

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 21 2016

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Post Conviction Relief

SC SUPREME COURT

Tanya A. Gee, Circuit Court Judge

Case No.: 2015-CP-43-0037
Appellate Case No.: 2016-000615

Robert T. Taylor,,,,.....Respondent-Petitioner,

vs.

State of South Carolina,.....Petitioner-Respondent.

PETITION FOR APPEAL BOND

Respondent-Petitioner, through his undersigned counsel, respectfully petitions this Court for an appellate bond pursuant to Rule 240, SCACR, and Rule 243(k), SCACR. Respondent-Petitioner (R-P) is requesting an appellate bond during the pendency of the cross-appeal of the Order Granting Application for Post Conviction Relief, which was signed by the Honorable Tanya A. Gee on February 19, 2016 and attached herein.

POST CONVICTION RELIEF PROCEDURAL HISTORY

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on December 31, 2014. Petitioner-Respondent (P-R) filed a Return on June 8, 2015. On October 14, 2015, R-P, through counsel, filed an Amendment

to Application for Post Conviction Relief, which amended the Application by adding the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to prepare and investigate prior to trial, which resulted in a failure to present a reasonable defense at trial. See Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). Specifically, but not limited to:
 - a. Ineffective assistance of trial counsel for failure to investigate the scene and be aware of notice from the State regarding time and place of the alleged incident. (Transcript pp. 240-9).
 - b. Ineffective assistance of trial counsel for pursuing a primary defense (as was addressed pretrial, during trial motions, in closing and in post-trial motions) based upon venue, which was unreasonable based upon information that should have been obtained from a minimal investigation.
 - c. Ineffective assistance of trial counsel for failure to speak to witnesses prior to trial and call witnesses on Applicant's behalf at trial.
 - d. Ineffective assistance of trial counsel for failure to properly prepare witnesses utilized at trial.
 - e. Ineffective assistance of trial counsel for failure to utilize exculpatory and rebuttal evidence.
2. Ineffective assistance of trial and appellate counsel in the handling of the Batson motion matter at trial and on appeal.
3. Ineffective assistance of trial counsel for failure to properly impeach and/or cross-examine the State's witnesses at trial.
4. Ineffective assistance of trial counsel for the handling of the expert testimony of Gaye Allen-Cook. Specifically, but not limited to:
 - a. Failure to request information regarding her findings / opinions prior to trial and to discuss such with her.
 - b. Failure to object to and/or move to suppress her testimony.
 - c. Alternatively, newly discovered evidence that Gaye Allen-Cook would not have taken the stand for the State if given the opportunity to review the case and would have been willing to assist with the defense of Applicant.

5. Ineffective assistance of trial counsel in closing argument, for:
 - a. Appealing negatively and prejudicially to the jury with the story used to illustrate counsel's argument regarding venue, and
 - b. Focusing solely on venue, which the trial court later ruled was not a proper question for the jury.
6. Ineffective assistance of trial counsel for failure to make a proper arguments against the imposition of a sentence of life without parole based upon Rule 404(b), SCRE, and S.C. Code 17-25-50 (2003). Ineffective assistance of counsel for failure to properly preserve arguments regarding the imposition of a sentence of life without parole for appeal. Alternatively, ineffective assistance of appellate counsel for failing to properly raise the argument made at trial against the imposition of a sentence of life without parole.
7. Ineffective assistance of trial counsel in the handling of reconsideration and/or post trial motion.
8. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal:
 - a. Objection regarding verbal statement of victim regarding time and place.
9. Pursuant to Rule 15(b), SCRCR, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On November 19, 2015, an evidentiary hearing was conducted at the Sumter County Courthouse in front of the Honorable Tanya A. Gee. Applicant was present and represented by Tricia A. Blanchette, Esquire. P-R was represented by Daniel Gourley, Assistant Attorney General. R-P testified along with Gaye Allen Cook, William Eddie Brown, Chad Bernard, Nick Everett, Linda Taylor, John Pezzullo, Michelle Gallagher, Tonya Morton, Pete Skidmore, Jeremy A. Thompson, Esquire, and Charles D. Barr, Esquire. R-P introduced nineteen exhibits. The lower court had before her a copy of Applicant's admitted exhibits, the records of the Williamsburg County Clerk of Court, the trial transcript, the appellate court filings, the Appendix from R-P's Georgetown

County conviction, and R-P's records from the South Carolina Department of Corrections.

Thereafter, counsel for R-P submitted a proposed Order as requested. On February 19, 2016, the Honorable Tanya A. Gee issued a revised version of the proposed Order Granting Application for Post Conviction Relief, which was filed on February 24, 2016.

On or about March 23, 2016, P-R filed a Notice of Intent to Appeal, and R-P filed a Notice of Cross-Appeal on March 28, 2016. R-P did not receive of receipt of the transcript, but she has recently received notice of an Order granting an extension for filing the Petition of Writ of Certiorari until July 6, 2016.

