

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County
Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

QUINTON DEWAYNE INMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001765

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel's failure to introduce a recorded statement that would have impeached the State's star witness who testified that petitioner murdered the victim constituted ineffective assistance of counsel in derogation of petitioner's Sixth Amendment rights?

STATEMENT

On August 24, 2006, a Marion County grand jury indicted petitioner for murder. App. 593. On August 4, 2008, appellant was tried before the Honorable Thomas A. Russo and a jury. App. 1. Ed Clements represented the State. App. 1. Shannon Prosser represented petitioner. App. 1. The jury convicted petitioner. App. 500, l. 10 – 501, l. 4. Petitioner's appeal was dismissed pursuant to Anders v. California, 386 U.S. 738 (1967) on October 21, 2010. State v. Inman, 2010-UP-457 (S.C. Ct. App. Oct. 21, 2010).

On June 17, 2011, petitioner filed a PCR application. App. 511. On February 11, 2014, a hearing was held before the Honorable Michael Nettles. App. 522. Heather Cannon represented petitioner. App. 522. Joshua Thomas represented the State. App. 522. On March 7, 2014, Judge Nettles denied petitioner's PCR application. App. 590. This petition follows.

ARGUMENT

Trial counsel's failure to introduce a recorded statement that would have impeached the State's star witness who testified that petitioner murdered the victim constituted ineffective assistance of counsel in derogation of petitioner's Sixth Amendment rights.

Relevant Facts

By the time of petitioner's trial, Anthony McCray ("McCray") had pled guilty to voluntary manslaughter for the death of Cynthia White ("White") but was awaiting sentencing. App. 351, ll. 1 – 5. The State allowed McCray to plead guilty to voluntary manslaughter instead of murder. App. 351, ll. 11 – 13. McCray expected to receive a sentence of twenty-five years' imprisonment in exchange for his testimony against petitioner. App. 351, ll. 17 – 23.

McCray gave multiple versions of his murder of White. On direct-examination, he claimed that he and petitioner rode around Florence in a Cadillac that broke down sometime after midnight. App. 353, ll. 9 – 24. They slept in the car. App. 353, l. 19 – 354, l. 5. When they awakened, they began driving again, but the car broke down because McCray put diesel fuel in the Cadillac by mistake because he was high. App. 354, ll. 1 – 12.

The pair began walking towards Florence. App. 355, l. 17 – 21. They went to a car wash. App. 355, ll. 17 – 21. It was late morning. App. 355, ll. 22 – 25. They smoked marijuana and stole things to eat from inside the car wash. App. 356, ll. 3 – 17. They approached several people and asked them for a ride back to Marion. App. 356, ll. 18 – 21. No one would give them a ride. App. 356, l. 18 – 357, l. 4.

McCray claimed that when a red Ford Focus driven by White pulled into the car wash, they noticed her washing her car and then White left. App. 357, ll. 5 – 14. White returned fifteen minutes later and was trying to throw something in the trash when petitioner grabbed a

longneck beer bottle and began beating White. App. 357, l. 8 – 358, l. 11. McCray claimed they had not discussed assaulting White beforehand. App. 358, ll. 8 – 9. McCray admitted also hitting White with the beer bottle. App. 358, ll. 12 – 21. The pair continued to beat White. App. 358, ll. 22 – 23. They forced White into the trunk and when McCray checked her pulse, White scratched his neck. App. 360, ll. 1 – 10. Petitioner hit her again and McCray closed the trunk. App. 360, l. 19 – 361, l. 1. They began driving towards Marion. App. 361, ll. 14 – 15. White stopped kicking soon after they crossed the Pee Dee River Bridge. App. 364, ll. 15 – 20.

