

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
R. Lawton McIntosh, Circuit Court Judge

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FEB 20 2014

S.C. Supreme Court

JEROME CHISHOLM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001639

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in denying Petitioner relief from his conviction and sentence where trial counsel, in violation of Petitioner's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, failed to file a motion for a speedy trial when the most damaging evidence against him was discovered over a year after he was arrested for the alleged offense?

STATEMENT

On December 12, 2005, a Greenwood County grand jury indicted Petitioner for criminal sexual conduct with a minor in the first degree. App. 611-612. The state represented by Andrew C. Hodges and Jane H. Merrill called the case to trial on June 15, 2009 before the Honorable Eugene C. Griffith, Jr., and a jury. E. Charles Grose Jr., and Janna Nelson represented Petitioner. App. 1. The jury found Petitioner guilty as charged. App. 487, lines 4-9. Judge Griffith sentenced Petitioner to thirty years' imprisonment. App. 493, lines 20-25; App. 613. Robert M. Pachak represented Petitioner in his direct appeal. App. 496-511. On October 26, 2011, the Court of Appeals affirmed Petitioner's conviction and sentence. State v. Chisholm, 395 S.C. 259, 717 S.E.2d 614 (Ct. App. 2011); App. 530-540.

On January 26, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 541-547. The Honorable R. Lawton McIntosh presided over an evidentiary hearing on November 29, 2012. Bradley Knott represented Petitioner, and J. Rutledge Johnson represented the state. App. 555. On March 25, 2013, Judge McIntosh issued his order denying Petitioner relief from his conviction and sentence. App. 599-610.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari follows.

ARGUMENT

The PCR court err in denying Petitioner relief from his conviction and sentence where trial counsel, in violation of Petitioner's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, failed to file a motion for a speedy trial when the most damaging evidence against him was discovered over a year after he was arrested for the alleged offense.

Relevant facts

Evidence produced at trial

Neno Berry claimed Petitioner, with whom she had a son, arrived at her home during the early morning hours of September 17, 2005. Berry walked onto her porch to answer a private call. App. 203, line 9 – App. 204, line 24. When Berry returned, she found Petitioner and their son in bed. App. 207, line 22 – App. 208, line 3; App. 209, line 19 – App. 210, line 12. Berry then saw Minor's hair bow sticking out of the covers. App. 210, line 13 – App. 211, line 3. Berry pulled the covers back and saw Minor's "pants all the way down" and Petitioner's "penis hanging down between his legs and inside [Minor]'s butt." App. 211, lines 7 – 11. Berry replaced Minor's clothing and sent her to a family member's house down the street. App. 212, lines 4 – 16. Shortly thereafter, Berry and Petitioner went to the family member's house as well. App. 212, lines 19 – 23. After speaking to the police, Berry took Minor to the hospital where Minor was examined. App. 213, lines 7 – 14.

Minor claimed that Petitioner took off her clothes, put her in the bed, and then turned her over and got on top of her. App. 224, lines 2 – 25. According to Minor, Petitioner put his penis inside her butt. App. 225, lines 8-19. Then, Minor's mother walked in the room. App. 225, lines

24 – 25. Her mother took her to a family member’s house to call the police. App. 226, lines 1 – 4. Minor spoke to the police and later went to the hospital. App. 226, line 14 – App. 227, line 3.

Police Officer Vernon Peppers responded to the call. After speaking to Berry and Minor, Peppers arrested Petitioner on September 17, 2005. App. 255, line 1 – App. 256, line 2. Peppers testified that Minor demonstrated how Petitioner had touched her. In her demonstration, Minor used her open right-hand to touch the right side of her buttocks. App. 263, lines 7 – 23. Minor denied Petitioner touching her anywhere else. App. 263, line 24 – App. 264, line 3. Additionally, the doctor and nurse who examined Minor told Peppers that they did not believe that “the suspect had made penetration into the victim.” App. 266, line 20 – App. 267, lines 7.

