

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 20 2024

S.C. SUPREME COURT

Certiorari to Bamberg County

Honorable Edward W. Miller, Circuit Court Judge

RANDY CHESTNUT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000536

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to adequately argue for a directed verdict of acquittal?

STATEMENT

On April 18, 2019, the Bamberg County Grand Jury indicted Petitioner, Randy D. Chestnut, for burglary first degree, indictment #2019-GS-05-00024. (App. pp. 254-255). On April 23, 2019, Petitioner proceeded to jury trial before the Honorable Thomas L. Hughston. C. David Hayes and Wallis A. Alves represented Petitioner at trial. R. Jackson Cooper and Michael H. Emmer, III, prosecuted the case. The jury found Petitioner guilty as indicted. Pursuant to South Carolina's recidivist statute, S.C. Code §17-25-45, Judge Hughston sentenced Petitioner to life imprisonment without the possibility of parole. A timely notice of intent to appeal and the direct appeal perfected by the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). On July 7, 2021, the South Carolina Court of Appeals dismissed the appeal. State v. Randy Chestnut, Op. No. 2021-UP-255 (S.C. Ct. App. filed July 7, 2021).

On April 18, 2022, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 257-263). On July 18, 2022, the State filed a return and motion for more definite statement. (App. pp. 264-275). On January 3, 2023, Petitioner filed an amended PCR application. (App. pp. 276-277). On January 17, 2023, an evidentiary hearing was held before the Honorable Edward W. Miller. Ashley A. McMahan represented Petitioner at the PCR hearing. Zachary Jones represented the State. In a written order signed February 14, 2024, Judge Miller denied relief and dismissed the application. A timely notice of intent to appeal was served on April 4, 2024. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to adequately argue for a directed verdict of acquittal.

The jury convicted Petitioner of breaking into a home and stealing a television. The judge sentenced Petitioner to life in prison. Surveillance cameras captured the burglary, but the video was of poor quality, and as admitted by the prosecutor in opening statement, the individual cannot be positively identified. (App. p. 115, lines 11-23). The other evidence presented by the State included testimony from Lieutenant Linder, admitted over objection, about a purported confession that was not recorded by the Lieutenant's body camera. (App. pp. 8-36; pp. 155-160). Petitioner denied making the statement. (App. p. 32, lines 12-25). Despite the purported confession, Petitioner was not arrested until a month later. (App. p. 180, line 12 – p. 181, line 1). Additionally, the State introduced an incriminating jail phone call where the individual states that his fingerprints would not be found at the house because he was wearing gloves. (App. pp. 162-169; pp. 196-199). The judge, over objection, allowed the Lieutenant to identify the voice on the call as Petitioner's voice. (App. pp. 167-169).

At the close of the State's case trial counsel moved for a directed verdict and argued, "Judge, I would, at this time move for a directed verdict. Taking the evidence most favorable to the nonmoving party and prior motions and arguments to objections, Judge I would say that the State has failed to bring sufficient evidence before the Court that Mr. Chestnut is the individual in question and prove that there's a connection between the individual and the video and the individual that is here today." (App. p. 207, lines 17-24). The judge denied the motion stating, "I appreciate that, but I think it's a jury issue at this point and also I deny your motion." (App. p.207, line 25 – p. 208, lines 1-2).

In the order of dismissal the PCR judge wrote:

Finally, Applicant claims Counsel failed to obtain a directed verdict where the State did not put up any evidence. The Court finds this allegation is without merit. The State put up substantial evidence of Applicant's guilt, including a surveillance video of the burglary, Lieutenant Linder's testimony about Applicant's confession, and the incriminating phone call Applicant made from the jail. There was no basis for making a directed verdict motion in this case. Counsel testified he believed the State had presented sufficient evidence to create a question of fact for the jury, and the transcript reveals that Counsel ably attacked the State's evidence through cross-examination and argument. The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation, and this claim is, therefore, denied and dismissed with prejudice.

(App. pp. 323-324). The PCR judge erred. Trial counsel was ineffective in failing to specifically argue during the directed verdict stage that the individual in the surveillance video could not be positively identified, the purported confession was not recorded even though the Lieutenant admitted she was wearing a body camera at the time of purported confession, Petitioner was not arrested until a month after the purported confession, and that the authentication of the jail phone call was questionable.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable

probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

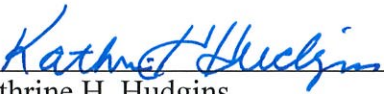
In Hill v. State, 415 S.C. 421, 432, 782 S.E.2d 414, 420 (Ct. App. 2016), the South Carolina Court of Appeals wrote:

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). “A case should be submitted to the jury if there is any substantial evidence, either direct or circumstantial, which tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” Brown v. State, 307 S.C. 465, 468, 415 S.E.2d 811, 812 (1992). “[O]ur duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was *any* evidence from which the jury could infer [the defendant's] guilt.” State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015); see also State v. Bennett, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016) (“Therefore, although the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.

Trial counsel was deficient in failing to adequately argue that the State failed to produce substantial evidence tending to prove the guilt of Petitioner or from which guilt may be fairly and logically deduced. There is a reasonable probability that if trial counsel had specifically argued that the Petitioner could not be identified in the video, the purported confession was uncorroborated and the jail call not properly authenticated, the trial judge would have directed a verdict of acquittal. Petitioner is entitled to relief in the form of a new trial.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of December, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randy Chestnut states:

1. She is 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 Edward W. Miller, which was held on Jan. 17, 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 Randy Chestnut.

Respectfully Submitted,



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of December, 2024.

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CERTIFICATE OF COUNSEL

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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This 20th day of December, 2024.