

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 29 2022

S.C. SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

ANTWAN JAMAL JETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000727

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to conduct an independent investigation of the charges in order to adequately prepare for trial?

STATEMENT

In April of 2014, the Florence County Grand Jury indicted Petitioner, Antwan Jamal Jett, for burglary first degree, armed robbery, two counts, assault with intent to commit criminal sexual conduct first degree, possession of a weapon during the commission of a violent crime and criminal conspiracy, indictment #2014-GS-21-00525. (App. pp. 344-346) On April 20, 2015, Petitioner proceeded to jury trial before the Honorable D. Craig Brown on all of the charges except the assault and one of the armed robbery charges involving Britney Foxworth. W. Vickery Meetze represented Petitioner at trial. John C. Jepertinger prosecuted the case. The jury found Petitioner guilty. Judge Brown sentenced Petitioner to thirty (30) years for burglary, twenty-five (25) years concurrent for armed robbery, 478 days concurrent for the weapon charge, and five (5) years concurrent for conspiracy. (App. pp. 347-350).

A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the convictions and sentence. State v. Jett, 423 S.C. 415, 814 S.E.2d 635 (S.C. Ct. App. 2018). (App. pp. 382-387). A petition for writ of certiorari was filed and denied by the South Carolina Supreme Court on October 18, 2018.

On December 10, 2018, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 388-394). The State filed a return and motion for more definite statement on March 13, 2019. (App. pp. 395-403). On September 6, 2019, an evidentiary hearing was held before the Honorable William H. Seals, Jr. Jonathan D. Waller represented Petitioner at the PCR hearing. Samuel L. Key represented the State. In a written order filed May 18, 2022, Judge Seals denied relief and dismissed the application. A timely notice of intent to appeal was served on May 25, 2022. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to conduct an independent investigation of the charges in order to adequately prepare for trial.

According to witness Michael Barr on December 31, 2013, at 3:30 AM someone who identified himself as “BJ” knocked on the door. (App. p. 83line 20 – p. 84, lines 1-15). When Barr answered the door three guys with hoodies tied across their faces came in the house, began assaulting Barr and asking about where the money was. (App. p. 85, line 21 -p. 86, 87, lines 1-25). One of the men had a gun. (App. p. 86, lines 19-25). Barr testified that the men took pills and his hunting knife. (App. p. 96, line 17 – p. 97, line 1). When one of the men entered Barr’s roommate’s room, she began screaming and the three men ran out of the back door. (App. p. 88, lines 6-24). According to Barr, the police were already at the house when the three men ran out. (App. p. 101, lines 5-8).

Officer Herman testified that when he arrived at the house he saw two subjects running near the back of the house. (App. p. 125, lines 4-11). Officer Herman did not see a third individual. (App. p. 129, lines 13-16). Officer Herman testified that he chased an individual wearing a green/gray outfit while another officer, Officer Blackmon, chased an individual in dark clothing. (App. pp. 126 – 129). The officers lost track of both individuals. (App. p. 128, lines 11-15; p. 129, lines 7-10). As Officer Herman, circled back he found a small gun. (App. p. 130, lines 17-24). Officer Blackmon testified that on his way back he found a hunting knife on the ground. (App. p. 142, line 21 – p. 143, lines 1).

Officer Gowdy testified that he and Officer Allen found one green and one gray pullover on the porch of one of the apartments along with some hats. (App. p. 189, line 21 – p. 190, lines 1-11). Officer Allen also testified that she found some pill bottles. (App. p. 155, lines 10-20). Officer Gowdy testified that Petitioner was found under a parked Cadillac wearing a T-shirt, blue

jeans and gloves. (App. p. 190, line 19 – p. 191, lines 1-21; p. 206, lines 9-20). The DNA analyst from SLED testified that a DNA profile developed from a gray sweatshirt jacket matched the DNA profile of Petitioner.

Law enforcement was unable to determine the identity of the other two individuals. (App. p. 243, lines 8-16). Petitioner denied involvement in the robbery and told Investigator Jones that he was walking from a friend's house where he had been drinking and he just went to sleep under the Cadillac. (App. p. 243, lines 17-21). Petitioner was arrested and charged with the robbery of Barr.

During the PCR hearing Petitioner asserted that trial counsel was ineffective for failing to investigate and prepare for trial. (App. p. 408, lines 4-10). During the PCR hearing trial counsel was asked, "Okay. In this case, did you do any outside independent investigation?" (App. p. 444, lines 24-25). Trial counsel answered, "I don't believe so." (App. p. 445, line 1). Trial counsel confirmed that Petitioner was the only one arrested in connection with the robbery. (App. p. 445, lines 5-11). Trial counsel confirmed that the fact that Petitioner never named co-defendants in exchange for leniency supports Petitioner's statement denying involvement in the robbery. (App. p. 445, line 12 – p. 446, lines 1-12).

In the order of dismissal the PCR judge wrote:

This Court finds Trial Counsel credibly testified that Applicant did not provide any witnesses that could support Applicant. Trial Counsel credibly testified that there were no defenses to prepare for because this was a case of Applicant did not do it. Trial Counsel credibly testified they presented to the jury that the evidence did not support the charges beyond a reasonable doubt. Furthermore, this Court finds Applicant has failed to present any additional information that could have been discerned through further investigation; additionally, Applicant's allegation that Trial Counsel failed to prepare is refuted by Trial Counsel's testimony. Applicant has failed to establish how Trial Counsel's performance was deficient or how Trial Counsel's performance prejudiced Applicant. Therefore, this allegation is denied and dismissed with prejudice.

(App. p. 465). The PCR judge erred.

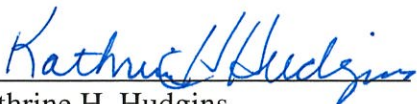
A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

Trial counsel was ineffective in failing to conduct an independent investigation of the charges. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Trial counsel admitted that he did not conduct any independent investigation. (App. p. 445, line 1). Trial counsel should have investigated known associates of Barr to determine the identity of BJ, the name given by the person who knocked on the door to gain entry. At trial Barr claimed that BJ was a friend of his who he treated like a nephew and BJ treated Barr like an uncle because BJ respected Barr.

(App. p. 84, line 18 – p. 85, lines 1-2). Despite the familial like relationship, Barr admitted that he did not know exactly where BJ lived or his last name or what BJ stood for. (App. p. 114, lines 6-25). Trial counsel was ineffective in failing to conduct an independent investigation of BJ. Petitioner was prejudiced by the deficient performance. There is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of September, 2022.

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Counsel for Antwan Jamal Jett 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 H. Seals, which was held on September 6, 2019, 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 Antwan Jamal Jett.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of September, 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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