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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Brian M. Gibbons, Circuit Court Judge

EDDIE C. GOLSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002166

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the record supports the PCR court's finding that trial counsel adequately investigated and presented evidence of third-party guilt simply because trial counsel in closing touched on testimony that the fingerprints at the scene did not match Petitioner's.

STATEMENT

On October 13, 2008, the Lexington County Grand Jury indicted Petitioner Eddie Clay Golson for first degree burglary and possession of a weapon during the commission of a violent crime. App. 427-430. On March 30, 2009, Petitioner proceeded to trial before The Honorable R. Knox McMahon and a jury. Elizabeth C. Fullwood and Bennet E. Casto represented Petitioner, and David Shawn Graham represented the State. App. 1.

The State alleged that on the night of August 18, 2007, Petitioner broke into the home of a City of Columbia police officer and was quickly chased away. Petitioner allegedly broke a storm window while fleeing the house. App. 89, line 4—App. 90, line 22. The State called Officer James Hickman from the Lexington County Sheriff's Office to testify about the investigation of the break-in. App. 151, line 12—App. 167, line 22. During cross-examination, counsel Fullwood for Petitioner elicited from Officer Hickman that the investigation revealed four latent fingerprints from the broken window that were tested and found not to match those of Petitioner. App. 168, lines 5-23. The State also called Detective Brian Anderson from the sheriff's office to testify about the investigation. App. 213, line 16—App. 230, line 17. On cross-examination, counsel Fullwood elicited confirmation from Detective Anderson about the existence of the fingerprints not matching those of Petitioner. App. 233, line 17—App. 234, line 10.

At the conclusion of trial, the jury found Petitioner guilty as charged. App. 306, lines 11-22. The trial judge sentenced him to twenty-five years' incarceration for the burglary charge and five years' concurrent for the weapons charge. App. 317, lines 4-12. On June 14, 2012, Petitioner filed an application for post-conviction relief ("PCR") claiming ineffective assistance of counsel. App. 319—App. 325. Petitioner filed amendments to the application on April 18, 2013, May 6, 2013, and June 10, 2013. App. 326—App. 329. The State filed a return on June 24, 2013. App. 330—

App. 336. On January 21, 2014, Petitioner appeared at an evidentiary hearing before The Honorable Brian M. Gibbons. Charles Brooks represented Petitioner and Walter Whitmire represented the State. App. 337. Petitioner testified about the fingerprints that did not match his. He also moved into evidence a written report from the sheriff's office's latent print examination that showed the fingerprints found at the scene did not match his. App. 354, line 7—App. 356, line 8; App. 393—App. 399.

On September 21, 2014, the PCR court issued an order dismissing Petitioner's claim. App. 414—App. 426. Specifically, the order stated that Petitioner did not establish ineffective assistance of counsel for failure to investigate the fingerprint evidence because “[t]he record shows that counsel covered the matter during his closing argument.” App. 424.

ARGUMENT

The record does not support the PCR court's finding that trial counsel adequately investigated and presented evidence of a third party's fingerprints at the scene of the break-in simply because he talked about the matter in his closing argument.

The record does not support the PCR court's finding that trial counsel adequately investigated and presented evidence of a third party's fingerprints at the scene of the break-in simply because he talked about the matter in his closing argument. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. *Id.* at 687.

"[A]n attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.'" *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)). In determining whether a criminal defense counsel sufficiently investigated and presented evidence favorable to the defendant, a court must identify an affirmative decision not to proceed with the evidence and assess the reasonableness of the decision under the facts and circumstances within counsel's knowledge:

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments."

Wiggins v. Smith, 539 U.S. 510, 521-22 (2003) (quoting *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984)). See also *Lounds v. State*, 380 S.C. 454, 463, 670 S.E.2d 646, 650 (2008) (“The validity of counsel’s strategy is reviewed under ‘an objective standard of reasonableness.’” (quoting *Ingle v. State*, 348 S.C 467, 470, 560 S.E.2d 401, 402 (2002))).

A defendant may introduce evidence showing that he is innocent because another person committed the crime:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence

State v. Gregory, 198 S.C. 98, 104-105, 16 S.E.2d 532, 534-35 (1941) (quoting 22 C.J.S. *Criminal Law* § 1085, p. 560 (1918)).

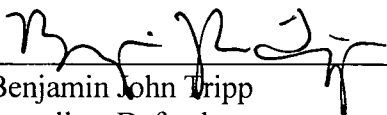
In this case, no evidence was presented at the PCR hearing to identify an affirmative decision by trial counsel not to investigate the identity of the person to whom the fingerprints belonged. Trial counsel elicited in cross-examinations confirmation from Officer Hickman and Detective Anderson that the sheriff’s office investigation revealed prints of a third party on the broken glass where the intruder escaped. The fingerprint analysis report that Petitioner adduced at the PCR hearing showed the same. However, based on the record, trial counsel never investigated to whom the prints belonged in order to present evidence of third-party guilt that would plainly have exonerated Petitioner. Accordingly, no basis appears in the record to conclude that any decision by trial counsel not to pursue this evidence was reasonable under the facts and circumstances within his knowledge. Furthermore, the mere fact that trial counsel touched on the matter in his closing argument did not make reasonable the failure to investigate and present evidence of third-party guilt. Tangible evidence of an identified person who broke into the home other than Petitioner is an

indisputably and incomparably more powerful defense than the suggestion of the same solely through an argument in closing.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of June, 2015.

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IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
BRIAN M. GIBBONS, CIRCUIT COURT JUDGE

EDDIE C. GOLSON,

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STATE OF SOUTH CAROLINA,

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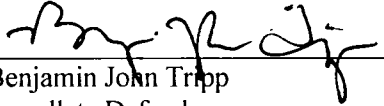
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eddie C. Golson 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 January 21, 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 Eddie C. Golson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 16th day of June, 2015

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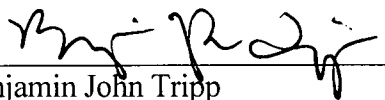
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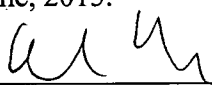
CERTIFICATE OF SERVICE

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 John Walt Whitmire, Esquire and Eddie C. Golson, #303012, at Lieber Correctional Institution this 16th day of June, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of June, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.