

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Greenville County

Eugene C. Griffith, Jr., Circuit Court Judge

ANTWAN GRAYSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000823

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

INDEX

INDEX.....1
ISSUE PRESENTED2
STATEMENT3
ARGUMENT4
CONCLUSION10
PETITION TO BE RELIEVED AS COUNSEL.....11

ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to review all of the discovery materials with Petitioner prior to trial thereby preventing Petitioner from fully accessing the extent of the state's evidence against him and making an informed decision to reject the state's plea offer and proceed to trial?

STATEMENT

A Greenville County Grand Jury indicted Petitioner at the May 4, 2010 term of General Sessions for armed robbery, kidnapping, first degree criminal sexual conduct, and possession of a weapon during the commission of a violent crime. App. 594-599. His case was called to trial on March 28, 2011 before the Honorable Robin B. Stilwell, and a jury. App. 1. Assistant Solicitor Kristie Bjorndal Hodge represented the state, and Randall Lee Chambers represented Petitioner. App. 1.

On March 30, 2011, the jury found Petitioner guilty. App. 482, l. 9 – 483, l. 6. He was sentenced by Judge Stilwell to concurrent terms of thirty years imprisonment for armed robbery, thirty years for kidnapping, thirty years for first degree criminal sexual conduct, and five years for the weapons offense. Judge Stilwell ordered these sentences be served consecutive to a fourteen year sentence Petitioner was currently serving for a probation revocation. App. 495, l. 7 – 496, l. 2.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Grayson, Op. No. 2013-UP-263 (S.C. Ct. App. filed June 19, 2013); App. 512-513.

On August 21, 2013, Petitioner filed an application for post-conviction relief (PCR). He filed an amended application on November 19, 2013. App. 515-530. The state filed a return to this application dated April 8, 2014. App. 531-536. The matter proceeded to an evidentiary hearing on December 18, 2014 before the Honorable Eugene C. Griffith, Jr. App. 537. Senior Assistant Deputy Attorney General Karen C. Ratigan represented the state, and Caroline N. Horlbeck represented Petitioner. App. 537. By order dated February 7, 2015, Judge Griffith denied Petitioner relief. App. 585-593.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to review all of the discovery materials with Petitioner prior to trial thereby preventing Petitioner from fully accessing the extent of the state's evidence against him and making an informed decision to reject the state's plea offer and proceed to trial.

Facts at Trial

The state alleged at trial that on the night of March 16, 2009, Petitioner approached the complainant, Crystal Byers, as she was walking to her apartment and put a gun to her mouth. When Byers claimed she did not have any cash or anything of value in her apartment, Petitioner and his accomplice allegedly forced Byers to drive the two men to an ATM, where she withdrew cash from her mother's account. Byers also claimed that after they returned to her apartment complex, Petitioner forced her to have vaginal sex with him in the backseat of her car. After they had sex, Petitioner allegedly made Byers drive back to her apartment and retrieve her cell phone. Byers claimed that after she gave Petitioner her cell phone, he simply walked away and she called 911 from her mother's telephone. See App. 86, l. 9 – 111, l. 18.

Petitioner's alleged accomplice and codefendant, Curtis Wilkie, testified against Petitioner at trial and corroborated Byer's claim regarding the armed robbery. However, Wilkie maintained that he got out of the car before the alleged sexual encounter. See App. 234, l. 5 – 251, l. 23. Notably, Wilkie admitted to having numerous pending charges at the time of Petitioner's trial, including three counts of armed robbery, two counts of kidnapping, and one count each of first degree burglary and attempted burglary in Spartanburg County, as well as the charges related to this case, specifically armed robbery, kidnapping, and conspiracy. App. 256, l. 10 – 257, l. 8.

