

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Certiorari to Spartanburg County

SEP 19 2014

J. Derham Cole, Circuit Court Judge **S.C. Supreme Court**

TRAVIS T. TRACY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000408

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief 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 6

PETITION TO BE RELIEVED AS COUNSEL 7

ISSUE PRESENTED

Trial counsel erred in allowing petitioner to plead guilty to armed robbery rather than investigating into and developing an alibi defense in the case.

STATEMENT

On September 19, 2011, petitioner Travis Tyrone Tracy pled guilty to armed robbery at the Spartanburg County General Sessions Court before Roger L. Couch. Petitioner was sentenced to imprisonment for a period of twenty five years, suspended upon the service of twenty years and two years probation. App 1-23. On September 22, 2011, petitioner's prison sentence was amended to imprisonment for a period of twenty years. Petitioner appealed, but the appeal was dismissed per Rule 203(d)(1)(B)(iv). Robert Hall represented petitioner at the plea proceeding and Assistant Solicitors Ryan McCarly and Danny Fulmer appeared on behalf of the state.

Petitioner filed a PCR application and an amended PCR application on February 24, 2012, and on March 12, 2012, respectively, with the Spartanburg County Office of the Clerk of Court. App. 25 – 31. The respondent filed a return dated November 30, 2012, requesting that a hearing be held in response to petitioner's PCR action. App. 32 – 35.

A PCR hearing was convened on October 3, 2013, at the Spartanburg County Courthouse before Judge J. Derham Cole. Petitioner was present at the PCR hearing and represented by Christopher D. Brough, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. App. 37 -77. On February 20, 2013, Judge Cole issued an Order of Dismissal denying petitioner's PCR allegations of ineffective assistance of counsel in the case. App. 102 – 110.

Petitioner appealed Judge Cole's Order of Dismissal filed in the case. This petition follows.

ARGUMENT

Trial counsel erred in allowing petitioner to plead guilty to armed robbery rather than investigating into and developing an alibi defense in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. According to the state's theory of the case, petitioner, who was armed with a handgun, and codefendant Adrian Grayson entered the Family Video Store in Spartanburg on October 18, 2010, "demanding cash from the registers of the store as well as cash from the two clerks that were working that night." The men took the money and fled. App. 15, lines 16-24. A third man stood outside as a lookout, and petitioner's girlfriend (Tierra) went in the store before the robbery occurred to "case" the store. App. 16, lines 13 – 16; App 16, lines 23 – 25. Also during the plea proceeding, the solicitor advised the trial judge that petitioner's girlfriend was prepared to testify against petitioner and that she could identify one of the perpetrators on the store surveillance videotape of the robbery as petitioner based on the "tennis shoes and sweatshirt [he wore] at that time. App. 17, l. 1 - 7. Note further that co-defendant Adrian Grayson admitted guilt and named petitioner as the robber who held the gun while they were in the store. App. 17, l. 1 – 3.

During the PCR hearing, petitioner that "at the time of the [robbery he] was with another female [named] Keyone Fagan.... at the Zaxby's on Reidville Road." App. 59, lines 3 – 5. However, petitioner testified at the PCR hearing that his girlfriend's statement and testimony could not be considered reliable because Tierra (girlfriend) was angry at him for cheating on him with this female whom he took to Zaxby's. App. 59, l. 17 – p. 60, l. 2. Petitioner added that counsel failed to locate Keyon Fagan and develop his alibi defense. App. 59, lines 11 – 16.

Trial counsel testified at the hearing and stated that he did attempt to contact petitioner's alibi witnesses, but was unable to find them. App. 70, l. 7 – 12.

The PCR judge ruled that counsel adequately conferred with petitioner, conducted a proper investigation, was thoroughly competent in his representation, and that counsel's conduct did not fall below the objective standard of reasonableness. App. 108-110.

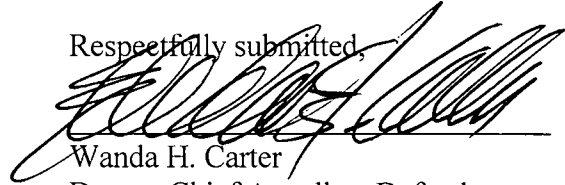
Attorneys representing criminal defendants have a duty to conduct reasonable investigations. Strickland v. Washington, 466 U.S. 668 (1984). Also, a defendant has a right to have his witnesses interviewed on behalf of his defense. See State v. Williams, 326 S.C. 130, 485 S.E.2d 99 (1997). Moreover, a defendant has a right to present witnesses in his defense. Faretta v. California, 422 U.S. 806 (1975); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). Compare, Grier v. State, 299 S.C. 321, 384 S.E.2d 772 (1980) and Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991), where the court reversed convictions where counsels were found ineffective in failing to present alibi witnesses at trial.

Trial counsel erred in failing to contact and locate the female alibi witness in the case because her testimony would have been favorable to the defense and helpful in exonerating petitioner of his armed robbery charge. Counsel's omission was an error that violated petitioner's Sixth Amendment right to effective assistance of counsel with respect to his plea proceeding. Hill v. Lockhart, 484 U.S. 52 (1985). Prejudice resulted because but for counsel's failure to locate and secure the alibi witnesses in question on behalf of the defense, a reasonable probability exists that petitioner might have opted to exercise his right to present his alibi defense per a jury and not chosen to enter the guilty on the armed robbery charge lodged against him.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
J. DERHAM COLE, CIRCUIT COURT JUDGE

TRAVIS T. TRACY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

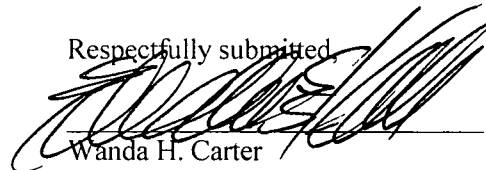
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis T. Tracy states:

1. She is Deputy Chief 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 October 3, 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 Travis T. Tracy.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of September, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

TRAVIS T. TRACY,

PETITIONER,

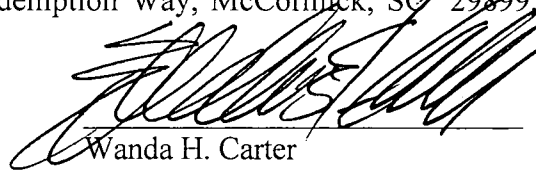
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

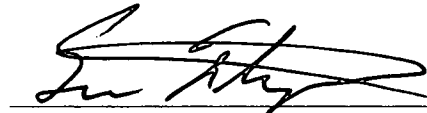
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Travis T. Tracy, #347877, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 19th day of September, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of September, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.