McCray admitted wearing an “LA ring” on his right hand while he was beating White. App. 358, l. 24 – 359, l. 16. The State’s pathologist compared White’s abrasions to McCray’s ring and concluded that the angles of her wounds matched his ring. App. 246, ll. 6 – 21. When McCray was arrested, he had White’s cut up driver’s license on his person. App. 409, l. 23 – 410, l. 6. The only piece of forensic evidence that tied petitioner to the murder was DNA from a spot of blood on the outside of White’s car near the license plate. App. 336, ll. 14 – 25.

McCray described riding around and going to various places and meeting with various people in White’s car with her body still in the trunk. App. 365, l. 3 – 369, l. 2. Another man named Wondell McClam (“McClam”) got into the car and rode with them. App. 367, ll. 2 – 12. Petitioner got out of the car in Marion. App. 369, ll. 3 – 9. McClam then drove White’s car. App. 370, ll. 8 – 10. McClam’s brother then met them and got into the car with them. App. 371, ll. 2 – 10. McCray then met a woman named Tanjula Harley (“Harley”) for the first time. App. 371, l. 17 – 23. She got into the car with them. App. 371, ll. 17 – 23. McCray claimed he was trying to get McClam, his brother, and Harley to help him get rid of the car and the body. App. 372, ll. 11 – 373, l. 1. They refused. App. 373, ll. 2 – 5. McCray dropped off McClam and his

brother and then went somewhere else with Harley where they smoked marijuana and had sex. App. 374, ll. 6 – 11. McCray then “ditched her with the car.” App. 374, ll. 14 – 15.

On cross-examination, trial counsel questioned McCray about his multiple statements that differed from his trial testimony. McCray agreed that he lied in his first statement which told a completely different story from his trial testimony. App. 383, l. 19 – 384, l. 1. At no point in his first statement did McCray implicate petitioner in the crime or say that he had been with petitioner. App. 384, l. 2 – 389, l. 1. In this statement, McCray claimed he got into an argument with a girl in a car, got angry, got out of the car and started walking on Highway 52. App. 384, l. 2 – 385, l. 16. He met “a black guy” and they smoked weed together. App. 385, l. 17 – 24. He then met another black male who said his name was “Bleak.” App. 386, ll. 3 – 8. McCray and Bleak were smoking weed at the car wash when Bleak assaulted White. App. 386, ll. 19 – 23. Bleak pulled a gun on McCray and forced him to help. App. 386, l. 24 – 387, l. 9. Trial counsel entered McCray’s first statement into evidence. App. 389, ll. 2 – 8.

In McCray’s second statement, he changed the name of “Bleak” to “Sneaky” who he said was petitioner. App. 390, l. 12 – 391, l. 7. McCray’s second statement contained inconsistencies with his trial testimony. 389, l. 10 – 394, l. 2. Trial counsel entered McCray’s second statement into evidence. App. 394, ll. 3 – 8.

Trial counsel then questioned McCray about a “third statement in 2005 I believe it was, which was recorded.” App. 394, ll. 10 – 13. McCray admitted giving the statement. App. 394, ll. 10 – 13. Based on trial counsel’s questions, it appears this third statement had further inconsistencies with McCray’s trial testimony. App. 394, l. 10 – 396, l. 12. However, McCray denied making the statements on which trial counsel questioned him. App. 394, l. 17 – 395, l. 14. Specifically, trial counsel asked McCray whether he told the investigators that “Ain’t no

y'all involved," and "ain't no we." App. 394, l. 23 – 395, l. 4. McCray denied making both of these statements. App. 394, l. 23 – 395, l. 4. McCray also denied telling the officers that petitioner did not know how to drive. App. 395, ll. 13 – 14. Trial counsel did not admit this third recorded statement or use it in any way to impeach McCray's denials.

Discussion

The PCR court erred in holding that trial counsel's failure to introduce the recorded statement to impeach McCray was not ineffective assistance of counsel. The PCR court held that trial counsel made a strategic decision not to introduce the recorded statement because it further implicated his client. App. 586. This finding was error because not introducing the statement could not have been a reasonable strategic decision.

