

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

NATICIA LAURENT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001313

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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Division of Appellate Defense
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INDEX

INDEX.....1

ISSUE PRESENTED2

STATEMENT3

ARGUMENT4

CONCLUSION8

ISSUE PRESENTED

Did the PCR judge err in refusing to grant a continuance when the information packet for the PCR hearing was mailed to PCR counsel on February 20, 2013, and PCR counsel did not have adequate time to meet with his client and discuss the packet before the PCR hearing on April 4, 2013.

STATEMENT

In November of 2009, the Beaufort County Grand Jury indicted Natricia Laurent for homicide by child abuse, indictment #2009-GS-07-2249. On September 22, 2011, Laurent appeared before the Honorable Roger M. Young and pled guilty as charged. Attorney Helen Dovell represented Laurent at the guilty plea. Attorney Jeffrey Stephens prosecuted the case on behalf of the State. Pursuant to negotiations with the State, Judge Young sentenced Laurent to twenty {20} years in prison. Laurent did not appeal her sentence or conviction.

On July 25, 2012, Laurent filed an application for post conviction relief. The State filed a return on February 20, 2013. On April 4, 2013, an evidentiary hearing was held before the Honorable Perry M. Buckner. Attorney Larry W. Weidner, II represented Laurent at the PCR hearing. Attorney Ashleigh R. Wilson was present on behalf of the State. In a written order filed May 2, 2013, Judge Buckner denied relief and dismissed the application. A timely notice of intent to appeal was served on June 11, 2013. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to grant a continuance when the information packet for the PCR hearing was mailed to PCR counsel on February 20, 2013, and PCR counsel did not have adequate time to meet with his client and discuss the packet before the PCR hearing on April 4, 2013.

At 9:12 AM on April 4, 2013, Petitioner's case called for an evidentiary hearing. PCR counsel moved to continue the case to the next PCR term. (App. p. 35, line 15 – 22). PCR counsel advised the judge that he was appointed to represent Petitioner on September 19, 2012, but did not receive the PCR packet with the information about the case until the beginning of March 2013. (App. p. 35, line 23 – p. 36, lines 1-17). The State advised the judge that the packet would have been sent to PCR counsel on February 20, 2013, when the State filed their return. (App. p. 36, line 20 - p. 37, lines 1). PCR counsel then advised the judge that he sent the packet to Petitioner on March 11, 2013. PCR counsel further stated that he had not had an opportunity to meet with his client or discuss issues to be raised at the PCR hearing. (App. p. 37, lines 3-23).

There is no evidence in the record that the case had been continued previously. The State, however, objected to the continuance. (App. p. 38, lines 10-16). The State argued, "As we – as I stated earlier, the information was provided to Mr. Weidner on February 20th, after the filing of my return. Your Honor, it's a guilty plea. It's not an extensive record that needs to be reviewed for this hearing. So, we would just request that we proceed today." (App. p. 38, lines 11-16). Petitioner was charged with homicide by child abuse. While the guilty plea transcript may not have been extensive, the discovery material provided by the State for a case of this serious nature should have been extensive. During the PCR hearing plea counsel testified that in preparing Petitioner's case counsel spoke with Petitioner's husband, the forensic pathologist and the lead investigator. (App. p. 58, lines 7-10). Plea counsel also testified that Petitioner gave multiple statements. (App. p. 57, lines 14 – p. 58, lines 1-4). During the plea, counsel stated that she consulted with another medical

examiner about the case but there is no testimony in reference to an independent expert in the PCR transcript. (App. p. 9, lines 15-17).

