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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable J. Mark Hayes, Circuit Court Judge

DONNEL L. WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002178

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in finding Petitioner received effective assistance of counsel where trial counsel failed to move for a continuance to allow counsel adequate time to contact and interview the witnesses Petitioner had identified?

STATEMENT OF THE CASE

On April 9, 2017, at approximately two in the morning 911 dispatch received an anonymous call regarding a man shooting a gun in the area of Seaboard Street in the city of Georgetown, S.C. App. 68, l. 22-App. 69, l. 24. Officer Ryan Call responded to the area of Prince and Lafayette Streets in Georgetown where he located a weapon holster and several empty shell casings in the road. Call also recovered a projectile from between the screen door and the main door of the home of Bobbie Sykes. While in the area Call was able to speak with Sykes and Cheryl Gadson. According to Gadson on the evening of April 8, 2017, she had dinner with Sykes and had returned to his house when Appellant showed up. App. 143, l. 3-144, l. 4. There was a confrontation between Appellant and Sykes where shots were allegedly fired, but neither Sykes nor Gadson called the police after Petitioner left. She maintained that Petitioner later returned and shot into the trailer. App. 144, ll. 4-145, l. 5.

Gadson requested Call escort her back to her home¹ after the incident. App. 70, l. 1-73, l. 23. When they arrived at Gadson's residence it was approximately 3:30 a.m. Call noticed the door was dented, appearing to have been forced open with a blunt object. App. 74, ll. 15-21. The inside of the home had been "destroyed" with food pulled out of the refrigerator, items thrown everywhere, and various things broken. App. 74, l. 21-75, l. 3; App. 85, ll. 7-18; App. 148, l. 20-149, l. 24.

¹ The home that was purportedly burglarized was rented by Maragret Washington (Petitioner's mother). The landlord testified that Washington rented the home for Gadson and her children to move into. Gadson, along with her children, were the occupants listed in the lease agreement. App. 131, l. 10-134, l. 24.

Petitioner was located at the Bay View Motel² that same morning. App. 75, ll. 18-19; App. 86, l. 8-87, l. 4. After a lengthy standoff with police Appellant was eventually arrested and taken for an interview. App. 87, ll. 5-25. During the interview Petitioner informed police that he and Gadson had been in a relationship, had a child in common, and had formerly lived together. He claimed to have last seen Gadson on April 4 and last communicated with her via text message on April 9. Petitioner admitted to being in the area near Sykes home on the day of the incident but stated he only drove through the area and did not speak or interact with anyone. Petitioner also informed police that he was with a friend from 1:30 to 3:00 that morning. App. 115, l. 8-116, l. 21.

On June 17, 2019, the state, represented by Richard Todd, called the case to trial before the Honorable Larry B. Hyman and a jury. Petitioner was represented by Madison Harte.³ App. 1. After the state rested Judge Hyman directed a verdict of acquittal on the obstruction charge. The jury ultimately found Petitioner not guilty of CDVHAN and discharging a firearm into a dwelling but found Petitioner guilty of burglary first degree. Judge Hyman sentenced Petitioner to life imprisonment suspended to the service of eighteen years.

Petitioner timely appealed his conviction and sentence. The Court of Appeals dismissed the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Washington, Op. No. 2021-UP-346 (S.C. Ct. App. filed October 6, 2021). Appellant filed the present PCR application on March 22, 2022. App. 260-284. The state filed a return and motion for a more definite

² Jaya Patel, an employee of the motel for twenty years, testified that Petitioner and his girlfriend (Gadson) had been staying at the motel for a lengthy period. The room registration card, which was in Gadson's name, was dated July 30, 2016. Petitioner's name and phone number were also on the room registration card. Both he and Gadson took turns paying rent at the motel. App. 125-130.

³ Martin Spratlin, another member of the NUMBER Circuit Public Defender's office sat second chair during the trial. Spratlin was not listed as counsel of record.

statement on July 25, 2022. Ap. 286-300. An evidentiary hearing was convened on October 28, 2024, before the Honorable J. Mark Hayes, II. The state was represented by Shayla J. Flores. Petitioner was represented by Steven W. Fowler. App. 301. At the start of the hearing PCR counsel Fowler moved to amend Petitioner's PCR application. He provided the court with four additional pages written by Petitioner, a letter from a pastor, and the indictment and warrant for the burglary charge. The court allowed the amendment over objection. App. 305, l. 11-308, l. 18; NEW PAGES.

