

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Nov 06 2024

S.C. SUPREME COURT

Certiorari to Colleton County

Honorable Roger M. Young, Circuit Court Judge

ALBERT SIDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000770

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief 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

Trial counsel erred in failing to conduct adequate pre-trial investigations into matters of defense in petitioner's case.

STATEMENT

Petitioner Albert Edward Siders was convicted of kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime during a jury trial held at the April 2015 term of the Colleton County General Sessions Court before Judge Thomas W. Cooper. Petitioner was sentenced to life imprisonment. App. 68-291. David S. Matthews, Esquire, represented petitioner at trial, and Assistant Solicitor Steven H. Knight prosecuted the case. Petitioner appealed, but his case was affirmed on appeal. See State v. Siders, Op. No. 2017-UP-429 (Ct. App. 2017). Assistant Appellate Defender Laura R. Baer represented petitioner on direct appeal.

On December 7, 2017, petitioner filed a PCR application with the Colleton County Office of the Clerk of Court. App. 293-299. The Respondent filed a Return on October 26, 2018. App. 300-304. A PCR hearing in the case was convened on November 27, 2023, before Judge Roger M. Young, Senior. App.306-349. Petitioner was present at the PCR hearing and represented by Chelsey Marto, Esquire, and Assistant Attorney General Bryan Hall appeared at the hearing on behalf of the state.

On May 2, 2024, Judge Young filed an Order of Dismissal in the case therein denying post-conviction relief to petitioner. App. 351-359. Petitioner appealed Judge Young's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to conduct adequate pre-trial investigations into matters of defense in petitioner's case.

A synopsis of the case was presented to the trial judge during a pre-trial hearing regarding petitioner's request to relieve trial counsel in the case.¹ At the pre-trial hearing, both trial counsel and petitioner apprised the court with summaries of the case for the defense.

Trial counsel stated during the pretrial hearing that petitioner walked into a BP store, displayed a gun, and went on to commit armed robbery. Counsel added that the event was captured on video tape by a surveillance camera placed inside of the store. In addition, trial counsel apprised the trial judge of the fact that petitioner was coerced into committing the armed robbery because two men threatened to kill him if he did not comply with their demand to do so. The two men were acting on behalf of Celestra Rivers, who directed them to coerce petitioner to commit the crime of armed robbery as an act of revenge due to his prior contact with petitioner when he (petitioner) was a confidential drug informant. App. 12, l. 15 – p. 16, l. 5.

Petitioner spoke during the pre-trial hearing and apprised the trial judge of his version of the case. Petitioner stated that he was confronted by two drug dealers (Dread and another male) who coerced him to commit armed robbery, and that a third male gave him a BB gun to use during the armed robbery. Petitioner stated that the two men who coerced him to commit armed robbery would have killed him if he had not done so. Petitioner explained that his prior role as a confidential drug informant caused the events in question to occur. App. 16, l. 8 – p. 29, l. 15.

At trial, Jurnell Washington testified that she was working as a cashier at the BP store in question on February 21, 2024, when petitioner walked in, pulled out a gun, and then left the

¹ Judge Young denied petitioner's motion to relieve trial counsel in the case. App. 30, lines 4-5.

store with money from the register. Washington made an in-court identification of petitioner as the perpetrator at trial. App. 103, l.10 - p. 108, l.22.

Also, petitioner testified at trial and explained that he committed the armed robbery under duress. App. 175, l. 16 – p. 198, l. 25.

During the PCR hearing held in the case, petitioner reiterated that he was set up and coerced into committing the armed robbery based on an order from two men who were acting per directions from a male seeking revenge. App. 310, l. 20 – p.319, l. 14.

