

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 24 2025

S.C. SUPREME COURT

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Certiorari to Beaufort County

Honorable J. Derham Cole, Circuit Court Judge

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ISAIAH GADSON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001382

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JOHNSON PETITION FOR WRIT OF CERTIORARI
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Lara M. Caudy
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South Carolina Commission on Indigent Defense
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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly advise Petitioner of his right to testify, and where Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of his trial would have been different if Petitioner had testified that he had consensual sex with Minor?

STATEMENT OF THE CASE

On January 5, 1980, twenty-one year old David Krulewicz was murdered and his fifteen year old girlfriend Minor was raped as they sat parked in Krulewicz's van on "Lover's Lane" in rural Beaufort County. The investigation went "cold" after law enforcement was unable to develop a suspect. In 2002, Minor's underwear and pants were resubmitted to the South Carolina Law Enforcement Division (SLED) for DNA testing. Semen was identified on both the underwear and the pants. A DNA analyst developed a profile from the semen. App. 322, ll. 15-20. The DNA profile did not match Krulewicz. App. 325, ll. 3-6. The unidentified DNA profile was entered into a database. On August 3, 2016, law enforcement received a "hit" from the database. Based on the hit, police located and arrested Petitioner. After his arrest, buccal swabs was collected from Petitioner and submitted to SLED for testing. App. 405, l. 11 – 406, l. 20. A DNA analyst determined that Petitioner's DNA profile developed from buccal swabs matched the DNA profile developed from the semen found on Minor's underwear and pants. App. 342, l. 2 – 344, l. 25.

A Beaufort County grand jury indicted Petitioner on October 12, 2017, for murder, criminal sexual conduct, kidnapping, and armed robbery. App. 737-744. Petitioner's case was called to trial on May 21, 2018, before the Honorable Brooks Goldsmith, and a jury. App. 1. Assistant Solicitors Hunter Swanson and Kimberly Smith represented the state. App. 2. Trasi Campbell and Benjamin Tripp represented Petitioner. App. 2.

On May 24, 2018, the jury found Petitioner guilty as indicted. App. 591, ll. 1-16. He was sentenced to fifty years for murder, thirty years for criminal sexual conduct, kidnapping, and armed robbery. All sentences were ordered to be served concurrently. App. 606, l. 19 – 607, l. 8.

The Court of Appeals affirmed Petitioner's convictions and sentence. State v. Gadson, 439 S.C. 278, 886 S.E.2d 719 (Ct. App. 2023); App. 663-666.

On July 11, 2023, Petitioner filed an application for post-conviction relief (PCR). App. 669-686. The state filed a return to this application on December 11, 2023. App. 687-695. With the assistance of counsel, Petitioner filed an amended application on May 2, 2024. App. 696-698. An evidentiary hearing was held on May 7, 2024, before the Honorable J. Derham Cole. App. 699. Assistant Attorney General Danielle Dixon represented the state. Chelsey Marto represented Petitioner. App. 699.

Petitioner testified at the evidentiary hearing that he wanted to testify in his defense at trial. He explained that he did not rape Minor and that "she offered herself" to him. Petitioner maintained that trial counsel never discussed with him his right to testify and never told him he should testify. App. 704, l. 14 – 706, l. 6.

Trasi Campbell, Petitioner's trial counsel, testified that she thoroughly discussed with Petitioner his right to testify, including the advantages and disadvantages of testifying. She maintained that Petitioner did not want to testify and it was his choice not to testify. App. 711, ll. 5-19; App. 717, ll. 3-12. Additionally, Campbell explained that the trial judge advised Petitioner of his right to testify or remain silent during trial. App. 717, ll. 13-15.

By order filed August 13, 2024, the PCR court denied Petitioner relief. App. 725-736. The court found Petitioner did not prove trial counsel was deficient for failing to prepare him to testify and call him as a witness during trial. App. 728. The court found credible counsel's testimony that she discussed with Petitioner the advantages and disadvantages of testifying and Petitioner chose not to testify. App. 729. Moreover, the court concluded Petitioner failed to show the outcome of his trial would have been different if he had testified. App. 729.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly advise Petitioner of his right to testify, and where Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the outcome of his trial would have been different if Petitioner had testified that he had consensual sex with Minor.

