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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

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SC Court of Appeals

Certiorari to Richland County

Robert E. Hood, Circuit Court Judge

RANDOLPH ASHFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001268

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the lower court err by denying Petitioner's application for forensic DNA testing pursuant to S.C. Code Ann. § 17-28-90 where the court made no specific findings of fact and did not expressly state its conclusions of law in the order denying Petitioner's application for forensic DNA testing?

STATEMENT OF FACTS

On April 18, 2007, the Richland County Grand Jury indicted Petitioner for first degree burglary, three counts of assault with intent to kill (AWIK), and first degree criminal sexual conduct. App. 998 – 1000. On May 23, 2007, Petitioner was indicted for kidnapping and three counts of carjacking from the same set of facts. App. 1000 – 1021. On March 31, Petitioner's case proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr. App. 1. Deon O'Neil and Nicole Singletary represented Petitioner. Kathryn Luck Campbell and Will Bryant represented the State. App. 1.

According to the State, on the afternoon of February 24, 2007, Petitioner committed a series of carjackings in Columbia, South Carolina, which led him to the home of Deborah Simmons. App. 227. Simmons testified that Petitioner called her repeatedly from 12:00 a.m. until 4:00 a.m. during the morning of the alleged incident looking for Roberta Neil, Petitioner's girlfriend. App. 346, ll. 7 – 9. Simmons told Petitioner that Neil was not at the home and asked him to stop calling. App. 346, ll. 7 – 9.

Simmons claimed that Petitioner forced his way into her home and held Simmons and her grandchildren hostage at gunpoint. App. 340. The grandchildren were eventually allowed to leave the home. App. 340 – 341. Simmons stated that Petitioner repeatedly asked her where was Roberta Neil. App. 348, ll. 5 – 6.

Simmons stated that Petitioner barricaded the front door with furniture. App. 352 – 353. She also asserted that Petitioner sexually assaulted her while holding her hostage. App. 353 – 354. Richland County officers testified that gunshots were fired from the front bedroom window. After a nearly eight-hour standoff, Petitioner and Simmons were escorted out of the residence by police. App. 356, ll. 9 – 10.

During a search of the residence, police discovered a green jacket lying on the bed in the bedroom where the gunshots allegedly came from. App. 624, l. 25 – App. 625, l. 3. There were witnesses who testified that Petitioner was wearing a green jacket. App. 196 – 203. However, Petitioner denied wearing a green jacket on the day of the alleged incident. App. 791 – 792. Petitioner explained that he had been taking pain medication from his doctor for pain in his arm. App. 785, ll. 2 – 5. Petitioner could not remember the name of the pain medication but stated that it made him drowsy. App. 785, ll. 6 – 9.

Petitioner recalled that at around 11:00 a.m. on the day of the incident, he had taken his pain medication because his arm was hurting. App. 792, ll. 14 – 16. The next thing Petitioner remembered after taking his medication was walking through the parking lot of the Wash World on Main and Prescott streets in Columbia, South Carolina. App. 173, ll. 1 – 3. Petitioner admitted driving away in someone else's car but could not recall why. App. 793, ll. 9 – 25. Petitioner then drove to Simmons' house to look for his girlfriend, Neil, who was not answering Petitioner's phone calls. App. 796, l. 23 – App. 797, l. 4. Petitioner testified that the sex with Simmons was consensual. App. 805, l. 9 – App. 806, l. 13.

Petitioner was found guilty and sentenced to ten years' imprisonment for each count of AWIK, sixteen years' imprisonment for one count of carjacking, and ten years' imprisonment for the remaining two counts of carjacking, all to run concurrently to each other. App. 990 – 998. That sentence was to be followed consecutively by concurrent twenty year terms of imprisonment for kidnapping and first-degree burglary. App. 990 – 998.

Petitioner appealed his convictions and sentences. A brief was filed pursuant to the procedure in Anders v. California, 386 U.S. 738 (1967), by Deputy Chief Appellate Defender Wanda H. Carter. The South Carolina Court of Appeals dismissed Petitioner's appeal by order

dated January 25, 2012. See State v. Ashford, 2012-UP-035 (S.C. Ct. App. filed January 25, 2012). The remittitur was issued on February 15, 2012.

On April 23, 2013, Petitioner filed an application for post-conviction forensic DNA testing. App. 955. Respondent filed its response on July 18, 2013, requesting that Petitioner's application be denied. App. 961. An evidentiary hearing was held on January 5, 2015 before the Honorable Robert E. Hood. App. 965. David Belding represented Petitioner. Joanna McDuffie represented the State. App. 965.