GENERAL SESSIONS PROCEDURAL HISTORY

R-P is presently confined in the South Department of Corrections pursuant to orders of commitment from the Williamsburg County Clerk of Court. R-P was true bill indicted at the May 2006 term of the Williamsburg County Grand Jury for criminal sexual conduct-second degree and kidnapping (2006-GS-45-176). Prior to R-P's Williamsburg charges, R-P pled guilty to three charges out of Georgetown County.¹

¹ R-P was indicted in Georgetown County for two counts of lewd act upon a minor (2004-GS-22-44 & 2005-GS-22-523). On April 20, 2006, R-P waived grand jury presentment on another Georgetown County charge, criminal sexual conduct with a minor- second degree (2006-GS-22-361), and pled guilty to all three charges. R-P was represented by R. Scott Joye, Esquire, and Delton W. Powers, Jr., Esquire at his plea. Mr. Joye, Esq. served as R-P's primary counsel. The Honorable Edward B. Cottingham sentenced R-P to concurrent eight-year terms, suspended to five years of active time and three years of probation. R-P did not file a direct appeal.

R-P filed an Application for Post Conviction Relief on April 3, 2007. An evidentiary hearing took place at the Horry County Courthouse on November 20, 2008. R-P was present and represented by Tara Dawn Shurling, Esquire. P-R was represented by Christina J. Catoe, Assistant Attorney General. The Honorable Michael G. Nettles issued an Order of Dismissal on January 16, 2009. A Notice of Appeal was timely filed, and R-P sought certiorari with this Court. Certiorari was denied June 21, 2013. The Remittitur was issued on July 26, 2013.

Charles David Barr, Esquire represented R-P. On July 10, 2007, Applicant proceeded to trial before the Honorable George C. James, Jr. Applicant was convicted as indicted. On July 12, 2007, Judge James sentenced Applicant to life without the possibility of parole for kidnapping and criminal sexual conduct-second degree.

A timely Notice of Appeal was filed on R-P's behalf. Jeremy A. Thompson, Esquire represented R-P on appeal. On June 6, 2012, the South Carolina Court of Appeals affirmed R-P's conviction and sentence. State v. Taylor, 399 S.C. 51, 731 S.E.2d 596 (Ct. App. 2012). R-P sought certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court denied certiorari on April 3, 2014. The Remittitur was issued on April 7, 2014.

GROUND IN SUPPORT OF REQUEST FOR BOND

By way of the Order Granting Application for Post Conviction Relief, the Honorable Tanya A. Gee made multiple clear findings of ineffective assistance of trial counsel. Specifically, the lower court held: "After listening to the testimony, carefully weighing the witnesses' credibility and reviewing the transcript from Mr. Taylor's trial, I agree that Mr. Taylor received ineffective assistance of trial counsel and grant his application for post-conviction relief." Order p. 8.

As to the issues raised, the lower court first held that counsel was ineffective for his acknowledged failure to interview the boys that were on the camping trip, who provided testimony and Affidavits at the evidentiary hearing.⁴ In light of counsel's admitted trial strategy of discrediting the victim's story, the lower court found that it was

⁴ The State did not call the victim at the evidentiary hearing to refute the testimony and evidence offered nor was his presence noted at the evidentiary hearing.

inconceivable to excuse such failure as reasonable trial strategy.⁵ Order p. 10. Thereafter, the lower court provided a four page analysis of why R-P has met the burden of proving prejudice. Order p. 11-14. R-P submits that the lower court made a very clear and well-reasoned finding of ineffective assistance and prejudice that is supported by the record.

Secondly, the lower court found that trial counsel was deficient in his "handling of the Batson motion matter at trial." Order p. 14. In order to properly address the testimony elicited from trial counsel that the lower court deemed "shocking", R-P's counsel obtained a portion of the evidentiary hearing transcript prior to the drafting and issuance of the Order containing the testimony of both attorneys. By way of her Order, the lower court cited the testimony of Attorney Barr and held:

This Court finds that Mr. Barr's representation was deficient where he admittedly struck jurors in an effort to seat David Pressley, a friend of Mr. Barr's who Mr. Barr believed would have changed the outcome of the case. As a result of this improper purpose, Mr. Barr struck a number of white jurors and for one of them, juror #146, he provided a non-race neutral explanation. Although at trial attorney's failure to provide a race neutral explanation is not per se deficient performance, where the trial attorney admits that the true reason for striking the juror was to accomplish an improper purpose (i.e., seating a different juror who was a friend of the attorney), such behavior falls below professional norms. Mr. Barr's conduct during jury selection reinforces this Court's finding that trial counsel failed to investigate and prepare for this case because, according to Mr. Barr's own testimony, he relied on winning the trial based on seating a biased juror. To the extent prejudice resulted, it is the same prejudice already addressed above – trial counsel failed to properly investigate and call favorable witnesses on Taylor's behalf.

