

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Laurens County

Honorable Edward W. Miller, Circuit Court Judge
—————

KHELSEY RICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000333
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
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GARY H. JOHNSON
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ATTORNEY FOR PETITIONER

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May 23 2024

S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in finding counsel was effective when he allowed petitioner to plead guilty to all charges arising out of a fatal motor vehicle accident despite failing to investigate the identity of the actual driver of the vehicle who would have exonerated petitioner?

STATEMENT

On May 18, 2018, petitioner was involved in a car accident in which two people died and two other people suffered significant bodily injuries. App. 6, ll. 23. At the time of the fatal collision, an acquaintance of petitioner, identified at the PCR hearing as Mr. Adams, was driving petitioner's vehicle. 7, ll. 1 - 25. Following the collision, Adams physically moved petitioner, who had been initially knocked unconscious in the accident, into the driver's seat. App. 75, ll. 17 - 25. After the accident, Adams was found with petitioner's purse in his possession. App. 77, l. 25 - 10, l. 9. Following the accident, petitioner's blood was tested with it showing a nominal concentration of alcohol (0.013), but also indicating methamphetamine and marijuana in her system. App. 12, ll. 6 - 9.

Petitioner was indicted by a Laurens County grand jury on two counts of felony driving under the influence causing death in violation of S.C. Code Ann. § 56-05-2945(A)(2) and two counts of felony driving under the influence causing great bodily injury in violation of S.C. Code Ann. § 56-05-2945(A)(1). App. 115 - 120.

Petitioner appeared before the Honorable Thomas L. Hughston, Jr., on December 19, 2019, to plead guilty on all charges. App. 1. At the plea hearing, petitioner was represented by Tristan Shaffer (hereinafter plea counsel) and Jule Keeney appeared on behalf of the state. App. 1. Petitioner was sentenced to sixteen years on each of the felony DUI resulting in death charges and ten years on each of the felony DUI resulting in great bodily injury charges, all sentences to run concurrently. App. 44, ll. 11 - 25.

Before her guilty plea, it is uncontested that petitioner informed plea counsel that she was not driving at the time of the accident but that her friend, Mr. Adams, was the actual driver. App. 87, ll. 3 - 25. After being told about Adams, plea counsel made no effort to investigate his

complete identity or locate Adams since petitioner had to be removed from the driver's seat of the car following the accident. App. 87, ll. 3 – 25. Rather than conduct an adequate investigation, plea counsel allowed petitioner to plead guilty to all charges. App. 94, ll. 5 – 19; App. 98, l. 22 – 99, l. 18.

Petitioner timely filed for PCR. An evidentiary hearing was held before the Honorable Edward W. Miller on March 7, 2023. App. 69. Petitioner was represented by Ashley McMahan, and Zachary Jones appeared on behalf of the state. App. 69. Judge Miller denied relief by written order on February 14, 2024. App. 105.

This petition for certiorari follows.

ARGUMENT

The PCR Court erred in finding counsel was effective when he allowed petitioner to plead guilty to all charges arising out of a fatal motor vehicle accident despite failing to investigate the identity of the actual driver of the vehicle who would have exonerated petitioner.

A. How the issue was raised at PCR.

During the PCR hearing, petitioner related telling plea counsel that Mr. Adams had been driving the vehicle at the time of the accident rather than petitioner. App. 75, ll. 6 – 8. Petitioner also testified that Mr. Adams was later found with her purse in his possession, as additional evidence Mr. Adams was present and in the vehicle the night of the accident. App. 77, l. 25 – 78, l. 9. Plea counsel admitted he did nothing with this information and acknowledged being told about Mr. Adams before petitioner’s guilty plea. App. 90, l. 3 – 91, l. 5; 90, ll. 5 – 19.

B. How the PCR court ruled.

The PCR court simply found that plea counsel’s memory of being told about Adams late in the representation of petitioner, combined with the “problems” created by the evidence petitioner was the driver (“the fire department had to extricate Applicant from the car, and Applicant told the doctor at the hospital that she was the driver”), prevented a finding that plea counsel’s “performance fell below a reasonable standard of reasonableness in this respect.” App. 110. The PCR court’s order did not address the complete lack of any investigation by plea counsel to locate and interview Mr. Adams.

C. The PCR court erred in finding counsel’s investigation of Adams was effective assistance of counsel.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (emphasis added); *see also* Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597

(2007) (“Moreover, while the scope of a reasonable investigation depends upon a number of issues, ‘at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.’”).

“Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Gilchrist v. State, 350 S.C. 221, 226–27, 565 S.E.2d 281, 284 (2002). However, “strategic choices made by counsel after an incomplete investigation are reasonable ‘only to the extent that reasonable professional judgment supports the limitations on the investigation.’” McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (*quoting* Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

This case is guided by other cases dealing with witnesses and evidence that would be central to a defense, such as an alibi witness. *See* Martin v. State, 427 S.C. 450, 456, 832 S.E.2d 277, 280 (2019) (finding as a matter of law that Martin's trial attorneys were deficient for not eliciting specific alibi timeline testimony from available witnesses); Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding counsel deficient in failing to call witnesses “that would have added significantly to the credibility of petitioner's case.”); Weldon v. State, 436 S.C. 69, 82, 870 S.E.2d 183, 190 (Ct. App. 2021) (finding “no evidence supports the PCR court's findings that trial counsel provided effective assistance or implemented—much less articulated—any valid trial strategy with respect to the alibi witnesses.”); Bagwell v. State, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014) (finding decision not to test broken glass for DNA prior to trial was unreasonable because the state used the glass as circumstantial evidence of guilt).

In Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014), trial counsel was found ineffective following PCR when counsel failed to investigate the potential alibi witness identified by Walker, his girlfriend Robina Reed. This Court noted that while Reed's testimony “was not as

clear as it could have been, due in part to the passage of five years, one viable interpretation of it was that Walker spent the night of March 2 with her.” Id. at 407, 756 S.E.2d at 147. As was the case in Walker, petitioner’s guilt would have been far from certain had trial counsel properly investigated and interviewed Mr. Adams.

Counsel was ineffective for failing to investigate the real driver of the vehicle involved in the fatal accident, Mr. Adams. As this testimony would have made conviction for the crime charged an impossibility, counsel was ineffective for allowing petitioner to plead guilty without conducting an appropriate investigation. *See Strickland v. Washington*, 466 U.S. 668 (1984); Edwards v. State, 392 S.C. 449, 710 S.E.2d 60 (2011).

D. Prejudice.

In the present case, plea counsel’s decision not to investigate the existence of Mr. Adams as the driver of the vehicle when it crossed the center line deprived petitioner of a chance of acquittal. Instead, plea counsel ignored the potential impact of Mr. Adams and allowed petitioner to plead guilty, without negotiations or recommendations from the state other than an agreement that sentences could be concurrent and not consecutive. App. 20, ll. 11 – 17. “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014).

Petitioner was incarcerated for a significant period of time with ineffective contact and support from plea counsel. App. 73, l. 19 – 74, l. 1. As petitioner noted, this skeptical attitude from plea counsel regarding Mr. Adams was reflected in her decision to plead:

Q. Did you ever want to go to trial or was it always you just wanted a guilty plea?

A. *I wanted to go to trial, but he [plea counsel] didn’t think it was a good idea.*

Q. What did [plea counsel] tell you about that? Why was it a bad idea?

A. *[Plea counsel] didn't think I would win.*

Q. Is that why you decided to go ahead and try to take some type of plea deal on it?

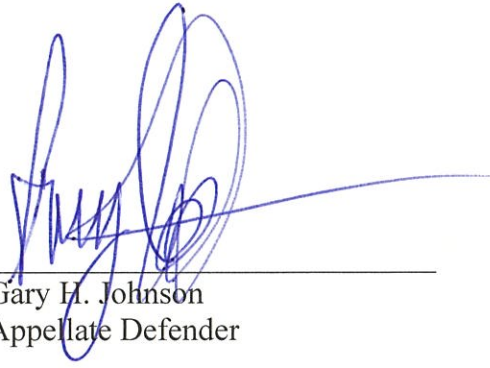
A. Yes, ma'am.

App. 79, ll. 1 – 9 (emphasis added).

Plea counsel, provided the name of a witness who would have fully exonerated petitioner, was ineffective in failing to investigate and instead advising petitioner to plead guilty despite the exonerating nature of the potential witness. See Hill v. Lockhart, 474 U.S. 52 (1985); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on the issue presented.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of May, 2024.

STATE OF SOUTH CAROLINA

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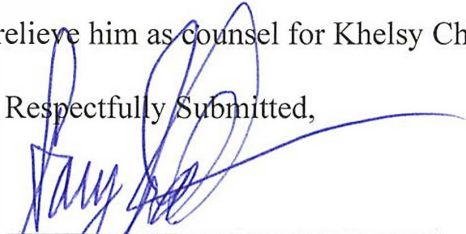
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Khelsy Chanta Rice 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 Edward W. Miller, which was held on March 7, 2023, 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 Khelsy Chanta Rice.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of May, 2024.

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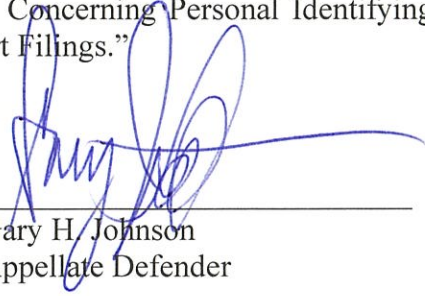
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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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This 23rd day of May, 2024.