

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Laurens County  
Frank R. Addy, Circuit Court Judge  
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AUG 14 2015

S.C. Supreme Court

MARCUS D. YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002631

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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WANDA H. CARTER  
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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

Trial counsel erred in failing to investigate into information available from DSS indicating that the children's mother abused her children because this was exculpatory material that counsel could have used in petitioner's defense in order to establish reasonable doubt on the assault charges levied against him had the case gone to trial.

## STATEMENT

Petitioner Marcus D. Young pled guilty to assault and battery with intent to kill and three counts of assault and battery of a high and aggravated nature during the October 2010 term of the Laurens County General Sessions Court before Judge J. Derham Cole, and was sentenced to imprisonment for an aggregate period of fifteen years. Petitioner did not enjoy the benefit of a direct appeal in the case. Joseph T. St. Pierre represented petitioner at the plea proceeding and Assistant Solicitor Ronald N. Fleming appeared on behalf of the state. App. 187 – 213.

On June 9, 2011, petitioner filed a PCR application with the Laurens County Office of the Clerk of Court. App. 215 – 226. The respondent filed a return dated September 13, 2011, requesting that a hearing be held in response to petitioner's PCR action. App. 227 – 230.

A PCR hearing was held on October 14, 2014, at the Laurens County Courthouse before Judge Frank R. Addy, Junior. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. App. 232 – 274. On November 7, 2014, Judge Addy issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 276 – 286.

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

## ARGUMENT

Trial counsel erred in failing to investigate into information available from DSS indicating that the children's mother abused her children because this was exculpatory material that counsel could have used in petitioner's defense in order to establish reasonable doubt on the assault charges levied against him had the case gone to trial.

At the plea proceeding, the solicitor apprised the trial judge of the facts in the case. On November 7, 2008, while petitioner babysat his girlfriend's three children, said children were taken to the hospital later for injuries sustained during that time. App. 200, l. 25 – p. 204, l. 3. Subsequently, petitioner was indicted for assaulting the children.

During the PCR hearing, petitioner testified that counsel was in effect ineffective in his legal representation due to his failure to investigate into matters of defense that included paperwork, specifically medical reports and a DSS report (See Supp App), that proved that the injuries sustained by the children were inflicted upon them by their mother, who was petitioner's girlfriend, and others, and that the children's injuries in question did match the medical reports (i.e. no lacerations) from the case. Petitioner stated that this was exculpatory information that counsel should have developed in his defense and used to establish reasonable doubt and possibly gain acquittals had he been tried by jury. Petitioner stated that but for counsel's failure to investigate and uncover this exculpatory information, he would not have pled guilty, but rather opted for a trial by jury instead. App. 238, l. 18 – p. 241, l. 23; App. 242, l. 1 – p. 243, l. 10; App. 246, l. 22 – p. 248, l.10.

Trial counsel testified at the PCR hearing and acknowledged that the DSS report pointed to the mother as the one responsible for the children's injuries. App. 264, l. 7 – p. 265, l. 7.

The PCR judge ruled that petitioner's allegation that counsel failed to investigate properly into matters of defense in the case was not credible because counsel obtained and discussed all discovery documents with petitioner in the case. App. 277 – 283.

Counsel has a duty to conduct reasonable investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). For example, in Bagwell v. State, 410 S.C. 259, 763 S.E.2d 630 (2015), the Court held that trial counsel was ineffective in failing to conduct DNA tests on blood found on the homeowner's shattered glass doors which the burglar entered and exited because the state pointed to blood on the defendant's face at the scene to connect him to the burglary, but the PCR evidence revealed that the blood on the glass did not match petitioner's blood DNA; and had this exculpatory evidence been available at trial, then the outcome of the trial might have been different. See also Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2009), where the Court found counsel ineffective in failing to adequately investigate and present mitigating evidence (mental incompetence) during the penalty phase at trial. Likewise, in Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), counsel was found ineffective in failing to investigate gunshot residue evidence in a capital case. Additionally, in Wiggins v. Smith, 539 U.S. 510 (2003), trial counsel was found ineffective in failing to investigate and present the defendant's dysfunctional background, low IQ, and tumultuous childhood as strong mitigating evidence in the capital case. Finally, in Williams v. Taylor, 529 U.S. 362 (1999), the Court held that counsel was ineffective in failing to investigate into substantial mitigating evidence that should have been presented during the penalty phase of that capital murder case.

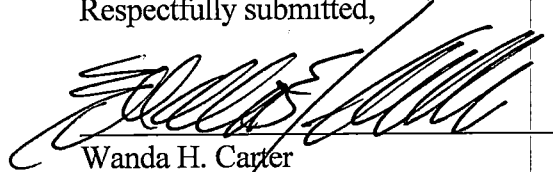
Hence, counsel's failure to investigate into the DSS report in question meant that there was exculpatory evidence in existence in the case that was not given proper consideration and review by counsel, which in turn constituted deficient representation in a criminal case in violation of the Sixth

Amendment. See Hill v. Lockhart, 474 U.S. 56 (1985). Also, but for counsel's failure to investigate in this regard, a reasonable probability exists that petitioner would not have pled guilty, but rather opted for a jury trial in the case.

CONCLUSION

Based on the foregoing argument, counsel requests that this Court grant the petition.

Respectfully submitted,

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

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of August, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO LAURENS COUNTY  
FRANK R. ADDY, CIRCUIT COURT JUDGE

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MARCUS D. YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002631

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Marcus D. Young 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 14, 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 Marcus D. Young.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 14th day of August, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Laurens County

Frank R. Addy, Circuit Court Judge

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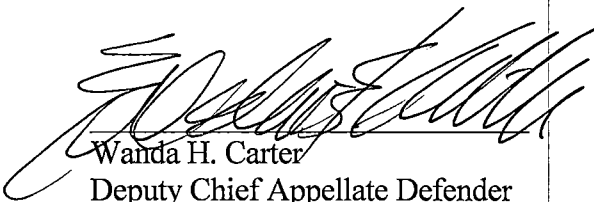
APPELLATE CASE NO. 2014-002631

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CERTIFICATE OF SERVICE

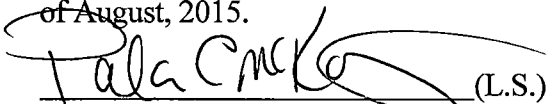
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Marcus D. Young, #321575, at Tyger River Correctional Institution, 200 Prison Road, Enoree, SC 29355, this 14th day of August, 2015.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day  
of August, 2015.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.