

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 06 2024

S.C. SUPREME COURT

Certiorari to Lexington County

Honorable George M. McFaddin, Circuit Court Judge

BOBBY GEORGE SIGHTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000482

JOHNSON PETITION FOR WRIT OF CERTIORARI

GARY H JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ISSUE PRESENTED

Was plea counsel ineffective in allowing petitioner to be painted as the most culpable and primary actor among three co-defendants when a reasonable investigation would have revealed the role of petitioner's co-defendant in orchestrating the armed robbery of the victim?

STATEMENT

Petitioner entered the hotel room of the alleged victim believing his co-defendant, Ms. Lakelyn Register, was in need of assistance to get away from unwanted attention from the alleged victim. App. 54, l. 12 – 55, l. 13. Petitioner did not possess a weapon or threaten harm to the victim, but helped Register get out of the hotel room that was full of victim's drugs. App. 58, l. 3 – 59, l. 22; 66, l. 4 – 67, l. 15. Petitioner admitted taking victim's car keys as he left the room and drove victim's truck from the scene. App. 66, ll. 18 – 21.

Petitioner plead guilty to attempted armed robbery¹ and failure to stop for a blue lights before the Honorable Walton J. McLeod, IV, on July 14, 2019. App. 1. At the plea, petitioner was represented by Derek Mobley with Sutania Fuller representing the state. App. 1. During the plea hearing, the solicitor referred to petitioner as the primary defendant and as being the most culpable. App. 14, l. 15 – 15, l. 1. Plea counsel did not object to this characterization or present the facts of the case as mitigation. The guilty plea involved a negotiated sentencing range of seven to fifteen years. App. 4, l. 18 – 5, l. 3. Judge McLeod sentenced petitioner to the maximum of fifteen years. App. 22, ll. 2 – 6.

Petitioner filed for PCR alleging ineffective assistance of counsel. App. 24. By amended application, Petitioner asserted plea counsel failed to adequately investigate the case and present evidence of interaction with the victim and co-defendant Register that contradicted the state's version of events that petitioner was the primary and most culpable defendant. App. 44. The evidentiary hearing was held before the Honorable George McFaddin on October 12, 2022. Petitioner was represented by Tommy Thomas and Taylor Smith appeared on behalf of the state.

¹ Petitioner was originally indicted for armed robbery but plead guilty to attempted armed robbery. Several companion charges were also dropped by the state in connection with the plea. App. 4, l. 18 – 5, l. 3.

Judge McFaddin heard testimony from petitioner and plea counsel Mobley. App. 48. Judge McFaddin denied relief by order of dismissal filed March 14, 2024.

This petition for certiorari follows.

ARGUMENT

Plea counsel was ineffective in allowing petitioner to be painted as the most culpable and primary actor among three co-defendants when a reasonable investigation would have revealed the role of petitioner's co-defendant in orchestrating the armed robbery of the victim.

A. How the matter was presented during the guilty plea.

During his original guilty plea, petitioner was painted by the solicitor as the “primary” and “most culpable” of the three defendants being charged with attempted armed robbery. App. 14, ll. 22 – 24. As a result of this assertion, the solicitor requested the maximum sentence of a negotiated range of 15 years in prison. App. 13, ll. 8 – 16. With no pushback from plea counsel on the culpability of the co-defendant, Register, the plea Court was left with the impression that petitioner was the mastermind of the armed robbery and sentenced him to the 15 years requested by the solicitor. App. 21, ll. 11 - 25.

B. How the matter was presented during PCR.

At the PCR hearing, petitioner testified about being tricked into appearing at the victim's hotel room by his co-defendant, Register. App. 65, l. 4 – 67, l. 15. When petitioner arrived at the motel room, he was expecting to find Register in distress and in need of assistance in escaping from the victim. App. 54, l. 19 – 55, l. 13; 66, l. 4 – 67, l. 15. Petitioner denied possessing a gun and indicated there was no armed robbery or attempted armed robbery, and that the situation was caused by the victim's use and possession of drugs and the distress of Register. App. 65, l. 4 – 67, l. 15.

Plea counsel indicated a belief that pushing back on the solicitor's allegation that petitioner was the primary and most culpable defendant would not have been helpful or mitigated the offense.

Q. Okay. Did you think there could be any pitfalls in, you know, pushing back against the State's allegations at a plea hearing like that?

A. I didn't see where it would help us. I didn't truly see where it would help us at that point, because I wanted to concentrate on -- so wanted to concentrate on getting sympathy from the Court and try to help the Judge to understand, how did we get here?

App. 97, ll. 4 – 12.

C. How the PCR Court ruled.

The PCR court found This Court further plea counsel's performance, including “not objecting to the Solicitor's characterization of Applicant, was within an objective standard of reasonableness.” App. 129. The PCR court also found that no prejudice resulted from the failure of petitioner’s counsel to present the reality of the actions of the three co-defendants that showed petitioner’s lesser role in the crime.

D. How the PCR court erred.

“[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)).

A reasonable investigation includes introducing evidence in mitigation of the offense. *See* Stone v. State, 419 S.C. 370, 798 S.E.2d 561 (2017); Wiggins v. Smith, 539 U.S. 510, 523 (2003) (noting the focus is whether “counsel's decision not to introduce mitigating evidence of [defendants]' background *was itself reasonable.*”) (emphasis in original).

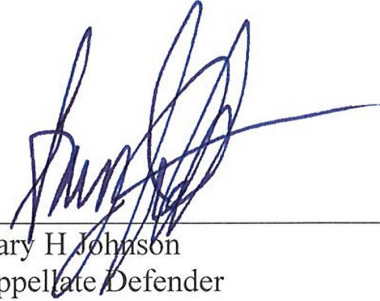
Counsel was ineffective for failing to challenge the solicitor’s characterization as the primarily responsible defendant. The reality of the actions of the three co-defendants, had plea counsel properly investigated and presented the facts, would have mitigated against the solicitor’s allegation that petitioner was the “primary” and “most culpable” of the three defendants. App. 14, ll. 22 – 24. Counsel was also ineffective for allowing petitioner to plead guilty without conducting an appropriate investigation and offering reasonably available explanation and mitigation evidence. *See* Strickland v. Washington, 466 U.S. 668 (1984); Wiggins v. Smith, 539 U.S. 510 (2003).

As petitioner was sentenced at the maximum level of a negotiated sentence range. The failure of plea counsel to present the plea court with an accurate picture of the offense was prejudicial. Petitioner acknowledges that this Court has noted “[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.” Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). However, failure of plea counsel to present evidence that mitigates the charge in connection with a negotiated plea with a ranged sentence is not merely wishful thinking. It is an essential element of effective assistance of counsel to require as least some effort by plea counsel to

present evidence in mitigation. Wiggins v. Smith, 539 U.S. 510, 523 (2003) (noting the focus is whether “counsel's decision not to introduce mitigating evidence of [defendants]' background *was itself reasonable.*”) (emphasis in original).

CONCLUSION

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

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and somewhat illegible.

Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bobby George Sightler 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 George M. McFaddin, which was held on October 12, 2022, 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 Bobby George Sightler.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2024.

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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 6th day of August, 2024.