The Sixth Amendment requires reversal of a conviction when deficient performance by trial counsel prejudices a defendant. U.S. Const. amend. VI. Strickland v. Washington, 466 U.S. 668 (1984). The failure to impeach a witness with prior inconsistent statements is deficient performance that prejudices a defendant. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097 (trial counsel failed to impeach with inconsistent eyewitness identifications). In Driscoll, defense counsel's failure to impeach an eyewitness with prior inconsistent statements was held prejudicial. Id. The defendant was sentenced to death for stabbing a prison guard. Trial counsel failed to impeach a prosecution witness who claimed at trial that the defendant confessed to the murder with a prior statement omitting the confession. Id. at 709-12. The centrality of the witness's testimony was an important factor in the court's consideration. Id. Here, McCray was the central witness in the trial and failure to impeach his testimony was prejudicial. See also Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998) (holding that defendant was prejudiced by trial counsel's failure to impeach a witness with a

prior denial that a crime occurred); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009) (remanding case for prejudice inquiry because of trial counsel's failure to impeach police officer with prior statement claiming he was attacked by three Mexicans when same officer testified at trial he was only attacked by defendant).

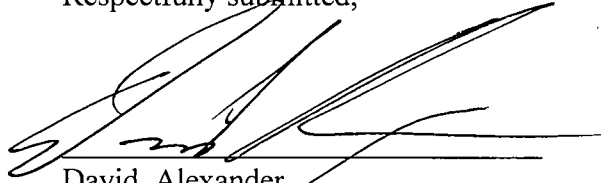
The PCR court's finding is erroneous because such a decision conflicted with trial counsel's overall strategy, which was to discredit McCray and claim petitioner was not there when White was killed. App. 557, ll. 14 – 22. In his opening statement, trial counsel told the jury that the main question “is going to be whether or not you believe Anthony McCray when he accuses Quinton Inman of doing this.” App. 52, l. 24 – 63, l. 8. He referenced McCray's inconsistent statements. App. 63, ll. 2 – 5.

Had the jury heard the recorded statement, it would have shown that McCray was lying on the stand after his multiple claims that he was telling the jury the truth. App. 351, ll. 24 – 25. Indeed, McCray recanted his testimony that petitioner was involved in the murder at the PCR hearing. App. 542, l. 24 – 545, l. 19. McCray said that the police coerced him into implicating petitioner. App. 544, l. 17 – 545, l. 21. The PCR judge found McCray to be a “categorically unreliable” witness. App. 588. With the central witness discredited, there is a reasonable probability the outcome of the trial would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989).

CONCLUSION

For the foregoing reasons, the Court should grant the petition with the ultimate relief of a new trial for petitioner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO MARION COUNTY
MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

QUINTON DEWAYNE INMAN,

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STATE OF SOUTH CAROLINA,

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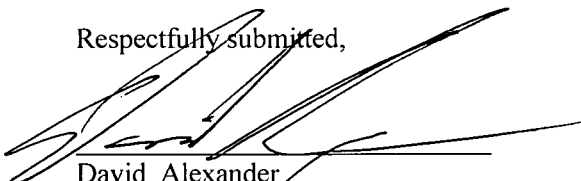
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quinton Dewayne Inman states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 11, 2014. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Quinton Dewayne Inman.

Respectfully submitted,



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of February, 2015

STATE OF SOUTH CAROLINA

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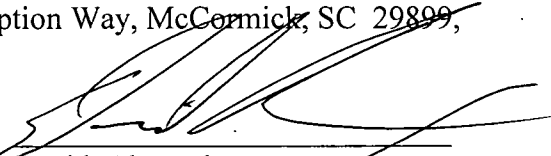
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APPELLATE CASE NO. 2014-001765

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 J. Croom Hunter, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 , and Quinton Dewayne Inman, #298283, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 13th day of February, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of February, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.