

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

MATTHEW BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000062

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief 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

RECEIVED

Jun 05 2023

S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT2

ARGUMENT

Trial counsel erred in failing to conduct adequate investigations on
petitioner’s behalf with respect to the gun related charges in order
to develop an alibi defense in the case.3

CONCLUSION5

PETITION TO BE RELIEVED AS COUNSEL6

ISSUE PRESENTED

Trial counsel erred in failing to conduct adequate investigations on petitioner's behalf with respect to the gun related charges in order to develop an alibi defense in the case.

STATEMENT

Petitioner Matthew Blackwell pled guilty to murder, possession of a firearm during the commission of a violent crime, two counts of attempted murder, trafficking in methamphetamine, and distribution of methamphetamine within one half mile of a school/park during the August 2021 term of the Spartanburg County General Sessions Court before Judge Grace Gilchrist Knie. Petitioner was sentenced to imprisonment for an aggregate period of thirty-eight years on his convictions. App. 1-35. William J. Nowicki, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Spenser H. Smith appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On June 21, 2022, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 37-43. The respondent filed a Return dated August 9, 2022. App. 44-57.

A PCR hearing was convened in the case on October 17, 2022, at the Spartanburg County Courthouse before Judge Brian M. Gibbons. App. 61-89. Petitioner was present at the PCR hearing and represented by Attorney Rodney Richey, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

On December 16, 2022, Judge Gibbons issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App.91-107.

Petitioner appealed Judge Gibbons' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to conduct adequate investigations on petitioner's behalf with respect to the gun related charges in order to develop an alibi defense in the case.

The state alleged that petitioner participated in a drive by shooting into a residence located in Spartanburg County on June 12, 2018. Three of the five men who were inside of the vehicle stated that petitioner and Tyler Bright were the two shooters in the case. App. 17, l. 18- p. 22, l. 23.

During the PCR hearing held in the case, petitioner testified regarding his alibi defense. Petitioner stated that he informed counsel that he was with his girlfriend at a lake on the day the shooting occurred, but that no alibi defense was ever developed in the case. Also, petitioner stated that he desired a jury trial at the outset of the case. App. 64, lines 19-25; App. 69, l. 8 – p. 73, l. 24.

Trial counsel testified at the PCR hearing and explained that he was aware of petitioner's claim that he was in the company of a female at a lake on the date of the shooting. Counsel added that petitioner expressed his desire for a jury trial in the case. App. 77, lines 12-25; App. 78, lines 5-7.

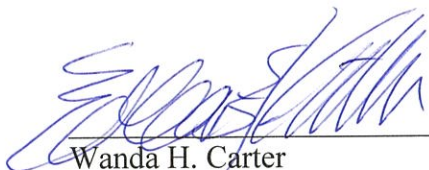
Counsel has a duty to conduct reasonable investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). In Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014), the Court found prejudice because trial counsel erred in failing to develop an alibi defense by not investigating into the existence of a potential alibi witness where the defendant claimed he spent the night with another woman on the same night that the prosecutrix claimed the rape occurred, and where the defendant declared several times on his taped interview with police that he was with another woman (who testified at the PCR hearing corroborating petitioner's claim) on the night the alleged rape

took place. See also Dover v. State, 337 S.C. 298, 523 S.E.2d 459 (2000), where trial counsel erred in failing to investigate into the existence of hospitalization records establishing the victim's commitments for depression and substance abuse and suicide threats in support of the defendant's defense that the victim committed suicide on the night the state alleged he killed the victim. Compare, Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991), where trial counsel was found ineffective in failing to uncover the fact that the prosecutrix no longer desired to prosecute the defendant on the two two-year old forgery charges instigated against him and that one of the burglary charges the defendant pled to in general sessions court had already been disposed of in magistrate's court. Also, compare further Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998), where the Court held counsel was ineffective in failing to call a triage nurse who would have testified that the prosecutrix denied penetration occurred in the state's criminal sexual conduct case, because the only evidence of sexual battery was the prosecutrix's accusation, and because this nurse's testimony would have established reasonable doubt and corroborated the doctor's testimony that the prosecutrix had no pelvic lesions, cuts or tears.

Here, trial counsel erred in failing to develop an alibi defense for petitioner's case in violation of the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985); and but for counsel's error there was a reasonable probability that petitioner would have elected a trial by jury and not plead guilty to the state's charges filed against him.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the above raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2023.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Jun 05 2023
S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

MATTHEW BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

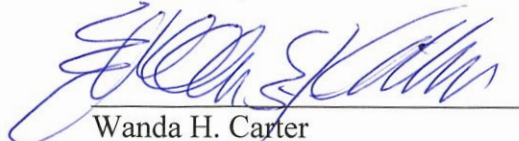
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Matthew Tyler Blackwell states that:

1. She is Deputy Chief 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 Brian M. Gibbons, which was held on October 17, 2022, 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 Matthew Tyler Blackwell.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2023.

RECEIVED

Jun 05 2023

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."


Wanda H. Carter
Deputy Chief 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

This 5th day of June, 2023.