

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 18 2014

S.C. Supreme Court

Certiorari to Georgetown County

J. Cordell Maddox, Jr., Circuit Court Judge

QUINTIN J. HOLT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000402

JOHNSON PETITION FOR WRIT OF CERTIORARI

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT	4
CONCLUSION	8
PETITION TO BE RELIEVED AS COUNSEL.....	9

ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly object to the state's motion to amend the indictments to change the dates of the alleged cocaine sales since Petitioner testified he prepared his defense based on the original indictments?

STATEMENT

A Georgetown County Grand Jury indicted Petitioner at the February 10, 2010 term of General Sessions for two counts of distribution of cocaine base, third offense. App. 406-409. His case was called to trial on September 20, 2010 before the Honorable Benjamin H. Culbertson, and a jury. Assistant Solicitor Erin E. Bailey represented the state, and Cezar E. McKnight represented Petitioner. App. 1. On September 22, 2010, the jury found Petitioner guilty. App. 273, ll. 5-19. He was sentenced by Judge Culbertson to twenty five years imprisonment or a fifty thousand dollar fine. App. 284, ll. 8-13.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Holt, Op. No. 2012-UP-253 (S.C. Ct. App. Filed April 25, 2012).

On July 11, 2012, Petitioner filed an application for post-conviction relief (PCR) raising the issue contained in this petition. App. 311-323. The state filed a return to this application dated October 4, 2012. App. 324-327. Petitioner subsequently filed an amended PCR application dated March 19, 2013 and the state filed an amended return dated August 20, 2013. App. 352-362. The matter proceeded to an evidentiary hearing on August 29, 2013 before the Honorable J. Cordell Maddox, Jr. App. 363. Assistant Attorney General Joshua L. Thomas represented the state, and Charles T. Brooks, II represented Petitioner. App. 363. By order dated January 20, 2014, Judge Maddox denied Petitioner relief. App. 398-405.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly object to the state's motion to amend the indictments to change the dates of the alleged cocaine sales since Petitioner testified he prepared his defense based on the original indictments.

Relevant Trial Facts

The solicitor moved pretrial “to amend the two indictments that the state has called [to trial] to correct scrivener's errors. On 2010-GS-22-00181, it currently reads that Quentin J. Holt did in Georgetown County on or about June 15th of 2009, the state would move to amend on that particular indictment that the date be changed to June 17th of 2009. And on 2010-GS-22-00179, the indictment currently reads that Quentin J. Holt did in Georgetown County on or about June 14th of 2009, the state would move to amend that indictment to change the date to June 20th of 2009.” App. 33, l. 23 – 34, l. 8. The solicitor argued the amendments were proper because “the indictment is a notice document and the defendant was put on notice when the indictments were worded that they were on or about” the date on the original indictment. App. 34, ll. 9-16. She also argued that Petitioner was provided with discovery documents in a timely manner that contained “the dates that I am moving to amend to.” App. 34, ll. 18-20.

Trial counsel objected to the proposed amendments arguing that the discovery materials provided to the defense contained a broad range of dates, specifically from June 14, 2009 until June 21, 2009. He said, “I do not believe that the case law as it is in South Carolina even though it provides that the, that the indictment is a notice document gives them such broad leeway that they can just say sometime in the month of June and then come back at the time of trial when we are ready to go forward and come up with a specific date . . . Allowing them to do that basically put us

in the . . . mindset of having to mount a defense for the entire month of June . . .” App. 35, l. 1 – 36, l. 6.

The court then asked trial counsel how amending the dates on the indictments would prejudice Petitioner. Trial counsel told the court that he had notified the state that he would be presenting an alibi defense. However, he conceded that his alibi defense was not based on the dates contained in the original indictment: June 14, 2009 and June 15, 2009. App. 36, l. 7 – 37, l. 1.

