At the start of the hearing, Counsel Richey orally amended the application to include a claim that counsel was ineffective for failing to pursue a plea offer. App. 405, ll. 16-23.

Petitioner offered somewhat confusing testimony during the PCR hearing. He initially testified that he did not commit the crimes he was convicted of. App. 407, l. 24-App. 408, l. 1. However, later he admitted to taking money from the cash register when he was shopping in the store but stated he did that prior to the armed robbery. App. 432, ll. 4-9. Regarding his co-defendant, when Petitioner asked if Counsel Neely had investigated her² background, he was told that no investigation had been performed. App. 409, ll. 15-25. According to Petitioner, there was information in his discovery that showed Pearson had lied during cases where she had been charged, and she had prior convictions that he believed should have been brought up during her cross-examination. App. 410, l. 24-App. 411, l. 15; App. 413, ll. 3-16.

² During the PCR hearing, Counsel Richey referred to the co-defendant as “Mindy” during this line of questioning. He later clarified that he was asking Petitioner about his co-defendant and not Mrs. Mindy Slotin. App 415, ll. 5-16.

Counsel Poole testified that he met with Petitioner on several occasions, provided him with discovery, and discussed the State's evidence in the case with him. App. 438, ll. 9-25. Regarding Pearson, Counsel Poole testified that he did not perform any investigation into her background but had been provided with her rap sheet. On her rap sheet, there was an arrest in 2000 for assault and battery that showed a non-conviction and an arrest in 2005 for prostitution which showed no disposition. Counsel Poole stated those charges would not have been admissible at trial for impeachment purposes because they were not prior convictions. App. 439, l. 20-App. 440, l. 9. Counsel Neely testified that his primary focus was on the identification made by Mrs. Slotin. App. 449, ll. 17-25. He stated that Counsel Poole handled everything regarding Pearson. App. 457, ll. 3-6

The PCR court took the matter under advisement. App. 459, ll. 12-13. An order of dismissal was filed on October 27, 2021. In the order, the PCR court found that Counsel Neely had decided that no further investigation was needed after he had been provided with Pearson's rap sheet and determined there were no admissible convictions that could have been used for impeachment. Additionally, the court found that Counsel Poole had adequately cross-examined Pearson about the deal she made with the State in exchange for her testimony against Petitioner in order to impeach her credibility. The court ruled that counsel acted reasonably under the circumstances and was not deficient. As to prejudice, the court found that Petitioner had neither produced any evidence that would have been uncovered had Counsel Poole further investigated Pearson nor demonstrated how that evidence would have changed the outcome at trial. The court ruled that, even if there was impeachment evidence, Counsel Poole should have found it would not have impacted the outcome of the case given the "sheer amount of evidence" presented at trial.App.461-482.

ARGUMENT

The PCR court erred in finding trial counsel effective where counsel failed to research the background of Petitioner's testifying co-defendant which showed an arrest for prostitution but no disposition of the charge and therefore counsel could not know whether the co-defendant could have been impeached with the charge.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting Strickland, 466 U.S. 668, 691 (1984)). See also Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986) (“A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation”). As this Court stated in Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007), “while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case” (internal citations and quotations omitted).

“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.” Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (citing Strickland v. Washington, 466 U.S. 668 (1984)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Strickland 466 U.S. at 695 (1984). A PCR applicant is entitled to relief based on ineffective assistance of trial counsel if he can establish that counsel's performance was deficient, and that this deficiency prejudiced his defense. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

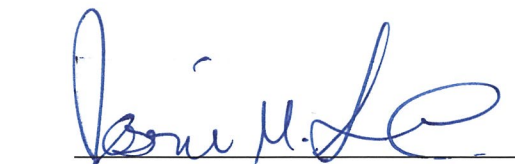
Counsel Poole testified that Pearson's arrest for prostitution did not show a disposition. While this could have meant that she was not convicted of the crime, it also could mean that she was convicted, and the disposition was not properly entered into the system that generates rap sheets. Counsel Poole had a duty to investigate that arrest to see if it resulted in a conviction which could have been used to impeach Pearson's character on cross-examination.

Not only did Counsel Poole fail to investigate Pearson's background, but he did not offer a reason for his failure. He simply stated he did not think further investigation was necessary after he reviewed Pearson's rap sheet. He offered no strategic or sound reasoning for not further investigating Pearson's record. The failure to investigate the background of Pearson was not justified and was deficient performance. Petitioner was prejudiced because Pearson's veracity could have been further impeached with a prior conviction.

Counsel's decision to forgo investigation must be reasonable. Counsel Poole's decision to not investigate the background of a testifying co-defendant was not reasonable nor was it strategic. Potentially valuable impeachment evidence may have been overlooked because Counsel Poole did not think he needed to look beyond the rap sheet provided to him by the State. This was ineffective assistance of counsel.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's writ of certiorari to allow full briefing on these issues.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of July, 2022.

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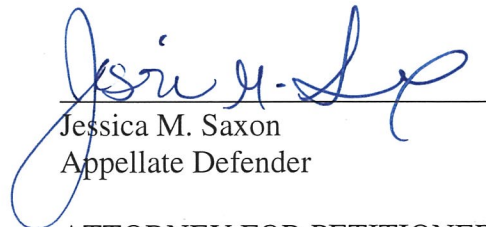
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Corey Andrew Brown states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge William A. McKinnon, which was held on September 15, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Corey Andrew Brown.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of July, 2022.

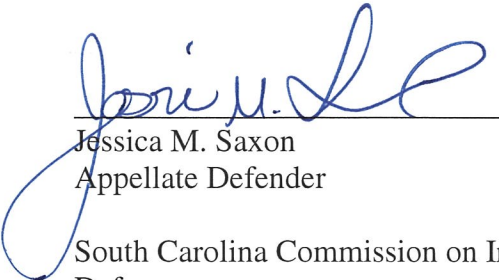
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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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This 5th day of July, 2022.