


STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

 ORIGINAL

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Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge  
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**RECEIVED**

OCT 20 2014

**S.C. Supreme Court**

BRIAN O'NEIL ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000736  
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PETITION FOR WRIT OF CERTIORARI  
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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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## ISSUE PRESENTED

Trial counsel erred in failing to investigate into the defense that petitioner's actions did not proximately cause the death of the motorcyclist in the case because there was a second collision from another motorist at the scene who created an intervening action, which in turn meant that petitioner was not guilty of felony DUI.

## STATEMENT

Petitioner Brian O'Neil Robinson pled guilty to felony DUI during the January 2012 term of the Spartanburg County General Sessions Court before Judge Roger L. Couch and was sentenced to imprisonment for a period of fifteen years. App. 63 – 104. Robert Hall represented petitioner at the plea proceeding and Assistant Solicitor Barry Barnette appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal of his conviction and sentence.

On August 23, 2012, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 106 – 112. The respondent filed a return dated August 19, 2013, requesting that a hearing be held in response to petitioner's PCR application. App. 113 – 116.

On October 3, 2013, a PCR hearing was held at the Spartanburg County Courthouse before Judge J. Derham Cole. App. 118 – 171. Petitioner was present at the hearing and represented by J. Brant Rucker, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. On February 20, 2013, Judge Cole issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 177 – 184.

Petitioner appealed Judge Cole's Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to investigate into the defense that petitioner's actions did not proximately cause the death of the motorcyclist ion the case because there was a second collision from another motorist at the scene who created an intervening action, which meant that petitioner was not guilty of felony DUI.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Petitioner drove the pick-up truck that collided with the motorcyclist who ended up laying on the road (Highway 221) in Spartanburg County on the night of August 12, 2011. Petitioner stopped after the impact. Immediately thereafter, the driver of a minivan drove up to the scene, but was able to drive around the motorcyclist's body; and then minutes later, Mrs. Vinson, who was the driver of a Honda, drove up to the scene and ended up running over/on top of the motorcyclist's body. The motorcyclist died at the scene. Petitioner's blood contained alcohol and marijuana on that night. App. 84, l. 6 – p. 86, l. 16; App. 78, l. 6 – p. 82, l. 2.

During the PCR hearing, petitioner testified that neither the coroner's report nor the autopsy report conclusively determined which vehicular impact (petitioner's or Mrs. Vinson's) caused the death of the motorcyclist. Petitioner added in effect that since Mrs. Vinson ran over/on top of the motorcyclist, this was the intervening action that resulted in proof that there was insufficient evidence establishing that his collision was the proximate cause of the decedent's death. App. 130, l. 24 – p. 132, l. 1.

Trial counsel testified at the PCR hearing and explained that he and petitioner discussed the intervening action principle via the fact that there was evidence that the motorcyclist was actually moving and rising until he was run over by Mrs. Vinson in her Honda. Furthermore, counsel conceded that the medical reports did not address the issue of which vehicular impact caused the

death of the motorcyclist. Also, counsel emphasized that the “intervening act” and “proximate cause” defenses would have been “pursued vigorously in a trial.” App. 157, l. 14 – p. 160, l. 4. However, counsel admitted candidly that he obtained no independent medical assessment of the cause of death and that he never spoke with or interviewed Mrs. Vinson about the case. App. 167, l. 6 – p. 171, l. 5.

The PCR judge ruled that petitioner’s allegation that trial counsel did not conduct adequate pretrial investigations lacked merit and that petitioner did not establish that the development of the intervening act issue would not “have led to a different outcome in this situation.” App. 181-182.

Clearly, counsel erred in his strategy that he would have “pursued vigorously” the “intervening act” and “proximate cause” theories in the event of a trial because the better course of action would have been to “pursue vigorously” these legal concepts during pre-trial investigations in order to argue that there was insufficient evidence to support a felony DUI guilty plea; and that at best, the only options available included a lesser charge or no charges at all in the case.

Felony DUI contains three elements: a driver of a vehicle who is under the influence of alcohol and/or drugs that commits an act forbidden by law or neglect a duty imposed by law that proximately causes the death of another person. S.C. Code Ann. § 56-5-2950(A). Proximate cause is that which is a natural and continuing sequence that is unbroken by a new cause. Lewis v. Seaboard Airline Ry. Co., 167 S.C. 204, 166 S.E. 134 (1932). In a felony DUI case resulting in death, a defendant’s actions may be regarded as the proximate cause if it is a contributing cause of the death of the decedent. State v. Martin, 391 S.C. 588, 706 S.E.2d 40 (2011).

In State v. Martin, *supra*, the defendant caused an accident that led to the decedents injuries and the Court held on appeal that the decedent’s choice to forego life support was not an intervening cause that relieved the defendant of the proximate cause of death. In Martin, the defendant caused

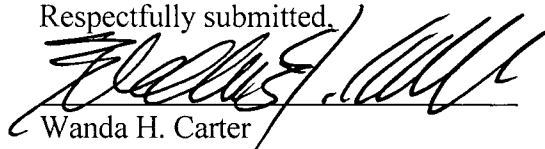
the decedent's injuries per a car accident. The issue of who caused the decedent's injuries that led to his death in this case rendered petitioner's case as quite different from Martin in that there was no evidentiary medical proof that the impact the decedent received from petitioner's vehicle caused the injuries that led to his death, which in turn meant that the intervening action of the driver of the Honda undoubtedly proximately caused the injuries that led to the motorcyclist's death, particularly since there was no proof to the contrary. Had trial counsel conducted adequate pre-trial investigations developing the "proximate cause" and "intervening act" theories in the case (interview driver Vinson, secure independent medical experts to determine cause of death, etc.), then the argument could have been made at the plea proceeding that there was insufficient evidence to support a felony DUI guilty plea conviction, and that only lesser included charges or no charges at all would have been the only viable options available in petitioner's case.

Counsel has a duty to conduct appropriate investigations in a criminal case. Strickland v. Washington, 466 U.S. 668 (1984). Here, counsel's error in failing to investigate in depth the defenses in connection with "proximate cause" and "intervening acts" prior to the plea proceeding prejudiced petitioner's case because but for this omission, a reasonable probability exists that petitioner would not have had to pled guilty to felony DUI. Counsel's performance in his representation of petitioner fell below the standard of competence required of criminal attorneys in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition for writ of certiorari 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 21st day of October, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County,  
J. Derham Cole, Circuit Court Judge

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BRIAN O'NEIL ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

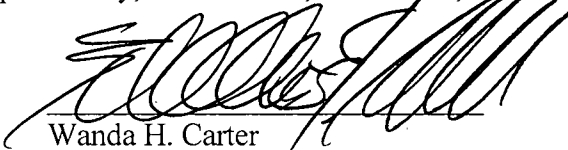
RESPONDENT

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CERTIFICATE OF SERVICE

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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 Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Brian O'Neil Robinson #349471, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 20<sup>th</sup> day of October, 2014.

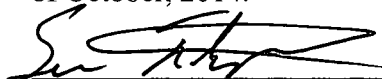


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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

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



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(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.