Trial counsel testified at the PCR hearing and explained that the defense theory of the case was coercion to the extent that “he (petitioner) was made to do it.” App. 336, lines 21-22; App. 339, lines 21-22; App. 340, lines 22-23; App.341, lines 12-16. However, trial counsel admitted at the PCR hearing that he in effect failed to investigate in depth into the identities of these two men (Dread and another male) who placed petitioner under duress. Trial counsel’s testimony at the PCR hearing with respect to this issue follows:

Q. Now when [petitioner] told you that he had been allegedly coerced, did you investigate it further?

A. Yes, we...I asked...I tried to have our investigator find the guy he said did it, the guy he only knew as Dread, and C.T. was unable to find him.

App. 340, l. 24 – p.341, l. 5.

Counsel has a duty to make reasonable investigations into cases. Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014) and Bagwell v. State, 410 S.C. 259, 763 S.E.2d 630 (2014), citing to Strickland v. Washington, 466 U.S. 668 (1984). In Walker, the Court held that trial counsel erred in failing to investigate into and interview the defendant’s girlfriend who would have been an alibi witness in the case. Walker was convicted of first degree criminal sexual conduct at his trial. In Bagwell, trial counsel was found ineffective in failing to investigate into

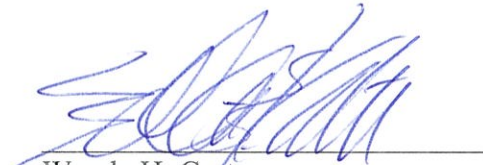
forensic DNA evidence in order to prove that none of the blood found at the crime scene matched Bagwell's DNA. Bagwell was convicted of burglary at his trial. See Dover v. State, 337 S.C. 298, 523 S.E.2d 459 (2000), where trial counsel erred in failing to investigate into the existence of hospitalization records establishing the victim's commitments for depression, substance abuse, and suicide threats that would have supported the defendant's defense that the victim committed suicide on the night the state alleged he killed the victim. See also 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-year-old forgery charges levied against him. Compare Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998), where the Court held that counsel was ineffective in failing to call a triage nurse who would have testified that the prosecutrix denied that penetration occurred in the state's criminal sexual conduct case where the only evidence of sexual battery was the prosecutrix's accusation, and where the doctor's testimony was that the prosecutrix had no pelvic lesions, cuts, or tears. Additionally, in Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2009), the Court found that trial counsel was ineffective in failing to adequately investigate and present mitigating evidence (defendant's mental incompetence) during the penalty phase of the trial.

Here, trial counsel's answers on this subject indicated that he failed to seriously and diligently investigate into uncovering the identities of the two men who coerced petitioner into committing armed robbery. Trial counsel assigned the duty of discovering the identities of these two men to an investigator. Had trial counsel conducted more than a perfunctory or cursory attempt to find these two men in question, then they could have been located, subpoenaed, and brought to trial as witnesses in order to strengthen and corroborate petitioner's defense of duress in the case. Clearly, very little effort went into pre-trial investigations in connection with

petitioner's case. Trial counsel's error in this regard constituted deficient legal representation in violation of petitioner's Sixth Amendment right to competent counsel in a criminal case. See Strickland v. Washington, 466 U.S. 668 (1984). Finally, but for trial counsel's ineffective assistance in this regard, a reasonable likelihood exists that the testimony of these men (had they been located and presented as witnesses) would have led to a different outcome in the case.

CONCLUSION

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

A handwritten signature in blue ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November 2024.

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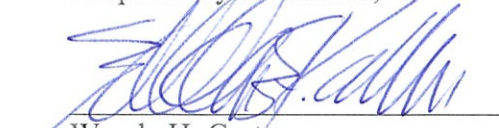
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Albert Edward Siders states:

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 Roger M. Young, which was held on Nov 27, 2023, 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 Albert Edward Siders.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November 2024.

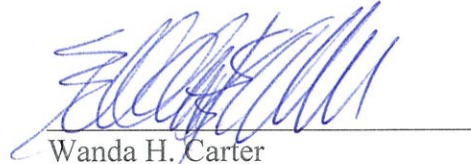
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for 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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