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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Eugene C. Griffith, Circuit Court Judge

TEQUAN L. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001337

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in denying relief, where trial counsel failed to provide Petitioner with a complete copy of his discovery?

STATEMENT

Between December 2013 and February 2014, a Colleton County grand jury indicted Petitioner for obstructing justice, murder, and possession of a weapon during the commission of a violent crime. App. 819 – 824.

He proceeded to trial before the Honorable Perry M. Buckner, III and a jury on June 22, 2015. App. 1. Matthew Walker represented Petitioner; Tameaka Legette appeared on behalf of the state. Following a four-day trial, the jury convicted Petitioner of the lesser-included offense of voluntary manslaughter, the possession of a weapon charge, and the obstruction of justice charge. App. 656 l.16 – App. 657 l. 3.

Judge Buckner sentenced Petitioner to twenty-five years on the voluntary manslaughter conviction. App. 669 ll. 1 – 6. He sentenced Petitioner to five years on the weapons offense, consecutive. App. 669 ll. 7 – 22. A ten-year sentence was handed down for the obstruction charge, concurrent. Id.

Petitioner's convictions were affirmed by the South Carolina Court of Appeals. State v. Brown, Op. No. 2017-UP-315 (S.C. Ct. App. filed July 26, 2017); App. 722. A petition for rehearing was filed on August 10, 2017. App. 725. The petition for rehearing was denied on October 19, 2017. App. 732.

Petitioner filed an application for post-conviction relief on January 16, 2018. App. 733. It contained allegations of ineffective assistance of counsel. App. 735. Additional claims were added through counsel's amendment. App. 745 – 746. The state made its Return and Motion for a More Definite Statement on or about March 22, 2019.¹ App. 747.

¹ The state's Return was untimely. Under S.C. Code Ann. § 17-27-70(a), the state has thirty days to "respond by answer or by motion." Approximately 430 days elapsed between the filing of Petitioner's PCR application and the filing of the state's return. Furthermore, the "Facts"

An evidentiary hearing was held before the Honorable Eugene C. Griffith, Jr. on August 9, 2021. App. 760. Timothy Griffith represented Petitioner; Taylor Smith appeared on behalf of the state. Petitioner, trial counsel, and appellate counsel testified at the hearing. At the conclusion of the hearing, the PCR judge took the matter under advisement. App. 797 ll. 4 – 7.

An Order of Dismissal was filed on September 22, 2022. The Order of Dismissal analyzed five claims: 1) trial counsel was ineffective for not going over discovery with Petitioner; 2) trial counsel was ineffective for not objecting to hearsay; 3) trial counsel was ineffective for not conducting an adequate pre-trial investigation; 4) trial counsel was ineffective for not cross-examining the state’s pathologist at trial; and 5) appellate counsel was ineffective for not filing a motion for rehearing under Rule 29(b), SCRCrimP. App. 801 – 817.

This petition follows.

portion of the state’s Return is nearly an exact replica of the “Statement of Facts” contained in the Final Brief of Respondent. App. 704 – 710; App. 748 – App. 747.

ARGUMENT

The PCR court erred in denying relief, where trial counsel failed to provide Petitioner with a complete copy of his discovery.

Relevant facts

At the PCR evidentiary hearing, Petitioner testified that the first time he saw the full discovery in his case was at trial:

Q: Did you ever see the discovery for your case?

A: I did. During the trial, at the defense table, I [saw] the full discovery of the case.

Q: So prior to that did you see the discovery?

A: No, sir. Mr. Walker had [given] me a police report and a few items, but I never [saw the] full discovery in the case.

Q: So did you ever possess, before the trial, a copy of the discovery?

A: No, sir.

App. 765 l. 19 – App. 766 l. 3.

Curiously, the state did not ask Petitioner any questions on cross-examination. Instead, after PCR counsel concluded Petitioner's case, the state called trial counsel to the stand. Trial counsel was appointed to represent Petitioner. App. 772 ll. 14 – 16. He testified that he received the discovery disclosure from the state. App. 773 ll. 22 – 23. He described the contents of the discovery as follows:

It was a basic initial packet with the incident report and whatnot. He had given some interviews, so we had some video interviews ... and there were codefendants charged with conspiracy and that sort of thing. So there were video interviews, and then the police report.

