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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Barnwell County

D. Craig Brown, Circuit Court Judge

ANTWON BYARS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001008

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in failing to investigate?

STATEMENT

On July 9, 2012, petitioner appeared before the Honorable Doyet A. Early, III in Barnwell County and pled guilty to assault and battery with intent to kill. A ten (10) year sentence was imposed. Michael Chesser, Esq. was plea counsel. (App. p. 1- p. 22) Petitioner appealed and the South Carolina Court of Appeals affirmed the conviction and sentence on November 27, 2013. State v. Byars, Op. No. 2013-UP-439. (App. p. 37)

Petitioner filed an application for post-conviction relief on April 10, 2013. (App. p. 25- p. 36) Respondent filed a return dated February 20, 2014. (App. p. 37- p. 41) An evidentiary hearing was held on January 16, 2015, before the Honorable D. Craig Brown. Petitioner was present and was represented by Lance S. Boozer, Esq. Respondent was represented by Daniel F. Gourley, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 42- p. 65) On March 23, 2015, Judge Brown issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 90- p. 98)

This petition follows.

ARGUMENT

Plea counsel was ineffective in failing to investigate.

At petitioner's guilty plea, the assistant solicitor gave the following factual basis for the plea:

MS. RINGLER: Thank you, Your Honor. On September 5, 2009 out in front of the club Lucky Spot in Williston, South Carolina---

THE COURT: Lucky Spot?

MS. RINGLER: Lucky Spot; yes, Your Honor. There were several groups of people gathered around outside, the victim being one of those being with a group of people. The defendant at that point felt as though the victim was being disrespectful, giving him dirty looks. He came over and confronted the victim and there was a brief verbal altercation. They then parted ways and the defendant then came back about 10 or 15 minutes later armed with a gun.

He shot the victim once in the chest and when the victim was on the ground he stood over him and the gun misfired. A witness reporting hearing a click -- clicking noise. At that point the defendant's friend CJ Chandler who has also been charged in this case -- he's been charged with accessory after the fact -- he was a short distance away. He said he heard the gunshot, came running, grabbed the defendant, and they both got into the car that they had arrived in together and left the scene.

They were both stopped by law enforcement a short time later and the gun was recovered from the car. It was a revolver and Mr. Chandler was

prepared to testify at trial and Jerry Screen represents him. Mr. Screen informed me his wife is having some health issues; so we're going to wait and deal with Mr. Chandler's charges during the September term, but he was prepared to be a state's witness and as was the man who witnessed the event and the victim who did have some difficulty being here today but was ready to testify tomorrow in trial, Your Honor.

(App. p. 10, line 4- p. 11, line 10)

Plea counsel did let the court know that the victim in this case did have a reputation for violence. He was charged with murder at one time but pled guilty to involuntary manslaughter. (App. p. 11, line 12- p. 12, line 1)

In the application for post-conviction relief petitioner did allege that there was no type of investigation into his case. (App. p. 27) At the evidentiary hearing petitioner testified that he retained plea counsel. They talked face-to-face four or five times. They spoke on the phone fifteen to twenty times. Petitioner said counsel was ineffective because he did not do enough investigative work. Counsel spoke to maybe one person who gave a statement but petitioner said he did not do anything else other than question him about the incident. Petitioner did not feel that counsel was prepared or confident. Counsel was not ready to go to trial. (App. p. 48, line 2- p. 49, line 14) Counsel told him the State had an offer of fifteen years but petitioner told him he did not want to plea. Counsel kept telling him that there were witnesses who could testify against him. (App. p. 50, lines 2-15)

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2)

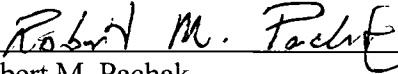
that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995).

Counsel had a duty to conduct an independent investigation into his client's case Ard. V. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). See also McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) ("A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.").

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BARNWELL COUNTY
D. CRAIG BROWN, CIRCUIT COURT JUDGE

ANTWON BYARS,

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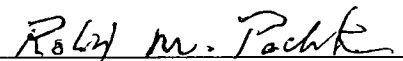
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwon Byars 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 16, 2015. 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 Antwon Byars.

Respectfully submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

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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 Daniel Gourley, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Antwon Byars, #351482, at Wateree River Correctional Institution this 3rd day of September, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day
of September, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.