

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

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AUG 20 2015

S.C. Supreme Court

WILLIE JAMES POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000087

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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 call and present a particular witnesses at trial who would have presented favorable testimony in corroboration of petitioner's defense in the case.

STATEMENT

Petitioner Willie Poole was convicted of armed robbery per jury trial held during the October 2011 term of the Greenville County General Sessions Court before Judge Edward Miller, who sentenced him to imprisonment for a period of twenty five years. App. 1 – 200. C. Timothy Sullivan represented petitioner at trial and Assistant Solicitor Judy Munson appeared on behalf of the state. Petitioner appealed, but his conviction and sentence were affirmed. State v. Poole, Op. No. 2013-CP-268 (S.C. Ct. App. June 19, 2013).

On November 19, 2013, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 202- 208. The respondent filed a return dated May 28, 2014, requesting that a hearing be held in response to petitioner's PCR application. App. 209 – 212. A PCR hearing was convened on October 21, 2014, at the Greenville County Courthouse before Judge Letitia H. Verdin. App. 214 – 236. Petitioner was present at the PCR hearing and represented by Mills Ariail; and Assistant Attorney General Karen Ratigan appeared on behalf of the state.

On December 8, 2014, Judge Verdin issued an Order of Dismissal in the case denying petitioner's allegations of ineffective assistance of trial counsel. App. 238 – 245.

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

ARGUMENT

Trial counsel erred in failing to call and present a particular witness at trial who would have presented favorable testimony in corroboration of petitioner's defense in the case.

At trial, Krystal Wells testified that she was working in the leasing office at Dixie Estate Mobile Trailer Park around 4:00 p.m. on January 8, 2009, when "two guys with...bandanas) tied...around their faces" [and] "guns" entered asking "where's it at." Wells stated that she knew the "it" meant money, so she placed an envelope containing rent money on the desk. The gunman in front of her took the money and then the two men fled to a blue car where a driver was waiting to drive off. Wells managed to see and report the get-a-way car tag number when she called the incident in to the police immediately thereafter. App. 36, l. 8 – p. 55, l. 19.

State's witness Donnell Hagood testified that petitioner drove to his house and picked him up on January 8, 2009, and that they then picked up Dee, AKA, Black, and rode to Dixie Estates. While there, he (Haywood) stood outside the door, while Dee went in with a gun, which he aimed at Krystal, got the money, and then they all fled. Hagood stated that petitioner told him he (Hagood) to go inside the trailer office and accomplish what was done. App. 88, l. 5 –p. 106, l. 22.

State's witnesses Timothy Brown and Octavious Hutchinson both testified that they were both living with petitioner in January 2009 and recalled a statement that petitioner made regarding a "lick".¹ App. 64, l. 19 – p. 68, l. 18; App. 74, l. 3 – p. 81, l. 2.

Police Officer Michael Fortner took a statement from petitioner who explained that he didn't realize what Hagood and Dee had planned. Petitioner's statement follows:

¹ Police Officer Michael Fortner testified that the word "lick" was synonyms with the word." "robbery". App. 142, lines 1 – 6.

It starts off, "It was on a Friday," ...I was at Uncle Junior's house smoking blunts with Mann. He is Donnell Hagood. Dee, I don't know his real name and my cousin Tario Poole. We were in Tim's car. It was a blue Mazda. It is a four-door with tinted windows. It's like a royal looking blue. We left my uncle's house to ride around. All of a sudden, Donnell was like pull over here. He was talking about there where Krystal was at. Donnell said he needed to make a move. Krystal works at Dixie Estates. I used to live there and my baby's momma did. Her name is Taleva Allen. I parked on the side of the trailer. Donnell and Dee went inside. They said that they had to make a move. At first I didn't realize what they were doing. They were inside for approximately two to three minutes. They came running out. They came our and had bandanas covering their faces. Donnell had either a .32 or .38 revolver in his hand. It was black. The gloves that Donnell was wearing was white with gray bottoms. The grips were gray. They came back to the car and said go, go, go, go. Donnell said I got you. Then we went to Donnell Hagood's house and then I watched them split the money up. The money was in an envelope with some checks in it. They got anywhere between \$1000 to \$1500. That's all I seen anyway." App 155, l. 12 – p. 156, l. 11

