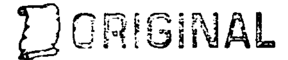

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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

George C. James, Jr., Circuit Court Judge

TERRANCE GOODMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001424

JOHNSON PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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

Was the guilty plea rendered involuntary by the fact that counsel failed to investigate Quinton Singleton as an alibi witness?

STATEMENT

In January 2012, the Sumter County Grand Jury, in a four count indictment, indicted Goodman for discharging a firearm into an occupied conveyance, armed robbery, attempted armed robbery and attempted murder, indictment #2012-GS-43-0217. On July 23, 2012, Goodman appeared before the Honorable R. Ferrell Cothran and pled guilty pursuant to North Carolina v. Alford to discharging a firearm into an occupied conveyance, armed robbery and attempted armed robbery. Tiffany Butler represented Goodman at the plea. Jason Corbett prosecuted the case. Pursuant to negotiations with the State, Judge Cothran sentenced Goodman to an aggregate term of fifteen years. The fourth count of the indictment was dismissed pursuant to the plea negotiation. Goodman did not appeal his sentence or conviction.

On November 9, 2012, Goodman filed an application for post conviction relief. Amended applications were filed on May 17, 2013, May 21, 2013, September 20, 2013, October 31, 2013 and February 21, 2013. The State filed a return on March 22, 2103. On February 26, 2014, an evidentiary hearing was held before the Honorable George C. James. Charles T. Brooks, III represented Goodman at the PCR hearing. Daniel F. Gourley, II represented the State. In a written order signed June 6, 2014, Judge James denied relief and dismissed the application. A timely notice of intent to appeal was served on June 24, 2014. This petition for writ of certiorari follows.

ARGUMENT

The guilty plea was rendered involuntary by the fact that counsel failed to investigate Quinton Singleton as an alibi witness.

Following jury selection, Petitioner entered a negotiated Alford plea to discharging a firearm into an occupied conveyance, armed robbery and attempted armed robbery for a fifteen year sentence. During the PCR hearing Petitioner testified that he asked his lawyer to talk with witness Quinton Singleton. (App. p. 67, line 16 – p. 68, lines 1-9). Petitioner testified, "Yeah, Quinton Singleton, one of my witnesses, said I ain't been at this crime." (App. p. 68, lines 10-11). Trial counsel admitted that Petitioner gave her Quinton Singleton's name and admitted that she did not contact Mr. Singleton. (App. p. 76, lines 1-5). Trial counsel testified that she did not contact Mr. Singleton because she "did not feel as though he would help any sort of defense we had." (App. p. 76, lines 3-5). Rather than pursuing an alibi defense trial counsel testified, "We didn't have much of a defense. I would say that the evidence was pretty overwhelming. My plan was just to poke holes into the investigation." Counsel was deficient in failing to investigate the possible alibi witness Quinton Singleton.

The order of dismissal incorrectly states that trial counsel was unable to contact Quinton Singleton. (App. p. 83; 85). As reflected by her testimony at the PCR hearing, counsel did not try to contact the potential alibi witness because she "did not feel as though he would help any sort of defense we had." (App. p. 76, lines 3-5). Counsel could not have evaluated an alibi defense without interviewing Quinton Singleton, the potential alibi witness. The PCR judge found that the plea was entered knowingly and intelligently without specifically addressing counsel's failure to contact a potential alibi witness. The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v.

State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' " Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

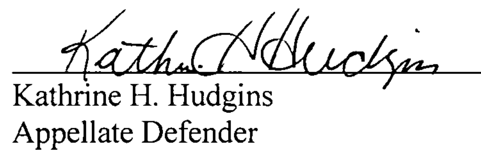
"The second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59, 106 S.Ct. 366. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

Counsel was deficient in failing to investigate the potential alibi witness. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991). Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). The guilty plea in the present case was rendered involuntary by counsel's failure to investigate the potential alibi witness.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY
GEORGE C. JAMES, JR., CIRCUIT COURT JUDGE

TERRANCE GOODMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001424

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terrance Goodman states:

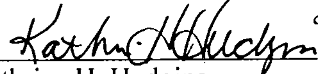
1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 26, 2014. 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 Terrance Goodman.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of February, 2015

STATE OF SOUTH CAROLINA

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TERRANCE GOODMAN,

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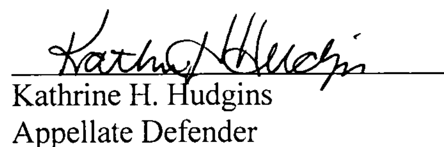
APPELLATE CASE NO. 2014-001424

CERTIFICATE OF SERVICE

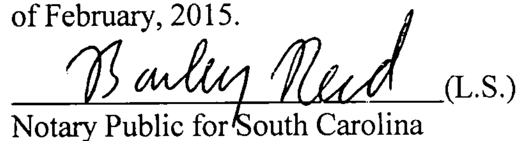
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Terrance Goodman, #351723, at Lee Correctional Institution this 6th day of February, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of February, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.