Petitioner, Counsel Harte, and Counsel Spratlin testified at the evidentiary hearing. App. 302. Petitioner testified that Counsel Harte was appointed to his case two to three months before trial. App. 324, ll. 7-16; App. 326, l. 23-327, l. 1. He provided Counsel Harte with a witness list of people to testify in his defense, but they were not called at trial. Petitioner averred that when he tried to speak with Counsel Harte about the witnesses, he brushed Petitioner off or would not respond. App. 317, l. 8-318, l. 17; App. 329, l. 17-330, l. 6. Petitioner asked Counsel Harte to request a continuance so that he would have more time to prepare and speak with Petitioner's witnesses, but Counsel Harte ignored him. App. 327, l. 2-328, l. 13. He maintained Counsel Harte was not adequately prepared to handle the trial, was not competent to handle the trial and had not investigated the case at all. App. 323, ll. 8-23; App. 329, l. 9-16; App. 330, ll. 9-11; App. 346, ll.11-15

Counsel Harte testified he was assigned the case in March 2019, met with Petitioner at the detention center and then promptly moved for a bond, which Petitioner posted in May 2019. App. 383, ll. 1-14. He confirmed that Petitioner had provided him with witnesses to speak with but that the investigator in the office was unable to locate them prior to trial. App. 386, ll. 1-13; App. 409, ll. 8-410, l. 22. When asked why he did not move for a continuance to allow himself

more time to prepare the case for trial Counsel Harte testified that he felt “extremely prepared” for the trial and that it had been set as date certain prior to his appointment to the case. He acknowledged he could have requested the court continue the trial even though it had been set as date certain. App. 427, l. 10-428, l. 2.

An order of dismissal was filed on December 20, 2024, finding Petitioner had failed to establish any constitutional violations or deprivations entitling him to relief. App. 457-495. The PCR court found Petitioner had failed to present any evidence or testimony from the potential witnesses during the hearing. The court disposed of the claim by finding no prejudice as the potential impact of the witnesses testimony on the outcome of Petitioner’s trial was purely speculative. App. 472-473.

ARGUMENT

The PCR court erred in finding Petitioner received effective assistance of counsel where trial counsel failed to move for a continuance to allow counsel adequate time to contact and interview the witnesses Petitioner had identified.


“A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland v. Washington, 466 U.S. 668, 691 (1984). When evaluating the reasonableness of counsel's conduct, “the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Strickland v. Washington, 466 U.S. at 690. Therefore, “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.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original).

“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.” Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (citing Strickland v. Washington, 466 U.S. 668 (1984)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Strickland 466 U.S. at 695 (1984). A PCR applicant is entitled to relief based on ineffective assistance of trial counsel if he can establish that counsel's performance was deficient, and that this deficiency prejudiced his defense. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In the three months that Counsel Harte represented Petitioner he failed to contact a single witness identified by Petitioner. Importantly, Counsel Harte admitted that Petitioner had provided him with names, he simply testified his investigator could not get in touch with them. He did not state how he tried to contact the witnesses or if he discussed with Petitioner how to best get in touch with the witnesses. Instead of informing the trial court that he required a continuance to further investigate the case, he proceeded to trial without any specific defense for the burglary accusation. The failure to contact, interview, and call witnesses in Petitioner's trial, along with the failure to request a continuance to perform the necessary case investigation, was deficient performance not excused by a valid trial strategy. See Stone v. State, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) (A strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound.). The witnesses were necessary for the defense of Petitioner and the failure to call them resulted in prejudice. Respectfully, this Court should reverse the PCR court and find Petitioner received ineffective assistance of counsel.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari to allow full briefing on this issue.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of September, 2025.

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Counsel for Donnel Lamont Washington 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 J. Mark Hayes, which was held on Oct. 28, 2024, 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 Donnel Lamont Washington.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of September, 2025.

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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 5th day of September, 2025.