Petitioner wished to testify in his defense at trial. However, trial counsel failed to properly and adequately advise Petitioner of his right to testify before trial. Counsel failed to discuss with Petitioner the advantages and disadvantages of testifying or prepare him to testify in his defense. This constituted deficient performance. Counsel's deficient performance prejudiced Petitioner because there is a reasonable probability the outcome of his trial would have been different if Petitioner had testified that he had consensual sex with Minor.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-88.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance

prejudiced Petitioner. Strickland, 466 U.S. at 687. Under the second prong, Petitioner must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

“The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions.” Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (citing Rule 609, SCRE). “A defendant’s decision to testify or not must be made with knowledge of the consequences of either choice.” Id. (citing State v. Orr, 304 S.C. 185, 403 S.E.2d 623 (1991) (waiver of Fifth Amendment right must be knowing and voluntary), *overruled in part on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991)).

In Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999), our Supreme Court held trial counsel was ineffective when he failed to consider the possibility of Foye testifying in his defense given the evidence presented at trial. Foye was charged with trafficking cocaine. Id. at 588, 518 S.E.2d at 266. He was tried jointly with his father. Id. at 591, 518 S.E.2d at 268. After his father told Foye’s counsel that he would testify Foye did not know cocaine was in the gym bag, counsel advised Foye not to testify because of his prior convictions. Id. However, at trial, his father testified he told Foye cocaine was in the gym bag as the pair were walking into the hotel to deliver the drugs and that Foye wanted to help his father because he was afraid his father would get hurt. Id. The two passed the bag back and forth before his father insisted Foye should

not get involved and took the bag away from him prior to entering the hotel. Id. Foye waited in the lobby while his father delivered the cocaine. Id.

The Court held Foye's counsel was ineffective because he did not consider the possibility of Foye testifying after his father's damaging testimony. Id. at 592, 518 S.E.2d at 268. The Court concluded "counsel failed to use his discretion in employing an appropriate trial strategy in light of the unexpected testimony." Id. The Court emphasized counsel's admission that it may have been proper to put Foye on the stand after his father's damaging testimony. Id.

In this case, trial counsel was deficient because she failed to properly advise Petitioner of his right to testify, including the advantages and disadvantages of testifying. Counsel did not adequately prepare Petitioner to testify or advise him that he should testify. Petitioner testified at the evidentiary hearing that he wished to testify in his defense, but counsel did not tell him to testify.

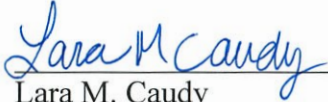
Petitioner was prejudiced by trial counsel's deficient performance because there is a reasonable probability the outcome of his trial would have been different if Petitioner would have testified that he had consensual sex with Minor. Petitioner was charged with the murder of David Krulewcz and the rape of Minor after semen found on Minor's clothing was determined to belong to Petitioner. If Petitioner would have testified that Minor willingly had sex with him, there is a reasonable probability the jury would have acquitted Petitioner. Consequently, the PCR court erred by denying Petitioner relief.

Respectfully, this Court should reverse the ruling of the PCR court, vacate Petitioner's convictions and sentence, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented. Ultimately, Petitioner requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2025.

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Counsel for Isaiah Gadson, Jr. states:


1. She is an 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, which was held on May 7, 2024, before the Honorable J. Derham Cole, 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 the Court relieve her as counsel for Isaiah Gadson, Jr.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2025.

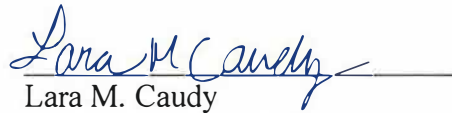
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CERTIFICATE OF COUNSEL

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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This 24th day of March, 2025.