The emergency room nurse at the hospital performed a sex assault kit on Minor on September 17, 2005 and released this evidence to the police on the same day. App. 240, line 10 – app. 243, line 12. However, the police did not collect a sample of Petitioner’s DNA until July 27, 2007, almost two years after his arrest. App. 282, lines 5 – 21. On August 16, 2007, the local police transported Petitioner’s DNA sample to the South Carolina Law Enforcement Division (SLED). App. 284, lines 15 – 20.

The DNA analyst found no sperm on the swabs from Minor’s vagina or rectum. App. 306, line 14 – App. 307, line 1. However, the analyst found a bloodstain on Minor’s underwear. The analyst extracted DNA from the stain and discovered a mixture of DNA from two individuals. One of the profiles was from an unidentified male. App. 308, line 1 – App. 311. The analyst requested a DNA sample from Petitioner. App. 310, line 24 – App. 311, line 2. He received the sample on August 16, 2007 – almost two years after Petitioner’s arrest. App. 312, lines 10-13. The analyst compared the DNA profile from the mixed sample to the profile of Petitioner and determined that

two matched. App. 313, lines 1 – 11. The analyst performed further analysis and determined there was semen mixed with the bloodstain. App. 313, line 12 – App. 314, line 11.

Dr. Lyle Pritchard examined Minor on October 12, 2005. App. 407, line 25 – App. 408, line 3. Although Minor had a normal physical exam, Dr. Pritchard diagnosed her with sexual abuse based upon a positive HIV test. App. 422, lines 20 – 22; App. 424, lines 5 – 11.¹ According to Dr. Pritchard, children may acquire HIV in one of three ways: congenital infection, blood transfusion, and sexual acquisition. Berry's medical records indicated that she tested negative for HIV while she was pregnant with Minor; therefore, Dr. Pritchard determined minor had not acquired HIV through congenital infection. Minor's medical history indicated that she had never received a blood transfusion. Thus, only the third option of sexual acquisition remained for how minor became HIV positive. App. 424, line 14 – App. 425, line 20. On cross examination, Dr. Pritchard admitted that the sexual transmission of HIV requires the exchange of body fluids and that minor had denied having a penis inserted into her vagina or rectum. Minor also denied any ejaculation. App. 427, line 8 – App. 429, line 9.

Additionally, the prosecution presented evidence that Petitioner's blood tested positive for HIV on November 14, 2005. App. 434, line 19 – App. 435, line 5. This testing was performed within a few months of his arrest.

Evidence produced at the PCR

Petitioner and trial counsel never discussed Petitioner's right to a speedy trial. App. 564, line 17 – App. 560, line 1. While Petitioner waited in jail for approximately three and a half years, the prosecution developed additional against him, and trial counsel never explained Petitioner's

¹ Jean Banks, an employee of the Greenwood County Health Department, claimed Minor's blood tested positive for HIV on October 21, 2005. App. 430, line 25 – App. 431, lines 1; App. 434, lines 4 – 18.

right to a speedy trial or sought to have the charges dismissed based upon a violation of Petitioner's speedy trial right. Importantly, almost two years into Petitioner's incarceration, the prosecution learned of the existence of semen in the minor's underwear and of a DNA match to Petitioner with that semen. App. 565, line 1 – App. 566, line 14.

Trial counsel admitted that he failed to file a speedy trial motion on Petitioner's behalf. According to trial counsel, “[t]his [was] probably not the type of case that [he] would do that in.” Trial counsel explained that he was hoping to avoid a trial due to the nature of the allegations and the evidence against Petitioner. Therefore, trial counsel put forward substantial efforts to negotiate a plea agreement; however, trial counsel was unsuccessful in those efforts. App. 578, line 17 – App. 579, lines 6. On cross-examination, trial counsel admitted he had no recollection of having any discussions with Petitioner about his right to speedy trial. App. 584, lines 23 – 25. Trial counsel claimed he was using “the time to see if there was a way that this case can be resolved without trial and without the type of sentence that [petitioner] ultimately had imposed upon him.” App. 584, lines 13 – 18. Nevertheless, trial counsel admitted that additional damaging evidence was produced by the prosecution approximately two years into Petitioner's pretrial incarceration. App. 585, line 20 – App. 586, line 19. Trial counsel opined that had he filed a motion for speedy trial, the solicitor would have looked at his file sooner and discovered the rape kit had not been analyzed. Trial counsel further opined that the trial court would have granted the solicitor an opportunity to have the evidence examined. App. 586, line 20 – App. 587, line 22.

