

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED
JUN 18 2013
S.C. Supreme Court

ERIC J. RIDEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000252

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether there was any evidence to support the PCR judge's findings that trial counsel was not ineffective in failing to move for a change of venue?

STATEMENT

Petitioner was convicted of murder and failure to stop for a blue light resulting in death after a jury trial held before the Honorable George C. James, Jr., in Sumter County on June 5 – 6, 2007. Respective sentences of life imprisonment without parole and twenty-five (25) consecutive years were imposed. Jack Howle, Esquire, was trial counsel. C. Kelly Jackson, Esquire, and Catherine Fant, Esquire, were the solicitors. (App. p. 1 – p. 298).

Petitioner's appeal was denied by the Court of Appeals on September 9, 2009. A petition for rehearing was denied on October 26, 2009. A petition for writ of certiorari was denied by the South Carolina Supreme Court on January 6, 2011. (App. p. 305).

Petitioner filed an application for post-conviction relief on October 4, 2011. (App. p. 300 – p. 304). Respondent filed a return dated January 11, 2012. (App. p. 305 – p. 308). An evidentiary hearing was held on December 10, 2012, before the Honorable R. Ferrell Cothran. Petitioner was present and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Megan E. Harrigan, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 309 – p. 330).

On January 24, 2013, Judge Cothran issued an order denying and dismissing the application for post-conviction relief. (App. p. 332 – p. 337).

ARGUMENT

There was insufficient evidence to support the PCR judge's findings that trial counsel was not ineffective in failing to move for a change of venue.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E. 2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, hearsay, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S. C. 278, 639 S.E. 2d 53 (2006).

In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E. 2d 878 (2006).

In the present case, petitioner alleged in his application for post-conviction relief that he asked for a change of venue, but trial counsel never moved for a change of venue. (App. p. 301). At

the evidentiary hearing, petitioner testified that he asked trial counsel for a change of venue because the victim was born and raised in Sumter County and he was a highway patrolman. Counsel told him he would make the motion. The next time petitioner saw counsel, he asked him if he put in the motion and he said, "It's all taken care of." When they finally got to trial, counsel admitted he did not put in the motion. To make matters worse, there were 150 highway patrolmen in the courtroom. (App. p. 314, line 15 – p. 315, line 17).

In spite of this testimony, the PCR judge made findings that trial counsel was not ineffective in failing to move for a change of venue. This Court has previously held it will not uphold the findings of the PCR judge if there is no probative evidence to support those findings. Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000); Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996). The decision of the PCR judge in this case should not be upheld.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of June, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

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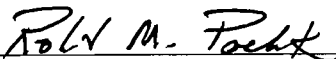
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric J. Ridel 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 records and transcript of petitioner's post-conviction relief hearing which was held on December 10, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Eric J. Ridel.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of June, 2013

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Certiorari to Sumter County

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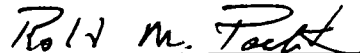
STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-000252

CERTIFICATE OF SERVICE

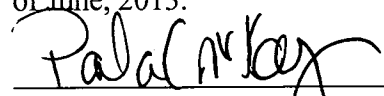
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Eric J. Ridel, #315658, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of June, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of June, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.