Counsel for Petitioner explained to the court that Petitioner requested that a green jacket located at the scene of the burglary be tested "for DNA and any physical evidence related to DNA matter." App. 968, ll. 19 – 20. Counsel explained that the State alleged Petitioner committed several carjackings where he ended up at the victim's mobile home. App. 968, l. 23 – App. 969, l. 1. Petitioner then held the victim hostage in her home for several hours. App. 969. Counsel stated that Richland County deputies who responded to the home claimed that shots were fired from a bedroom window. App. 969.

After Petitioner was escorted from the home with the alleged victim and was arrested, officers searched the home and found a green jacket lying on the bed in the room from which they heard gunshots. App. 969, ll. 16 – 25. Counsel stated that Petitioner asked his trial attorneys to have the green jacket tested for Petitioner's DNA. App. 970, ll. 1 – 8. Counsel explained that "[n]o one actually testified that they saw [Petitioner] go in that room." App. 971, ll. 5 – 8. The solicitor referenced the green jacket in her closing argument as circumstantial evidence that Petitioner was in the bedroom in question. App. 970, l. 15 – App. 971, l. 4. However, Petitioner contended that his DNA would not have been found on the jacket.

If Petitioner's trial attorneys had gotten the green jacket DNA tested, they could have used the test results for Petitioner's defense at trial. App. 974. Counsel asserted that if the green jacket had been tested and Petitioner's DNA was not found on the jacket, it would not have been circumstantial evidence which placed Petitioner at the crime scene. App. 974, l. 23 – App. 975, l. 5.

On January 5, 2015, the judge issued an order of dismissal denying Petitioner's application. App. 989. The judge wrote that "the green jacket in question was not available for testing." App. 989. The judge further wrote that the "green jacket was not made an exhibit at trial and thus, was not in the possession of the Clerk's office." App. 989. The judge found that there was a "lack of sufficient factual cause for the motion." App. 989.

ARGUMENT

The lower court erred by denying Petitioner's application for forensic DNA testing pursuant to S.C. Code Ann. § 17-28-90 where the court made no specific findings of fact and did not expressly state its conclusions of law in the order denying Petitioner's application for forensic DNA testing.

Pursuant to S.C. Code Ann. Section 17-28-30 of the Access to Justice Post-Conviction DNA Testing Act (DNA Testing Act), a person who pled not guilty to criminal sexual conduct in the first degree, *inter alia*, was subsequently convicted of, is currently incarcerated for the offense, and asserts he is innocent of the offense "may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication." The application for forensic DNA testing "must be heard in, and before a judge of, the general sessions court or family court in which the conviction or adjudication took place." S.C. Code Ann. §17-28-90(A).

A court "shall order DNA testing of the applicant's DNA and the physical evidence or biological material upon a finding that the applicant has established each of [seven] factors by a preponderance of the evidence." S.C. Code Ann. §17-28-90(B) (1-7).

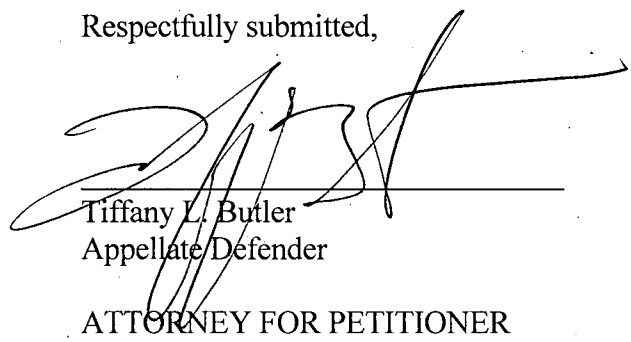
However, when "the court is satisfied, on the basis of the application, the responses, or the motion of the solicitor . . . that the applicant is not entitled to DNA testing and no purpose would be served by any further proceedings, it may indicate to the applicant and the solicitor . . . its intention for summarily dismiss the application and its reasons for so doing." S.C. Code Ann. §17-28-50(C). "The court shall make **specific findings of fact and expressly state its conclusions of law**." S.C. Code Ann. §17-28-50(C) (emphasis added).

Here, there are no specific findings of fact or conclusions of law made by the lower court in its assessment of whether Petitioner had met his burden of proving whether he was entitled to additional DNA testing. See Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007) (holding that in a post-conviction relief proceeding, the judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented). The lower court did not abide by the statutory provisions of the DNA Testing Act which deprived Petitioner of his right to counsel and to have a fair assessment of his application for forensic DNA Testing.

CONCLUSION

For the reasons argued above, Petitioner Randolph Ashford respectfully requests this Court to grant his petition for writ of certiorari with the ultimate relief of a new hearing.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

RANDOLPH ASHFORD,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randolph Ashford 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 which was held on January 5, 2015. 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 Randolph Ashford.

Respectfully submitted,

Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of March, 2016

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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 Clay Mitchell, Esquire and Randolph Ashford, #256638, at Perry Correctional Institution this 2nd day of March, 2016.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day
of March, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 2, 2023.