At the conclusion of the PCR hearing, the PCR judge denied Petitioner's claims except the speedy trial claim which he took under advisement. App. 593, line 13 – app. 596, line 17.

Order denying relief

As an initial matter, the PCR judge found the issue was not properly before the Court as Petitioner had not raised the issue in his original application and had not filed an amended application. App. 605. This was in error as will be discussed more thoroughly below in the discussion section.

Addressing the merits of the issue, the PCR judge found trial counsel provided effective assistance where he failed to file a speedy trial motion because counsel “wanted to avoid a trial based on the facts and evidence in this case.” App. 605. The PCR judge further explained that trial counsel attempted to negotiate a favorable plea agreement, but was unable to do so. App. 605. The PCR court acknowledged that Petitioner’s claim “rest[ed] on the fact that approximately two years into his incarceration awaiting trial, the sexual assault examination kit of the victim, which was taken at the hospital shortly after the sexual assault had not been analyzed.” App. 605-606. An analysis of the kit revealed a mixture of blood and semen on the alleged victim’s underwear. Thereafter, the prosecution sought and obtained a sample of Petitioner’s DNA for comparison. At trial, the state’s DNA expert testified Petitioner’s DNA matched the DNA found in the alleged victim’s underwear. App. 606. Although the PCR court recognized that this damning evidence was not discovered until two years into Petitioner’s detention, the PCR court was persuaded by trial counsel’s testimony that “even if he had filed [a speedy trial] motion, the solicitor would have discovered that the sexual assault examination kit had not been analyzed when he reviewed his file and would have had the kit analyzed.” App. 606.

The PCR court concluded trial counsel’s decision not to file a motion for speedy trial was a reasonable trial strategy based on the facts and evidence in the case. Additionally, the court found

no prejudice because “even had [trial] counsel filed this motion and the [trial] court granted it, the solicitor still would have had this evidence analyzed as further proof” of Petitioner’s guilt.

Discussion

The PCR judge erred in concluding Petitioner’s claim for relief regarding trial counsel’s ineffective assistance in failing to file a motion for a speedy trial was not properly before the court. Petitioner’s original PCR application alleged that trial counsel was ineffective and that his right to due process of law had been violated as a result of the “time frame between arrest and trial.” App. 543.² Rule 8(f) of the South Carolina Rules of Civil Procedure provides that “[a]ll pleadings shall be so construed as to do substantial justice to all parties.” See also Al-Shabazz v. State, 338 S.C. 354, 380-381, 527 S.E.2d 742, 756 (2000); Pittman v. Galloway, 281 S.C. 70, 313 S.E.2d 632 (Ct. App. 1984); Pilkington v. McBain, 274 S.C. 312, 262 S.E.2d 916 (1980); Montgomery v. Conway Lumber Co., 171 S.C. 483, 172 S.E. 620, 621 (1934); Lofis v. Eck, 288 S.C. 154, 156, 341 S.E.2d 641, 642 (Ct. App. 1986). The language used by Petitioner – “time frame between arrest and trial” – clearly evoked the speedy trial provision of the United States Constitution.³ Referencing the time between arrest and trial could refer to little else except a violation of Petitioner’s speedy trial right.

² During the PCR evidentiary hearing, Petitioner explained that in his application, he stated that his rights had been violated due to the “timeframe between arrest and trial” and that what he meant by this was that his right to a speedy trial had been violated. The state did not object to this testimony. App. 564, line 17 – App. 565, line 12. Additionally, the state questioned trial counsel regarding the speedy trial motion during the hearing. App. 578, line 17 – App. 579, line 9. However, when Petitioner was questioning trial counsel on cross-examination, the state objected to the speedy trial issue, but provided no basis for the objection. App. 584, lines 18-20.

³ In the return, the state construed this claim as one that could have been raised on direct appeal. App. 551-552. After quoting the statute governing the grounds for PCR actions, the state argued the issue was not cognizable for PCR. Either the state misconstrued the issue by not understanding that Petitioner was alleging trial counsel was ineffective for failing to file a speedy trial motion due to the time between his arrest and trial or the state understood the issue was related to a speedy trial motion and viewed such as more appropriate for direct appeal.

