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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Newberry County

Honorable Letitia H. Verdin, Circuit Court Judge

THEIA DARION MCARDLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000352

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
Appellate Defender

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INDEX

ISSUE PRESENTED

Whether the PCR court erred finding trial counsel was not ineffective for failure to pursue a change of venue because the case was highly publicized locally which resulted in prejudice to petitioner?

STATEMENT

On April 2, 2015, a Newberry County grand jury indicted petitioner for homicide by child abuse. App. 1263. On April 4-8, 2016, petitioner's case was called to trial before the Honorable Frank R. Addy Jr., and a jury. App. 1—1172. Charles Verner represented petitioner. Solicitor, David Stumbo, and assistant solicitor, Taylor Daniel, prosecuted for the state. App. 1.

The jury found petitioner guilty as indicted. App. 1155, ll. 15-24. Judge Addy sentenced petitioner to thirty years' imprisonment. App. 1170, ll. 22-24.

Petitioner appealed her conviction, and the South Carolina Court of Appeals affirmed. *State v. McArdle*, Op. No. 2018-UP-439 (S.C. Ct. App. Dec. 5, 2018). By order dated June 28, 2019, the South Carolina Supreme Court denied her petition for a writ of certiorari.

Thereafter petitioner filed an application for post-conviction relief (PCR). App. 1173—1179. An evidentiary hearing was held on August 2, 2022, before the Honorable Letitia H. Verdin. App. 1190—1238.

On January 29, 2023, the PCR court signed an order denying PCR. App. 1240—1260. The PCR court found all petitioner's allegations of ineffective assistance of counsel were without merit. App. 1251. Specifically, the court found that counsel's performance was not deficient, and petitioner was not prejudiced where petitioner alleged counsel failed to pursue a change of venue because of the amount of publicity her case received. App. 1257. The court found counsel credibly testified, and the record reflected that members of the jury pool were questioned regarding their knowledge of the case. Four jurors had heard news of the case. Of those four two were removed, one was struck and the last answered she was willing to put aside what she heard and only consider the evidence presented at trial. App. 1257.

This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred finding trial counsel was not ineffective for failure to pursue a change of venue because the case was highly publicized locally which resulted in prejudice to petitioner.

Relevant facts

During *voir dire*, the trial court asked the jury pool the following question, "[i]s there any member of the jury panel who has formed or expressed any opinion, thinks they may have read anything about this case or seen anything about this case in the newspaper or in the media or has any prior knowledge of this case at any time?" App. 13, l. 24—14, l. 3. The court then spoke to each of the jurors separately regarding this question. The court dismissed two of the potential jurors, juror 197 and juror 169. App. 15, l. 5—16, l. 9; 17, l. 5—18, l. 4. Juror 170 told the court her stepmother worked at South Carolina Law Enforcement Division (SLED) and stated, "so I've heard – not anything intimate, obviously, but I've heard about it a few times." She stated that she only heard what was on the news and agreed to put aside that information and judge the case on the evidence. App. 16, l. 12—17, l. 4. Juror 170 served on petitioner's jury. App. 29, ll. 9-13.

At the evidentiary hearing, petitioner testified that throughout the proceedings in her case there was news coverage including cameras inside the courtroom during her arraignment. App. 1209, ll. 3-13. Defense counsel agreed there was "more than the average news coverage" in petitioner's case. App. 1222, ll. 11-13. Counsel testified that at least the end of petitioner's trial was televised. App. 1222, ll. 3-11. Counsel stated, "I would not have sat anybody who knew anything about the case." App. 1222, ll. 19-22.

Discussion

Trial counsel was deficient for failure to move for a change of venue in this highly publicized case because petitioner was prejudiced where a juror that stated during *voir dire* that she had knowledge of the case because her mother was an employee of SLED ultimately served on petitioner's jury.

The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in their application. *Griffin v. Martin,* 278 S.C. 620, 300 S.E.2d 482 (1983). The question on PCR is, "whether 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." *Strickland v. Washington,* 466 U.S. 668, (1984). The resolution of this question involves the application of the two-prong test in *Strickland.* First, the applicant must show counsel's performance was deficient. This requires showing counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment. Second, the applicant must show that counsel's deficient performance prejudiced the defense. This requires showing counsel's errors were so serious as to deprive the defendant of a fair trial--a trial where the result would be reliable. *Id.* at 687.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. The proper measure of counsel's performance is whether counsel provided representation within the range of competence required of attorneys in criminal cases. *Id.* at 687.

It was unreasonable for trial counsel to fail to move for a change of venue where petitioner was being tried for the death of a child in a small town where the case was covered

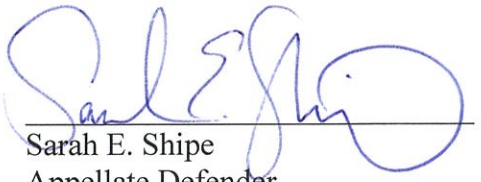
extensively. Furthermore it was unreasonable for counsel to fail to strike the juror that admitted they knew about the case from their parent who was employed at SLED.

"When a trial judge bases the denial of a motion for change of venue because of pretrial publicity upon an adequate voir dire examination of the jurors, his decision will not be disturbed absent extraordinary circumstances." *State v. Robinson*, 305 S.C. 469, 472, 409 S.E.2d 404, 406–07 (1991). "Mere exposure to pretrial publicity does not automatically disqualify a prospective juror; the defendant must show actual juror prejudice." *Id.* "When jurors are exposed to such publicity, there is no error in refusing a change of venue where jurors are found to have the ability to lay aside any impressions or opinions and render a verdict based on the evidence presented." *Id.*

Petitioner was prejudiced where this juror's exposure was more than the normal juror's exposure to pretrial publicity, the juror revealed to the court and to trial counsel that her mother worked at SLED and she heard about the case "a few times." The juror downplayed her knowledge of the case stating she had not heard "anything intimate" and stated she could be fair and impartial. However, her unintentional bias should not be minimized where she has a parent in law enforcement and admitted that she knew about the case prior to the trial.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah E. Shipe
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This 10th day of October, 2025.

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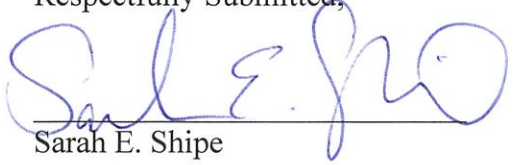
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Theia Darion McArdle 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 Letitia H. Verdin, which was held on Aug. 3, 2022, 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 Theia Darion McArdle.

Respectfully Submitted,



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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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