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Jan 15 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

DARRELL GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001625

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to obtain and review documents authorizing the placement of a GPS tracking device on petitioner's vehicle prior to the guilty plea proceeding because a pre-trial challenge to the legality of this attachment via a motion to suppress most likely would have benefitted petitioner during plea negotiations in the case.

STATEMENT

Petitioner Darrell Green pled guilty to trafficking in cocaine and was sentenced to imprisonment for a period of eighteen years at the October 2015 term of the Florence County General Sessions Court before Judge D. Craig Brown. App. 1-22. Petitioner's sentence was subsequently reduced to a twelve-year prison term.¹ Attorney Jacob Lean Parrott represented petitioner at the guilty plea proceeding, and Assistant Solicitor John Charles Jepertinger prosecuted the case. Petitioner did not appeal his conviction and sentence.

On March 30, 2016, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 24-28. On November 21, 2016, the Respondent filed a Return in the case. App. 29-32. Petitioner filed an amended PCR application on November 30, 2022. App. 34-39.

A PCR hearing in the case was held on December 14, 2022, at the Florence County Courthouse before Judge George M. McFadden. App. 40-92. Attorney Joshua Bailey represented petitioner at the PCR hearing, and Assistant Attorney General Danielle Dixon appeared on behalf of the state. On August 14, 2024, Judge McFadden signed an Order of Dismissal therein denying PCR relief to petitioner in the case.

Petitioner appealed Judge McFadden's Order of Dismissal. This petition follows.

¹ App. 49, lines 3 – 15.

ARGUMENT

Trial counsel erred in failing to obtain and review documents authorizing the placement of a GPS tracking device on petitioner's vehicle prior to the guilty plea proceeding because a pre-trial challenge to the legality of this attachment via a motion to suppress most likely would have benefitted petitioner during plea negotiations in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. On August 14, 2014, police officers were able to locate petitioner per the use of a GPS tracking device that was placed on his vehicle, and effect a traffic stop thereafter. Pursuant to the vehicle search that followed, petitioner was charged with trafficking in cocaine. App. 9, l.24 - p. 11, l.25. The GPS tracking device was placed on petitioner's car on or after July 28, 2014.

During the PCR hearing held in the case, petitioner testified that he did not know until three years after his guilty plea proceeding that a GPS tracking device had been placed on his vehicle at the time of his 2014 traffic stop in the case, and that he was unaware of the fact that documents had been filed authorizing the attachment. Petitioner stated that trial counsel did not file a pre-trial motion to suppress evidence seized pursuant to a search conducted after his traffic stop. App 50, l.22 - p. 55, l.9. Petitioner alleged in effect that trial counsel's failure to thoroughly investigate into and obtain the documents filed with respect to the GPS tracker request prior to his guilty plea proceeding, and his failure to object to the use of the GPS tracker as illegal at the pre-trial stage all resulted in ineffective assistance of counsel. App. 56, l. 13 – p. 57, l. 11; App. 61, lines 6 - 15. Petitioner stated in effect that a pre-trial challenge to the GPS tracking device issue would have impacted his decision on whether to enter a guilty plea or proceed with the option of a jury trial in the case. App. 66, l. 13 – p. 67, l. 25.

Trial counsel testified at the PCR hearing and stated that he was aware of the fact that a GPS tracking device had been placed on petitioner's vehicle in the case, but that he did not file a pre-trial motion to suppress regarding the same because his plan was to raise an objection to the matter after the jury had been sworn in the event the case proceeded to trial. App. 74, l. 5 – p. 75, l. 5; App. 80, l.25 – p. 81, l. 9. Trial counsel admitted that he never viewed the GPS tracking warrant requesting authorization for the use of a GPS tracker or the order granting the GPS tracker request until four years later during petitioner's Horry County PCR hearing held on October 19, 2019. App. 84, lines 7 - 11; App. 80, lines 18 -24; App. 85, lines 9 – p. 86, l. 4.

A GPS tracking device placed on a vehicle constitutes a search within the meaning of the Fourth Amendment, and the failure to obtain a warrant before the installation of such violates the Fourth Amendment and invokes the application of the exclusionary rule. State v. Adams, 409 S.C. 641, 763 S.E.2d 341 (2014), citing to United States v. Jones, 565 U.S. 400 (2012). In Adams and Jones, the cases were reversed because GPS trackers were installed without warrants. Note that S.C. Code Ann. {17-30-140 (2014) requires police to obtain a court order prior to the attachment of mobile tracking devices on vehicles. Compare, Frierson v. State, 417 S.C. 387, 789 S.E.2d (2016), where the allegation was that trial counsel was ineffective in failing to research the legality of the placement of a warrantless GPS tracker on the defendant's vehicle, and in failing to file a motion to suppress the fruits of the search that stemmed from the use of the tracker; particularly where counsel admitted that he knew not of the existence of S.C. Ann. Code 17-30-140 and counseled the defendant without an analysis of what impact a challenge to questions surrounding the use of the GPS tracker would have had in the case. The Frierson Court found no prejudice in the case.

Here, trial counsel did not obtain or view the documents filed in support of the order issued authorizing the GPS tracker to be placed on petitioner's vehicle prior to the guilty plea proceeding. This meant that trial counsel was unable to assess, challenge, or engage in proper consultations with petitioner regarding the legality of the GPS tracking device that brought about the traffic stop and the discovery of the drugs found per a search thereafter before he pled guilty in the case. Trial counsel's error in the mishandling of the GPS tracker issue in petitioner's case constituted deficient legal representation in violation of the Sixth Amendment. See Hill v Lockhart, 474 U.S. 52 (1985). Furthermore, but for trial counsel's ineffective legal assistance in this matter, a reasonable probability exists that petitioner might not have pled guilty and chosen rather to exercise his right to a jury in the case.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of January, 2025.