Order p. 16.

Furthermore, R-P has filed a cross-appeal and respectfully submits that there are additional viable grounds on which he will seek reversal of lower court's findings and ask

⁵ The lower court also supported this finding by addressing R-P allegations regarding trial counsel's handling of matters related to venue. Order pp. 10-11, fn. 2, 16-17.

that relief be granted. Notably as is addressed in the Order, the State's expert at trial Gaye Allen-Cook testified at the evidentiary hearing in support of R-P and her testimony provided a basis on which R-P will argue he should also be granted relief.

As a result of the Order issued by the lower court citing to clear admissions amounting to deficiencies on the part of trial counsel, the testimony and evidence offered in her presence and the record before her, along with the availability of additional claims to raise on cross-appeal, R-P respectfully requests that this Court take into consideration that there is a good probability that he will prevail on appellate review

While incarcerated, R-P has taken advantage of every opportunity afforded to him in the South Carolina Department of Corrections and has remained actively involved in the lives of his family and friends. As is evidenced by Respondent-Petitioner's attached letter, he has diligently worked to better himself, his family and fellow inmates while incarcerated and would be truly humbled by the opportunity to receive an appellate bond. To demonstrate efforts made towards improvement and service while incarcerated, attached please find a letter from Rev. Phillip Eason, Senior Chaplain, Broad River Correctional Institution and a copy of the following: 1) an Associates of Arts Degree from Columbia International University (CIU), 2) a Certificate of Completion from CIU for training in Comparative Religion and two Certificates of Achievement from CIU, 3) a Certificate of Appreciation for work as an instructor in the Character Based Unit Rehabilitation Program (CBU), 4) six Certificates of Completion from courses taken in the CBU, 5) a Certificate of Ordination, 6) two SCDC Character Club Recognition Certificates, 7) a Class of the Month Certificate from a class in the CBU, 8) two Certificates of Completion from SCDC programs; 9) two Certificates of Participation

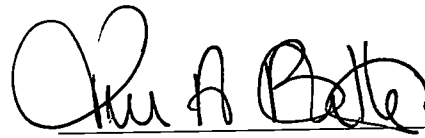
from SCDC programs. R-P submits that his activities while incarcerated speak to the strength of character that he will continue to demonstrate if he is granted bond.

R-P acknowledges the seriousness of the crimes from which he was convicted, but he respectfully asks that this Court to weigh the seriousness against the lower court's findings that the convictions were a result of ineffective assistance and the immense support he has from his family and community. To demonstrate the immense support R-P has and will receive from his loved ones and his community, attached herein are signed Petitions and letters from numerous individuals. Additionally, as is addressed in the letters of Rick Hipps, Arlene Pezzullo and R-P, R-P has made arrangements to be gainfully employed if given the opportunity to be on bond.

Finally, R-P would ask this Court to consider that he was out on bond and allowed to travel prior to his conviction as is addressed in his letter. Furthermore, due to his ties to the community, number of willing accountability partners and future plans with Ms. Ritchey, R-P submits he will not present a flight risk and will comply with all conditions set by this Court.

Based upon the likelihood of success on appeal, the reasons set forth in his letter, his comprehensive plan, his record and activities while incarcerated, the outpouring of support and affirmation from his family and the community, and his compliance with his prior bond, R-P submits that his case presents an extraordinary circumstance that warrants the granting of this Petition. Therefore, R-P would respectfully request that this Court grant his Petition for an Appellate Bond Pursuant to Rule 240, SCACR, and Rule 243(k), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette". The signature is written in a cursive style with a large initial "T" and "B".

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for Respondent-Petitioner

June 21, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 21 2016

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Post Conviction Relief

SC SUPREME COURT

Tanya A. Gee, Circuit Court Judge

Case No.: 2015-CP-43-0037
Appellate Case No.: 2016-000615

Robert T. Taylor,,.....Respondent-Petitioner,

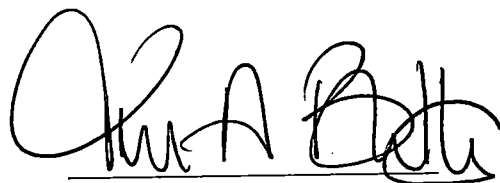
vs.

State of South Carolina,.....Petitioner-Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for R-P, certify that I served the Petition for Appeal Bond by depositing the same in the United States Mail this 21st day of June 2016 on the Attorney of Record for the Office of the Attorney General, addressed as follows:

Office of the Attorney General
Att: Julie Coleman, Assistant Attorney General
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008