Judge Buckner denied the motion to continue the case. (App. p. 38, line 17 – p. 39, lines 1-4). Judge Buckner stated, “. . . and I certainly believe in having time to prepare; but you haven’t shown me sufficient legal prejudice that would require us to delay this hearing, in light of what I hear from the State. Your motion is respectfully denied.” (App. p. 38, line 25 – p. 39, lines 1-4). Counsel then asked for ten minutes to meet with his client. (App. p. 39, lines 5-6). Judge Buckner stated, “I gave you ten minutes to visit with your client, and started this hearing 15 minutes late to allow you to do so.” (App. p. 39, lines 7-9). Judge Buckner then told counsel, “I’ll give you one more minute, Mr. Weidner, but it’s time to fish or cut bait.” (App. p. 39, lines 11-12). The judge then told PCR counsel to proceed and stated, “There are other people waiting behind you.” (App. p. 39, lines 16-17). After meeting with his client for sixteen minutes, PCR counsel informed the judge that Petitioner wanted to withdraw her post conviction relief application. (App. p. 39, lines 22-23). Upon questioning by the judge, PCR counsel attempted to confer with Petitioner. (App. p. 39, lines 24 – p. 40, lines 1-13). The PCR judge then stated, “We’re either going forward with the hearing or it’s withdrawn, one of the two, Mr. Weidner [PCR counsel], No, you need to talk to me now.” (App. p. 40, lines 14-16). PCR counsel then proceeded with the evidentiary hearing calling as witnesses the petitioner and trial counsel. No other witnesses were called to testify at the PCR hearing.

PCR counsel’s direct examination of Petitioner consisted of fourteen questions. (App. pp. 42-44). Plea counsel testified that she should have asked for a suspended sentence although she was aware of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011) holding that the trial court lacked the authority to suspend a sentence, pursuant to S.C. Code §24-21-410, for burglary first degree

because burglary first degree carries a maximum sentence of life without parole. (App. pp. 48-54). In the order of dismissal the PCR judge wrote, “This Court finds counsel’s decision to not request a suspended sentence for homicide by child abuse in light of State v. Jacobs was proper.” (App. p. 75). Although Petitioner alleged in her application for post conviction relief that plea counsel was ineffective because “[m]y crime was an accident and my attorney did not push the issue to the best of her ability,” the only issue presented to the PCR judge was the suspended sentence issue.

The PCR judge erred in refusing to grant a continuance when PCR counsel did not have the opportunity to adequately consult with Petitioner about issues to be raised in the PCR hearing. Petitioner is serving a twenty year sentence for homicide by child abuse. Sixteen minutes is not enough time to consult with a PCR client in such a case. While pursuant to Martinez v. Ryan, --- U.S. ---, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), Petitioner is no longer procedurally barred from raising substantial ineffective assistance of counsel claims in federal habeas, Petitioner submits that a South Carolina circuit court should have the opportunity to address the ineffective assistance of counsel claims after the issues have been fully investigated by PCR counsel.

A motion for continuance is addressed to the sound discretion of the trial court and its ruling on such motion will not be reversed without a clear showing of abuse of discretion. State v. Browder, 277 S.C. 206, 284 S.E.2d 775 (1981). In State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989) the South Carolina Supreme Court wrote, “In State v. Squires, 248 S.C. 239, 149 S.E.2d 601 (1966), we held that the trial judge did not abuse his discretion in refusing to grant a continuance. We stated there, in pertinent part: ‘There is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points in their behalf could have been raised had more time been granted for the purpose of preparing the case

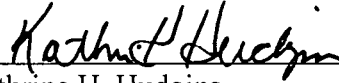
for trial.’ Squires, 248 S.C. at 244, 149 S.E.2d at 603. See also, State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977).”

In Tanner the Court found it was reversible error to deny defendant a continuance so that he could adequately ascertain the evidentiary value of blood, skin, and hair samples taken from vehicle after accident and held in police custody until ten minutes before a pretrial hearing. The Court found that Tanner satisfied the Squires criteria of demonstrating other evidence that could have been produced, and other points in his behalf that could have been raised. In the present case it was reversible error to deny the continuance so that PCR counsel could adequately explore, with his client, potential issues to be raised in post conviction relief. Based on the record before this Court, a continuance would have allowed PCR counsel to explore the various statements of Petitioner referenced by plea counsel during the plea. Additionally, a continuance would have allowed PCR counsel to learn the identity of the medical expert referenced by plea counsel during the plea, and perhaps frame an ineffective assistance of counsel claim based on the failure to pursue an accident defense. Petitioner satisfied the Squires criteria.

CONCLUSION

Based on the above argument, the case should be remanded for a new evidentiary hearing after PCR counsel is given adequate time to meet with Petitioner and prepare.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Perry M. Buckner, Circuit Court Judge

NATICIA LAURENT,

PETITIONER,

V.

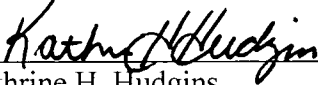
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001313

CERTIFICATE OF SERVICE


I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire this 20th day of March, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

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


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.