Petitioner's account of events differed significantly from Byer's allegations. He testified that on the night of March 16, 2009, he received a telephone call from an individual who wanted to buy crack cocaine. As a result, he walked to Byer's apartment complex with Wilkie to meet the individual. While they were waiting for the man, who never showed up, Byers pulled up, rolled down her car window, and asked Petitioner if he had any crack. Petitioner testified that Byers said she did not have any money and asked Petitioner and Wilkie to ride with her to the ATM. The men agreed and drove with Byers to the bank. Byers ultimately traded eighty dollars she obtained from the ATM for "four rocks." Petitioner maintained that after Byers smoked this crack in the car with him, she wanted more and, in addition to trading her cell phone for more crack, she also offered to have sex with Petitioner in exchange for payment. Petitioner said they had sex in the backseat of Byer's car while Wilkie waited outside in the "breezeway." After that, he went home. App. 356, l. 23 – 361, l. 25.

The jury deliberated for over five hours and ultimately found Petitioner guilty. App. 477, l. 24 – 483, l. 6. Judge Stilwell sentenced him to a term of thirty years imprisonment consecutive to a fourteen year sentence Petitioner was already serving for a probation revocation. App. 495, l. 7 – 496, l. 2.

PCR Hearing

Petitioner testified at the PCR hearing that after his arrest for this offense he was incarcerated at the local detention center for five months before he was ultimately transferred to the Department of Corrections because of a probation revocation. While he was housed at the county jail, trial counsel visited Petitioner once. During this meeting, the two discussed the possibility of bond being set and potential witnesses trial counsel could contact. However, while Petitioner was in the custody of the Department of Corrections, trial counsel never visited him. Petitioner testified

that, in addition to the lack of in person meetings, counsel only sent him one letter, and this letter simply indicated that, if Petitioner needed to communicate with counsel, he should contact his assistant, Tracy. App. 542, l. 4 – 544, l. 11.

Additionally, Petitioner testified that he was transported to court in Greenville County twice before his trial. On these two occasions, he briefly spoke with trial counsel in the “holding cell” at the courthouse. The two again discussed potential witnesses and Petitioner provided counsel with contact information for these individuals. App. 546, l. 14 – 547, l. 12. Counsel also informed Petitioner during one of these meetings of a plea offer made by the state. The solicitor was willing to recommend a twenty-two year sentence to be served concurrently with the fourteen year sentence Petitioner was serving for his probation revocation if Petitioner pled guilty. Petitioner asserted that he rejected this offer because he was unaware of the extent of the evidence the state had against him. App. 551, l. 24 – 552, l. 5; App. 567, ll. 7-24.

Besides the one meeting at the detention center and the two brief encounters at the courthouse, counsel also spoke with Petitioner during a video conference three days before trial. During the video conference, trial counsel “out of the blue” told Petitioner they were proceeding to trial in three days. App. 546, ll. 5-9.

At no time during any of their brief encounters did trial counsel review the discovery materials with Petitioner or provide him with a copy. App. 548, ll. 5-20; App. 568, ll. 3-8. Specifically, Petitioner testified that he did not hear the recording of the 911 call made by Byers until it was played for the jury during his trial. He also never saw the photographs the state obtained from the bank of him in Byers’ car at the ATM machine until his trial. Petitioner testified that if he would have known about the 911 tape and the photographs then he would have accepted the state’s plea offer and pled guilty. App. 550, l. 16 – 551, l. 23.

Randy Chambers, Petitioner's trial counsel, testified that as far as he knew, he received a full copy of the discovery materials from the state. He said he reviewed all of the discovery materials with Petitioner before his trial with the exception of the recording of the 911 call made by Byers because he "didn't have any way to do that . . . when he [Petitioner] was in jail." App. 575, ll. 1-21. Chambers also maintained that he provided Petitioner with a complete copy of the discovery. According to Chambers, if a client asks for a copy of his or her discovery materials, then his assistant, Tracy Burkette, would provide the individual with a copy. App. 575, l. 22 – 576, l. 22.

Additionally, Chambers testified that he conveyed the state's plea offer to Petitioner, but Petitioner rejected the offer because "he was adamant in his innocence." App. 578, l. 25 – 579, l. 7. According to Chambers, the two had discussed Petitioner's "version of what happened" and this became their "whole defense." Specifically, Petitioner told Chambers that Byers approached him at an apartment complex and "was looking to buy drugs." Byers ultimately drove to an ATM to withdraw cash to pay for the drugs and later had consensual sex with Petitioner in exchange for more drugs. App. 576, l. 23 – 577, l. 19.

