

Issue Presented

Whether the PCR court erred in concluding
Petitioner did not suffer prejudice from trial counsel's
deficient failure to prepare and investigate.

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JUN 11 2014

S.C. SUPREME COURT

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Statement

JUN 19 2014

S.C. SUPREME COURT Applicant testified at PCR that Tera Retzer was an co-defendants girlfriend and that she was also a employee at the Bi-lo that was robbed. He also stated that he expected that Retzer's testimony would exonerate him and that he explored that testimony with her. Hope informed Retzer that she needed to come forward and give the information that she needed to give, and that she indicated that she was willing to do that but trial Counsel Sample told him that he was to close to going to trial and that the judge would not grant him a continuance

Hope again iterated he told trial counsel sample to going to trial that Tera Retzer was a witness that he wanted him to subpoena because that testimony would exonerate him. Hope further stated that Retzer's testimony was more than just an alibi being that she was the girlfriend of one of the codefendants and being that she worked at the bi-lo that was robbed her testimony would have been very significant. Applicant indicated that Retzer's testimony would have been in the nature that he was set up by her boyfriend and other codefendant; So Mr. Sample understood how important Ms. Retzer was to his case but he did not have her to come to testify even after Retzer indicated that she was willing and available to testify. (Tr. p 311 Line 18 - p 313 Line 18)

Trial Counsel Sample indicated on direct examination that MS. Retzer was the girlfriend of one of the codefendants and that she was the cashier at the Bi-lo that was robbed. Sample stated that he recalled discussion between he and applicant about trying to subpoena MS. Retzer but he did not subpoena her. Counsel indicated that part of applicants defense was that he had a drug deal with one of the alleged co-defendants and that applicant owed the alleged co-defendants some money and was not able to provide it and that was the motivation for person testifying against him. Counsel stated that applicant told him that MS. Retzer's testimony was going to be directly related to that issue and that he didn't present that issue to the jury on the applicants behalf, that there was a drug deal and that the applicant had taken some money and that there was motivation for his alleged co-defendant setting him up Counsel further stated that the applicant told him that if MS. Retzer had

been called she would have potentially corroborated that information but it was his understanding that MS. Retzer was cooperating with the police investigation of the case and that she provided information to the police that was not supportive of applicant's position. Counsel indicated that he had never talked to MS. Retzer or interviewed her to see if that was the nature of her testimony, but indicated that she had given some information to the police about the case that was more favorable to the state than to the applicant and that it was his presumption that the fact that she was the girlfriend of one of the alleged co-defendants she would back up their positions that the applicant participated in the robbery. Counsel then reiterated that applicant told him something very different than that and recalled that the applicant indicated that she would have knowledge of this drug deal
< Appendix 321 Lme 19 - pg. 324 Lme 10 >

Argument

Petitioner suffered prejudice from trial counsel's failure to prepare and investigate this case when he failed to investigate Tera Retzer, a witness who could have exonerated him.

Petitioner suffered prejudice from trial counsel's deficiency because based on the testimony adduced at petitioner's P.C.R. hearing Tera Retzer and a friend of alleged co-defendant was requested by petitioner to testify on his behalf at trial to allege co-defendant's motivation to include him in the armed robbery. Trial counsel indicated that he never talked to or interviewed Ms. Retzer to see if that would be the nature of her testimony but presumed that the fact that she was the girlfriend of one of the alleged co-defendants that she would back up their position that petitioner participated in the robbery.

Under the dictates of Strickland v. Washington 466 U.S. 668 (1984) and the U.S. Const. amend. VI counsel has a duty to make reasonable investigations. A particular decision not to investigate must be directly assessed for reasonableness in all the circumstances. Counsel's actions are usually based on informed strategic choices made by the defendant and on information supplied by the defendant as in the case of Leah, in particular what investigation decisions are reasonable depends on such information. Looking into counsel's conversations with the petitioner is critical to a proper evaluation of counsel's investigation decisions. See U.S. v. Decoster, supra 372-373, 624 F.2d at 209-210. If there is only one line of defense as in this case counsel only presented an alibi defense counsel must have conducted a "Reasonably Substantial investigation" into that line of defense, since there can be no strategic choice that renders such an investigation unnecessary. Petitioner's testimony that Retzer's testimony would have exonerated him would indicate that there could not have been no strategic choice that would have rendered such an investigation unnecessary. The same duty exists if counsel relies at trial on one line of defense although others are available.

In either case the investigation should be thorough. It must include "An independent examination of the facts, circumstances and laws involved." In the instant case counsel failed to investigate the information supplied by the defendant because he presumed that Baker's testimony would back up the alleged co-defendant's position because she was a girlfriend of one of the alleged co-defendant. Counsel did not conduct a substantial investigation into petitioner's line of defense and excluded certain lines of defense for other than strategic reasons. Petitioners claim that counsel failed to prepare and investigate the case suggest that he was prejudiced by trial counsel's failure to look into petitioner's conversations and information supplied by the petitioner. See Cherry v. State 300 S.C. 115, 119 386 S.E.2d 624, 462 U.S. 1105, 103 S.Ct. 2451, 77 L.Ed. 2d 1332

Conclusion

For the foregoing reasons, Petitioner respectfully request that this court reverse the decision of P.C.R. Court and remand for a new trial.

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NOT CENSORED THIS ITEM, THEREFORE,
THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
S. C. DEPARTMENT OF CORRECTIONS