

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable J. Mark Hayes, Circuit Court Judge

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S.C. SUPREME COURT

TIMOTHY EARL BEHELER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000892

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel's failure to prepare for trial rendered petitioner's guilty plea unknowing and involuntary?

STATEMENT

In 2013, a Laurens County grand jury indicted petitioner for two counts of criminal sexual conduct with a minor and for contributing to the delinquency of a minor. App. 279-90. On May 31, 2016, petitioner pled guilty before the Honorable Donald B. Hocker and a jury. App. 1. Lance Sheek represented petitioner and Michael Gambrell represented petitioner. App. 1. Judge Hocker sentenced petitioner to concurrent terms of fifteen years' imprisonment on the CSC charges and time served on the contributing charge. App. 18.

Petitioner filed a PCR application and a hearing was held on February 28, 2018, before the Honorable J. Mark Hayes. App. 45. Carson Henderson represented petitioner and Justin Hunter represented the State. App. 45. On May 2, 2018, Judge Hayes denied petitioner's PCR and this petition for certiorari follows. App. 265.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The Court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Id. The Court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

Plea counsel's failure to prepare for trial rendered petitioner's guilty plea unknowing and involuntary.

Despite concrete evidence that DSS maintained a file on the minor complainant and had dismissed a previous allegation against petitioner as unfounded, plea counsel failed to obtain it. App. 61, 66, 82-84, 89-90. Plea counsel asked for and obtained from the court an order requiring DSS to produce its file on complainant. App. 45. DSS produced nothing in response. App. 45-46. Even though he knew DSS had been involved with the child, plea counsel failed to pursue the matter and obtain any records from DSS. App. 61, 66, 89-90.

Plea counsel also failed to interview potential witnesses. App. 61-63. The police lost a list of potential witnesses who could have testified about complainant's sexual activity and plea counsel did nothing to find these witnesses. App. 93-95. Complainant had a child and petitioner was conclusively proved not to be the father. App. 93, 127. Plea counsel did not visit the scene where the alleged crime took place. App. 77. Plea counsel did not have a copy of complainant's forensic interview in his file. App. 56. The State's best evidence was a statement admitting to having sex with complainant, but appellant did not remember giving the statement because of his prescription medication. App. 122-23. Plea counsel told appellant it would not matter and would be his word versus that of the SLED agent. App. 120.

Petitioner testified at the PCR hearing that complainant's aunt put her up to making the allegations because petitioner confronted the aunt about not taking care of complainant's mother. App. 127-129. Complainant's mother had cancer and the aunt often refused to take her to her treatments. App. 127-29. When petitioner confronted the aunt, the aunt retaliated by having the child make these allegations. App. 127-29. Complainant admitted this on the phone to her

mother. App. 130-31. Unfortunately, the mother died before the case was called for trial and she could testify for complainant. App. 123-24.

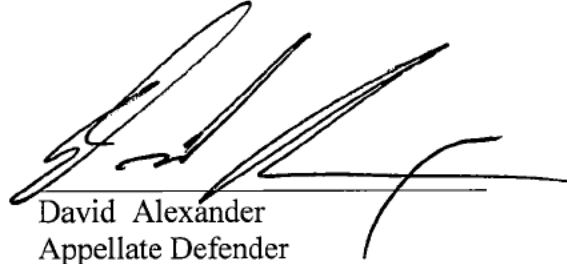
Petitioner would not have pled guilty but for plea counsel's complete failure to prepare for trial. App. 131-135, 139-41. Trial counsel has a duty to conduct a full investigation and present a complete and coherent defense. Wiggins v. Smith, 539 U.S. 510, 524 (2003); Strickland v. Washington, 466 U.S. 668 (1984). Part of this duty includes investigating the case and interviewing witnesses. See Council v. State, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008).

Had petitioner's attorney prepared, petitioner would not have been forced into pleading guilty against his will. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 363-69 (2010) (internal quotations omitted).

Petitioner was left with a choice of going to trial with an attorney who had interviewed no witnesses, had not visited the crime scene, may not have watched the forensic interview, and had not obtained potentially valuable impeachment material for the complainant and risking a hefty sentence, or pleading guilty. See Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) (addressing breakdown in adversarial testing of State's case and complete denial of counsel). Plea counsel's conduct left petitioner with no choice at all. This Court should reverse.

CONCLUSION

For the foregoing reasons, petitioner's convictions should be reversed and this case remanded for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and cursive.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable J. Mark Hayes, Circuit Court Judge

TIMOTHY EARL BEHELER,

PETITIONER

V.

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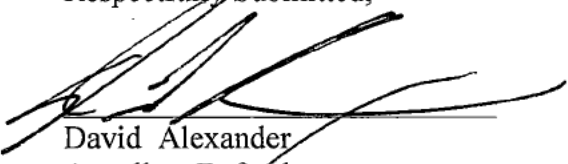
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Earl Beheler states:

1. He is an 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 the Honorable J. Mark Hayes, which was held on February 28, 2018, 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 Timothy Earl Beheler.

Respectfully Submitted,

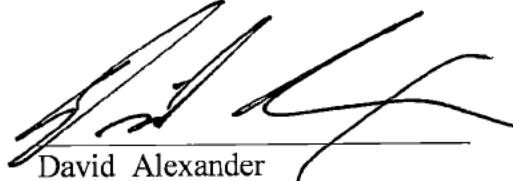


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of January, 2019.

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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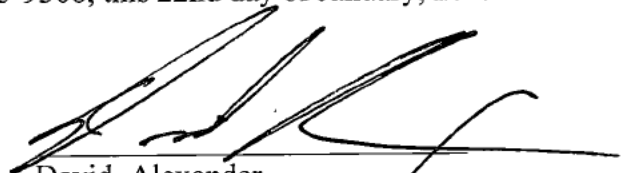
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————
CERTIFICATE OF SERVICE
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Timothy Earl Beheler, #257965, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 22nd day of January, 2019.


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of January, 2019.

Carthyn Powell (L.S)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.