Chambers claimed that at no point did Petitioner indicate he wanted to plead guilty. However, according to Chambers, if Petitioner had said he wanted to accept the state's offer and plead guilty, he "would have been more than happy to let him do that." App. 579, ll. 4-21.

Order of Dismissal

The PCR court found Petitioner failed to meet his burden of proving trial counsel did not review all of the discovery materials with him. The court found credible trial counsel's testimony that he reviewed the discovery materials with Petitioner and provided him with a copy. Moreover, the court found Petitioner's testimony that he would have pled guilty had he been aware of all of the

state's evidence against him not credible because Petitioner "was always adamant about his innocence." App. 589-590.

Discussion

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to review all of the discovery materials with Petitioner prior to trial thereby preventing Petitioner from fully accessing the extent of the state's evidence against him and making an informed decision to reject the state's plea offer and proceed to trial. If Petitioner would have been aware of all the evidence, specifically the recording of the 911 call made by Byers and the photographs of Petitioner in Byers' car at the ATM machine, Petitioner would have accepted the state's plea offer and pled guilty in order to receive a more favorable sentence.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

Trial counsel's performance was deficient because he failed to adequately communicate with Petitioner and review with Petitioner the state's evidence against him before Petitioner rejected the state's plea offer and proceeded to trial. The evidence presented at the PCR hearing showed counsel met with Petitioner at most on three occasions before Petitioner's trial: once shortly after Petitioner's arrest while Petitioner was still housed at the local detention center and twice in the holding area at the Greenville County courthouse when Petitioner was transported for court appearances. Counsel also held a video conference with Petitioner three days before trial.

The lack of time counsel spent with Petitioner, along with Petitioner's testimony at the PCR hearing, prove that it is unlikely trial counsel adequately reviewed with Petitioner all of the discovery materials. Counsel admitted he did not play the recording of the 911 call made by Byers for Petitioner before his trial. This left Petitioner in the dark and prevented him from making an informed decision about whether he should reject the state's plea offer and proceed to trial or accept the offer in hope of receiving a more favorable sentence.

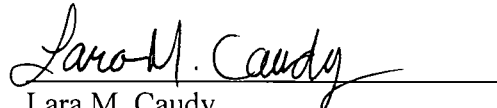
Petitioner was prejudiced by trial counsel's deficient performance because if counsel would have reviewed with Petitioner all of the discovery materials before trial and adequately communicated with Petitioner, Petitioner would have pled guilty in exchange for a favorable plea deal instead of proceeding to trial. Petitioner testified that if he had known the extent of the state's evidence against him, he is one "hundred percent sure [he] would have [taken] a plea." App. 549, 11. 11-15; App. 551, ll. 6-23.

Therefore, the PCR court erred by finding Petitioner failed to prove trial counsel rendered ineffective assistance of counsel and that he was prejudiced by counsel's deficient performance. Respectfully, this Court should reverse the order of the PCR court and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

ANTWAN GRAYSON

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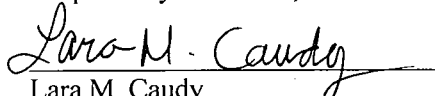
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwan Grayson states:

1. She is an 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 that was held on December 18, 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 one arguable legal issue that arose during the post-conviction relief process.

Therefore, counsel requests the Court relieve her as counsel for Antwan Grayson.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of November, 2015

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IN THE SUPREME COURT

Certiorari to Greenville County
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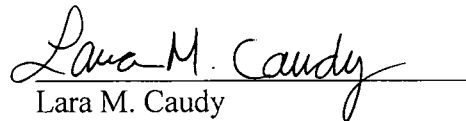
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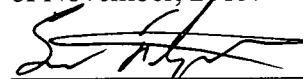
CERTIFICATE OF SERVICE

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 Karen C. Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Antwan Grayson, #329430, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 30th day of November, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of November, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.