In order to obtain relief based upon a claim of ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient and such deficiency prejudiced the petitioner. Strickland v. Washington, 466 U.S. 668, 687 (1984). An attorney whose representation fell below an objective standard of reasonableness provided deficient performance. Id. at 688. An attorney's performance is measured against prevailing professional norms. Id. at 688. Prejudice from deficient performance occurs when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Id.

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial." U.S. Const. amend. VI; see also Klopfer v. North Carolina, 386 U.S. 213 (1967); Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966). Additionally, our state constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy trial." S.C. Const. art. I, § 14. "The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense." State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012)(citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). If a court concludes a defendant's right to a speedy trial has been violated, dismissal of the charges "is the only possible remedy." Barker v. Wingo, 407 U.S. 514, 522 (1972).

The United States Supreme Court explained "[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon the circumstances." Beavers v. Haubert, 198 U.S. 77, 87 (1905). Therefore, the Court explained the appropriate analysis for a speedy trial claim is "a balancing test, in which the conduct of both the prosecution and defendant are weighed."

Barker, 407 U.S. at 529. The Barker Court “identif[ied] some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right.” Those four factors are the length of the delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant. Id. at 530; see also Doggett v. United States, 505 U.S. 647 (1992); Vermont v. Brillon, 556 U.S. 81 (2009); State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (1973); State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974); Waites, 270 S.C. at 107, 240 S.E.2d at 653; State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). However, “none of the four factors identified [are] a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial.” Barker, 407 U.S. at 533.

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial “has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay.” Doggett, 505 U.S. at 652 (quoting Barker, 407 U.S. at 530-531).⁴ The length of the delay that will trigger the inquiry is dependent upon the peculiar circumstances of the case. Barker, 407 U.S. at 530-531. Generally, the delay tolerated for an ordinary street crime is less than for a serious, complex conspiracy charge. Id. at 531.

The Barker Court found a delay between arrest and trial of well over five years to be clearly “extraordinary.” Barker, 407 U.S. at 533. Although seven months of that period was excused by the illness of a witness, the delay of “more than four years was too long a period.” Id. at 534. In Doggett, the Supreme Court noted that, depending on the nature of the charges, lower courts have generally found post-accusation delay “presumptively prejudicial” as it approaches one year. Doggett, 505 U.S. at 652; see also State v. Cooper, 386 S.C. 210, 217, 687 S.E.2d 62, 66 (Ct. App.

⁴ “The clock starts running on a defendant’s speedy trial right when he is ‘indicted, arrested, or otherwise officially accused.’” Langford, 400 S.C. at 442, 735 S.E.2d at 482 (quoting United States v. MacDonald, 456 U.S. 1, 6 (1982)).

2009). The South Carolina Supreme Court found a two-year and four-month delay sufficient to trigger further review. Waites, 270 S.C. at 108, 240 S.E.2d at 653. The Court found a twenty-three month delay presumptively prejudicial where the charges were serious, but the factual proof was not complicated. Langford, 400 S.C. at 442-443, 735 S.E.2d at 482. Our Court also found a three year and five month delay sufficient to trigger the analysis. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). This Court affirmed a circuit court's decision that a delay of forty-four months triggered the speedy trial inquiry. State v. Cooper, 386 S.C. 210, 216-217, 687 S.E.2d 62, 66-67 (Ct. App. 2009)

The Supreme Court afforded different weights to the different reasons for the presumptively prejudicial delay. On the far end of the spectrum is a deliberate delay by the prosecution to impede the defendant's ability to defend himself. A prosecutor acts improperly if he intentionally delays a trial to gain some tactical advantage over a defendant or to harass a defendant. Barker, 407 U.S. at 531, n. 32 (citing United States v. Marion, 404 U.S. 307, 325 (1971); Pollard v. United States, 352 U.S. 354, 361 (1957)). Such a reason should be weighted heavily against the prosecution. Even neutral reasons weigh against the state because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531.

Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett, 505 U.S. at 657. Obviously, delays contributed to the defendant's conduct weighs against him. Brillon, 556 U.S. at 90.

The third factor of the speedy trial analysis is the defendant's assertion of his right to a speedy trial. According to the Supreme Court, "[w]hether and how a defendant asserts his right is closely related to the other factors" because the strength of his efforts will be affected by the other factors. Barker, 407 U.S. at 531-532.

As an initial matter, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). The Court granted relief to Doggett while noting that he "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the prosecution. Id. at 658.

As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of

memories and exculpatory evidence. Barker 507 U.S. at 532. The Court observed that loss of memory “is not always reflected in the record because what has been forgotten can rarely be shown.” Id. According to the Court, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” Id. Being locked up hinders a defendant’s ability to gather evidence, contact witnesses, and prepare his defense. Id. at 533. Even a defendant who is not in jail prior to trial is disadvantaged “by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility.” Id.

Trial counsel rendered constitutionally deficient performance by failing to file a motion for speedy trial on Petitioner’s behalf where the prosecution waited almost four years before calling Petitioner’s case to trial. The length of the delay is presumptively prejudicial in light of the nature of the case. It was not a complex matter involving numerous parties. It was a simply matter requiring the testimony of very few individuals. The prosecution’s reason for the delay is unknown as no motion was made by trial counsel, which may have required the prosecutor to provide a reason for the delay. The prejudice to Petitioner is apparent based upon the additional evidence produced during his detention awaiting trial. Petitioner was arrested in September 2005 and charged with criminal sexual conduct. The evidence for the rape kit was gathered immediately, but due to failures by the state, the kit was not analyzed to determine any evidentiary value it may hold. In fact, the kit was not analyzed until at least two years into Petitioner’s pre-trial incarceration. Only then did the state seek the analysis of the evidence and the acquisition of Petitioner’s DNA for comparison purposes.

Turning to the prejudice prong, the PCR judge erred in his analysis of the prejudice prong. The PCR judge concluded that even if trial counsel had filed a motion for speedy trial and the trial judge had granted the motion, then the prosecution would have had the evidence in the rape kit

analyzed. However, this determination misapprehends the law governing speedy trial motions. As explained supra, if the trial court determined Petitioner's right to a speedy trial had been violated, then the remedy would have been a dismissal of the charges. This would not have allowed an opportunity for the prosecution to acquire additional evidence to use against Petitioner.

The correct prejudice analysis is to ask whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Counsel's deficient performance prejudiced Petitioner because his failure to move for a speedy trial allowed the state the opportunity to develop additional damaging evidence against Petitioner. The prosecution had no physical or forensic evidence against Petitioner until almost two years after the initial charges were made. The only evidence against him was the testimony of his ex-girlfriend and the alleged victim, Minor. During cross-examination, trial counsel challenged the credibility of the ex-girlfriend by showing her motive lie and how she gave a contradictory statement to the police officer who arrived on the scene. Trial counsel challenged the credibility of Minor by showing she gave statements in sharp contrast to her testimony to the doctor who examined her and the police officer who responded to the scene. Thus, there was a reasonable probability that the outcome of the proceeding would have been different had trial counsel filed the motion and required the prosecution to move forward without the forensic evidence. Further, had trial counsel filed the motion for speedy trial and the trial judge determined Petitioner's speedy trial rights had been violated, then the remedy would have been a dismissal of the charges.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the PCR court.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENWOOD COUNTY
R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

JEROME CHISHOLM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001639

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jerome Chisholm 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 records and transcript of Petitioner's post-conviction relief hearing which was held on November 29, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Jerome Chisholm.

Respectfully submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of February, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
R. Lawton McIntosh, Circuit Court Judge

JEROME CHISHOLM,

PETITIONER,

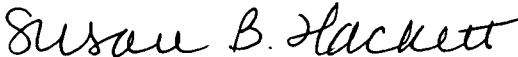
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STATE OF SOUTH CAROLINA,

RESPONDENT

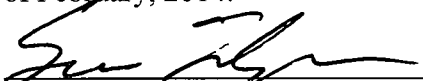
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jerome Chisholm, #335354, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of February, 2014.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of February, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.