

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 05 2024

S.C. SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY

Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2019-CP-32-04672

Nathaniel A. Hunter, #372378,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2023-001611

JOHNSON PETITION FOR A WRIT OF CERTIORARI

ASHLEY A. MCMAHAN
MCMAHAN LAW, LLC
PO Box 50536
Columbia, SC 29250
(803) 219-1110

ATTORNEY FOR PETITIONER

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**The PCR court erred in finding trial counsel was effective when
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QUESTION PRESENTED

1. DID THE PCR COURT ERR IN FINDING COUNSEL EFFECTIVE WHEN COUNSEL FAILED TO CALL PAULINE JONES AS A WITNESS TO SHOW THAT THE PETITIONER DID NOT HAVE OWNERSHIP OF THE CAP AT THE TIME OF THE INCIDENT?

STATEMENT OF THE CASE

During the December 2014, term the Lexington County Grand Jury indicted the Petitioner for attempted murder (2014-GS-32-3689); burglary, first degree (2014-GS-32-3687)l criminal sexual conduct, third degree (2014-GS-32-3688); and possession of a weapon during the commission of a violent crime (2014-GS-32-3692). Petitioner was represented by Assistant Public Defender Jason S. Chehoski, Assistant Public Defender Jael D. Gilreath, and Dayne C. Phillips, Esquire. (Trial Counsels) Assistant Deputy Solicitor L. Suzanne Mayes and Assistant Solicitor Robert E. McNair, III, represented the State. (App. p. 1.)

On April 24, 2017, Petitioner proceeded to trial before the Honorable Thomas W. Cooper. Petitioner was convicted on each count. Petitioner was concurrently sentenced to forty-five years for the burglary, first degree; thirty years for the attempted murder; fifteen years for the criminal sexual conduct, third degree; and five years on the weapon charge. (App. p. 1112.)

A timely Notice of Appeal was filed and an appeal was perfected. Appellate Defender Katherine H. Hudgins represented the Petitioner. Assistant Attorney General Joshua A. Edwards represented the State. The South Carolina Court of Appeals affirmed the Petitioner's conviction and sentence in an unpublished opinion. State v. Hunter, 2019-UP-312. The Remittitur was sent on September 13, 2019.

On November 20, 2019, Petitioner timely filed his post-conviction relief application. (App. pp. 1115-1122.) Petitioner amended his application on March 29,

2023. Respondent filed its Return on or about April 8, 2020, requesting an evidentiary hearing. (App. pp. 1123-1141.) The post-conviction relief hearing was held on April 3, 2023, before the Honorable Kristi F. Curtis at the Lexington County Courthouse. Petitioner was represented by Ashley A. McMahan, Esquire. Assistant Attorney General Zachary W. Jones represented the State. (App. p. 1147-1302) Judge Curtis denied the Petitioner's application by written order filed on October 11, 2023. (App. pp. 1352-1387.) This petition follows.

STANDARD OF REVIEW

The reviewing court defers to the PCR court's factual findings and will uphold them if supported by any evidence in the record. Smalls v. State, 422 S.C. 174, 179–181, 810 S.E.2d 836, 839 (2018). Furthermore, the reviewing court affords great deference to a PCR court's credibility findings. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012). Questions of law are reviewed *de novo*, and this court will reverse the PCR court if its decision is controlled by an error of law. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

STATEMENT OF THE FACTS

On April 12, 2014, Larenda Simon was sleeping next to her daughter in their apartment. She woke up and saw a man standing over her with a gun. Simon testified at trial that the man had on a hoodie and a ski mask that covered his whole face. Simon testified that the man took her phone and told her to take off her underwear. When she told him she was on her period, he then told the daughter to take her clothes off. A struggle then ensued between Simon and the man, resulting in Simon getting shot. The man then fled, and Simon and her daughter went to a neighboring apartment and the neighbor called 911. Simon also testified that she remembered the man's eyes and voice and during the trial, for the first time, identified the Petitioner. (FBOA p. 3.)

Investigator Neel testified that he was with another investigator when the evidence was collected from the apartment. Neel testified that when they collected a hoodie at the scene it also had a cap stuffed inside. Prior to trial the other investigator passed away. The hoodie was listed in the report prepared by the other investigator, but the cap was not. DNA was found on the cap that linked the Petitioner to the trial. (FBOA p. 3.)

ARGUMENT

The PCR court erred in finding trial counsel was effective when counsel failed to call Pauline Jones to show that the Petitioner did not have ownership of the nylon cap at the time of the incident.

When reviewing a claim for ineffective assistance of counsel, the "court proceeds from the rebuttable presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (*quoting* Strickland v. Washington, 466 U.S. 668, 690 (1984)). To rebut this presumption and succeed on an ineffective assistance claim, a PCR applicant must show (1) trial counsel's performance was deficient, and (2) trial counsel's deficient performance prejudiced the outcome of the trial. Strickland, 466 U.S. at 687.

"To prove trial counsel's performance was deficient, a [PCR] applicant must show '[trial] counsel's representation fell below an objective standard of reasonableness.'" Smalls, 422 S.C. at 181, 810 S.E.2d at 840 (*quoting* Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005)).

Investigator Griffin testified that when he initially interviewed the Petitioner he stated he had recently given away some of his clothes to a thrift store, and that the clothes included a hoodie. (App. p. 551, lines 17-22.) Pauline Jones testified at the PCR hearing that she had taken a bag of the Petitioner's clothes to Goodwill for him. She collected these clothes two or three weeks before the incident. (App. p. 1167, lines 15-21.) She took these clothes to the Salvation Army. (Id.) She estimated it was two or three bags of clothes. (App. p. 1168, lines 1-12.) Ms. Jones testified

that she saw the Petitioner take the bags out clothes out of the house and put them in the car. (App. p. 1168, lines 14-20.)

Had Trial Counsels called Ms. Jones as a witness it would have supplemented the Petitioner's statement about the donation of the clothes and possibly swayed the jury to return a verdict of not guilty. *See e.g. Pauling v. State*, 331 S.C. 606, 503 SE2d 468 (1998) (failure to call defense witness triage nurse was ineffective); *Martinez v. State*, 304 S.C. 39, 403 S.E.2d 113 (1991) (where trial counsel admits the testimony of a certain witness may have made the difference in obtaining an acquittal, the Court may find ineffective assistance).

Therefore, this Court should grant the application for post-conviction relief and order a new trial.

CONCLUSION

For the foregoing reasons, Petitioner submits this Court should grant the Petition for Writ of Certiorari and reverse the convictions and sentence and the case remanded for a new trial.

Respectfully submitted,



ASHLEY A. MCMAHAN

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

SC Bar No.: 71676

ATTORNEY FOR PETITIONER

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Nathaniel A. Hunter states:

1. She is a member of the South Carolina Bar and was appointed to represent the Petitioner.
2. She has reviewed the records and transcripts of Petitioner's post-conviction relief hearing which was held on April 3, 2023. In her opinion seeking certiorari from the Order of Dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 SC 310, 364 SE2d 201 (1998), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Mr. Hunter.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for a Writ of Certiorari complies with SCACR 11(b) 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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