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MAY - 6 2014

THE STATE OF SOUTH CAROLINA

In the Supreme Court

S.C. Supreme Court

ON WRIT OF CERTIORARI

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

2013 - 001466

Todd Maurice Bussey,

Petitioner,

v.

State of South Carolina,

Respondent.

JOHNSON

PETITION FOR WRIT OF CERTIORARI

Irma R. Brooks
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STATEMENT OF ISSUES

- (1) Whether the Petitioner was not properly represented at trial by counsel when trial counsel failed to object to prejudicial testimony, thereby resulting in ineffective assistance of counsel?
- (2) Whether the Petitioner was not properly represented on Appeal by counsel because Appellant's counsel abandoned the first two issues, thereby resulting in ineffective assistance of counsel?

STATEMENT OF THE CASE

Petitioner was indicted at the March 2007 term of the Lexington County Grand Jury for Armed Robbery (2007-GS-32-710). Petitioner was represented by Attorney William F. Gorski. Petitioner enter a not guilty plea and was tried on May 8-9, 2009. Petitioner exercised his right not to testify on his behalf during the trial. The jury returned a verdict of guilty and Petitioner was sentenced by the Honorable R. Knox McMahon for a period of fifteen (15) years.

A Notice of Appeal was timely filed on Petitioner's behalf and an appeal was perfected. Attorney Lanelle C. Durant represented Petitioner on appeal. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. *State v. Bussey*, Op. No. 2011-UP-139 (S.C. Ct. App. Filed April 5, 2011). The Remittitur was issued on April 22, 2011.

Petitioner filed an Application for Post-Conviction Relief on June 8, 2011, alleging the following grounds:

- (a) "Applicant was not properly represented at trial by not having ask to bring forth key evidence during trial."; and

- (b) “Applicant was misrepresented at direct appeal hearing by having his first two issues abandoned without reason.”

Petitioner’s Post-Conviction Relief Application was amended by Attorney Ryan M. Wingard on April 7, 2013, to the following grounds:

- (a) “Applicant was not properly represented at trial by counsel for failing to object to prejudicial testimony.” And
- (b) “Applicant was not properly represented on Appeal by counsel because Appellant’s coun[sel] abandoned the first two issues.”

The Post-Conviction Relief hearing was held on April 18, 2013, before the Honorable Frank R. Addy, Jr. in the Court of Common Pleas for Lexington County. At the evidentiary hearing, Petitioner alleged he was being held in custody unlawfully for the following reasons related to ineffective assistance of counsel: failure to make timely objections at trial; failure to investigate and present exculpatory evidence; failure to prepare; and failure to present all briefed issues at the oral argument.

The following witnesses testified at the evidentiary hearing: Attorney LaNelle Cantey Durant, Attorney Robert Membery Pachak, Petitioner Todd Maurice Bussey; and Attorney William F. Gorski.

Regarding the underlining charge and alleged facts, Petitioner was accused of committing an armed robbery with a deadly weapon at the Kangaroo Express, in which currency and/or lottery tickets were stolen. At the trial of this matter, the State introduced evidence of identification of Petitioner as the person committing the offense, evidence of the Petitioner’s mother and girlfriend cashing stolen lottery tickets, and evidence of a weapon. The State also introduced other evidence related to the case.

As a result of the evidentiary hearing, the Court made the following findings of fact and conclusions of law: Petitioner failed to meet his burden to prove trial counsel was ineffective for failing to object to inadmissible testimony and evidence at trial; Petitioner failed to prove trial counsel was ineffective for failing to conduct a reasonable investigation of allegedly exculpatory evidence; Petitioner failed to prove his appellant counsel was ineffective for substituting a colleague to argue the case on appeal; Petitioner failed to prove the first and second prongs of *Strickland* and that overwhelming evidence of guilt supported Petitioner's conviction. The Court further found that Petitioner affirmatively waived any remaining allegations set forth in his application for post-conviction relief.

Based on the above grounds, the Court concluded that Petitioner did not establish any constitutional violations or deprivations that would give rise to post-conviction relief. Therefore, the Court denied and dismissed with prejudice any such relief. The order of the court was dated June 13, 2013.

This Petition for Writ of Certiorari followed.

ARGUMENTS


- (1) Petitioner was not properly represented at trial by counsel when trial counsel failed to object to prejudicial testimony, thereby resulting in ineffective assistance of counsel.
- (2) Petitioner was not properly represented on Appeal by counsel because Appellant's counsel abandoned the first two issues, thereby resulting in ineffective assistance of counsel.

This Petition for Writ of Certiorari is submitted pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

CONCLUSION

Pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), this Honorable Court should grant relief accordingly.

RESPECTFULLY SUBMITTED,


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May 6, 2014

MOTION TO BE RELIEVED AS COUNSEL

Counsel for Petitioner, Todd Maurice Bussey, now moves before this Honorable Court to be relieved as counsel based on the following grounds:

1. The undersigned counsel has been appointed in lieu of the Office of Appellate Defense to represent Petitioner in this matter;
2. The undersigned counsel has reviewed the entire record in this matter, as well as the applicable rules of court and related case law;
3. The undersigned counsel is of the opinion that seeking Certiorari from the Order of Dismissal of the Post-Conviction Relief is without merit under current South Carolina law.
4. The undersigned counsel has submitted the Petition for Writ of Certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).


THEREFORE, the undersigned counsel respectfully requests that this Honorable Court relieve her as counsel in this matter.

RESPECTFULLY SUBMITTED,

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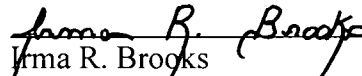
PROOF OF SERVICE

I do hereby certify that I have this 6th day of May 2014, served a copy of the **PETITION FOR WRIT OF CERTIORARI** and the **APPENDIX** by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

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RESPECTFULLY SUBMITTED,



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