Ultimately, the court granted the state’s motion to amend the indictments. He said, “I can see your [trial counsel’s] point if you were presenting an alibi defense for the dates that were listed in the indictment but when you’re not presenting an alibi defense for those specific dates I don’t see the prejudice to your client by allowing the amendment so I’m going to go ahead and grant the motion.” App. 37, l. 25 – 38, l. 5.

PCR Hearing

Petitioner testified at the PCR hearing that the state amended his indictments before trial by changing the dates that the alleged distributions took place. He maintained that trial counsel should have properly objected to the amendments and both indictments should have been quashed. App. 372, l. 16 – 373, l. 18. Petitioner also said that his appellate counsel should have raised this issue on appeal, but failed to do so. App. 373, l. 19 – 374, l. 10.

Trial counsel, Cezar McKnight, testified that the state moved pretrial to amend the indictments and that he objected “because it didn’t provide us with the specificity that we needed.” He said, “I made a motion at trial. It [the original indictment] didn’t provide us [with] grounds for us to solidify our defense. If they’re giving us random days, how then are we able to prepare for trial by possible alibi witnesses or alibi defenses. So it was at . . . [the] beginning of trial before we even took any testimony that I asked the Court to consider that, and Judge Culbertson decided that

the indictment itself was specific enough and denied my motion, ordered us on to trial.” App. 386, ll. 8-21.

Order of Dismissal

The PCR court found Petitioner’s allegation that trial counsel failed to challenge the indictment “wholly unsupported by the record.” The court indicated that trial counsel had challenged the state’s attempt to amend the indictment and challenged “the sufficiency of the indictments for failing to include the correct dates on which the crime occurred.” App. 403. The court ultimately found Petitioner failed to establish any constitutional violations or deprivations that would require the court to grant his application. It thus denied his application and dismissed it with prejudice. App. 404-405.

Discussion

Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly object to the state’s motion to amend the indictments to change the dates of the alleged cocaine sales. Petitioner was prejudiced because he testified that he prepared his defense based on the dates contained in the original indictments. See App. 372, l. 16 – 373, l. 18.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

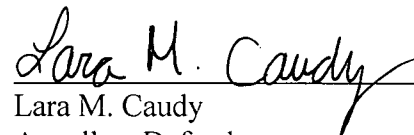
In this case, trial counsel's performance was deficient, as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Petitioner testified at the PCR hearing that he relied on the dates contained in the original indictment when he was preparing his defense and that trial counsel should have properly objected in order to get the indictments quashed. See App. 372, l. 16 – 373, l. 18. Trial counsel was ineffective for telling the court that his alibi defense was not based upon the alleged sales occurring on June 14, 2009 and June 15, 2009, the dates contained in the original indictment. See App. 36, ll. 17 – 37, l. 1.

Petitioner was prejudiced by trial counsel's deficient performance because if trial counsel would have properly raised the objection it is likely the court would have denied the state's motion to amend the indictment which would have changed the outcome of Petitioner's case. Therefore, the PCR court erred in finding trial counsel provided effective assistance of counsel because "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); See Strickland, 466 U.S. 668.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GEORGETOWN COUNTY
J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

QUINTIN J. HOLT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000402

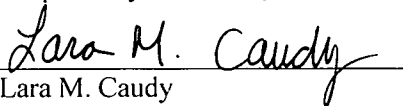
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quintin J. Holt 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 August 29, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), 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 Quintin J. Holt.

Respectfully submitted,



Lara M. Caudy
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of September, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County
J. Cordell Maddox, Jr., Circuit Court Judge

QUINTIN J. HOLT,

PETITIONER,

V.

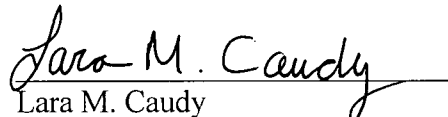
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000402

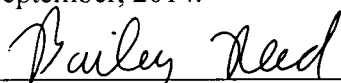
CERTIFICATE OF SERVICE

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 Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Quintin J. Holt, #268198, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 18th day of September, 2014.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.