During the PCR hearing, petitioner testified that counsel wanted to argue last at closing and thus refused to call and present a witness by the name of Poole (cousin), who would have verified his position that he (petitioner) did not participate in or plan a robbery, and that the events were spontaneous and not planned, and that Hagood, Brown, and Hutchinson lied when they testified otherwise. App. 223, l. 4 – p. 227, l. 18.

Trial counsel stated that he did not recall petitioner asking him to contact Poole, and that he did not contact any witnesses regarding the armed robbery charge in the case because petitioner admitted he was present at the scene of the crime. App. 231, l. 1 – 12. Counsel stated that he did not remember the witnesses petitioner wanted to appear at trial on behalf of the defense. App. 233, l. 10 – p. 235, l. 22.

The PCR judge ruled that petitioner “failed to meet his burden of proving that his trial counsel failed to adequately investigate and call additional witnesses mainly because the testimony and petitioner’s confession placed him as being present at the crime scene.” App. 241 – 242.

To the contrary, mere presence at the crime scene in and of itself is not sufficient evidence to convict one as charged via accomplice liability. Also, in order to establish petitioner’s guilt via accomplice liability note that mere presence and prior knowledge would not have constituted sufficient proof that petitioner committed armed robbery. State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (2010). In State v. Gibson, supra, citing to State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2002), the Court expounded on the matter as follows:

Under the “hand of one is the hand of all” theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, m]ere presence and prior knowledge that a crime was going to be committed, without more, is sufficient to constitute guilt. [Rather], presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle.

In the case at bar, the potential witness in question, who was Mr. Poole, would have been able to corroborate petitioner’s statement and theory of the case, which was that he was present only and knew nothing of Dee’s and Hagood’s plan to commit armed robbery. This corroborative defense witness named Poole would have assisted in planting reasonable doubt with respect to the state’s theory that petitioner was guilty of armed robbery per the acts of Hagood and Dees by way of accomplice liability.

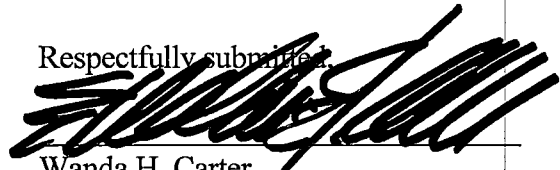
A defendant has a right to have his witnesses interviewed on behalf of his case. State v. Williams, 326 S.C. 130, 485 S.E.2d 99 (1997). Moreover, a defendant has a right to present

witnesses in his defense. Faretta v. California, 422 U.S. 806 (1975); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). In the case at bar, counsel's performance in not calling a defense witness to corroborate petitioner's claim that he had no knowledge of the crime and was merely present at the crime scene constituted deficient representation, and counsel's failure to present this witness could not be justified as trial strategy (value of last to argue at closing). Counsel's error in this regard violated petitioner's right to effective assistance of counsel in a criminal case, in violation of the Sixth Amendment, particularly since but for the error a reasonable probability exists that the outcome of the case would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, petitioner's counsel would request that this Court grant the petition and allow full briefing on the issue raised above.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
LETITIA H. VERDIN, CIRCUIT COURT JUDGE

WILLIE JAMES POOLE,

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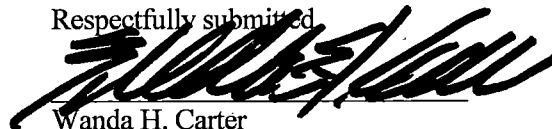
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Willie James Poole 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 21, 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 Willie James Poole.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of August, 2015

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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 Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Willie James Poole, #270914, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 20th day of August, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of August, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.