And then as we got closer to trial, I think there was a GSR report and an autopsy report, that sort of thing. It wasn't a particularly complicated case, so there wasn't any type of weird types of discovery.

App. 774 ll. 1 – 10.

Counsel testified he gave Petitioner an incident report and some paper copies. App. 774

ll. 13 – 19. Counsel admitted he did not provide Petitioner with the full discovery in his case:

And then you get all kinds of stuff in discovery that's kind of just voluminous paper or photos, or things like that. So I believe what I would have done with Mr. Brown is give him the incident report, a copy of the GSR report, autopsy report, that sort of thing, and videos and ... photographs, put those on the computer; take that computer to the jail with me; go through those digital type items at the jail, or have my investigator go over and show those things to him. You know, [t]his is what we have; [d]o you want to look at this?; [d]o you want to watch any more of this? [Y]ou know, that sort of thing.

App. 774 l. 23 – App. 775 l. 7.

Counsel testified “everything was made available” and that Petitioner “was given paper copies of what I would call the major reports.” App. 775 ll. 17 – 19. On cross-examination, counsel admitted he did not provide Petitioner “a copy of all the discovery.” App. 786 ll. 20 – 22.

Following testimony, the PCR court heard arguments from counsel. PCR counsel contended:

Mr. Walker admitted that he did not provide a complete discovery to Mr. Brown. He said he gave him a few things but did not give him his discovery, so he was not afforded the opportunity to have all of his discovery.

App. 795 ll. 6 – 9.

The PCR court denied relief as to this issue in the Order of Dismissal. App. 801 – 804. The PCR court found Petitioner “failed to prove that trial counsel’s performance was deficient in any way with respect [to] his handling of [Petitioner’s] discovery.” App. 804. Further, the PCR court found Petitioner failed to prove prejudice. Id.

Discussion

“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). “[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 534, 123 S.Ct. 2527 (quotations and citation omitted). In assessing prejudice, appellate courts “reweigh the evidence in aggravation against the totality of available mitigating evidence.” Id. Prejudice is established where “there is a reasonable probability that at least one juror would have struck a different balance.” Id. at 537, 123 S.Ct. 2527 (citation omitted). A “reasonable probability” is less than a preponderance of the evidence but still “a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 693–94, 104 S.Ct. 2052.

The appellate court must affirm the PCR court's decision when its findings are supported by any evidence of probative value. Cherry v. State, supra. However, the appellate court will not uphold the findings of the PCR court if there is no probative evidence to support those findings. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

Counsel conceded that he did not provide Petitioner with a complete copy of his discovery. Instead, counsel made the determination himself as to what he believed Petitioner should have access to while incarcerated and awaiting trial. This constituted ineffective assistance of counsel, where Petitioner could have made a decision to plead guilty or seek

additional offers from the state in lieu of going to trial. Further, Petitioner could have offered insight and context to the state's evidence against him. Therefore, but for trial counsel's decision to provide only partial discovery to Petitioner, for him to read in his own time, the result of the case would have been different.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court grant certiorari to allow further briefing.

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of March, 2023.

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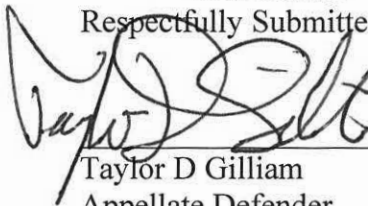
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tequan L. Brown states:

1. He is 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 Judge Eugene C. Griffith, which was held on August 9, 2021, 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 Tequan L. Brown.

Respectfully Submitted,



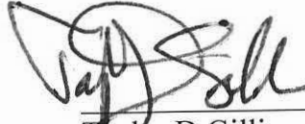
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of March, 2023.

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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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Johnson Petition for Writ of Certiorari and Appendix in the above referenced case have been served upon Taylor Z. Smith, Esquire at the primary e-mail address listed in the Attorney Information System (AIS); and on Tequan L. Brown, #341915, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 27th day of March, 2023.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER