

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

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Certiorari to Orangeburg County  
Maite Murphy, Circuit Court Judge  
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DYZSHON R. BOYKINS,

PETITIONER/RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPELLATE CASE NO. 2015-002513  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
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## ISSUE PRESENTED

I. Did the PCR court err by finding counsel provided effective representation where counsel failed to fully investigate Petitioner's alibi defense and adequately prepare for trial since Petitioner only pled guilty because counsel was not fully investigating his alibi defense and Petitioner did not think counsel was prepared to go to trial?

## STATEMENT OF FACTS

On the afternoon of December 28, 2010, the South Carolina Credit Union in Orangeburg County, South Carolina was robbed. App. 7, ll. 5 – 7. An individual came into the bank, presented a firearm, and took money. App. 7, ll. 8 – 9. The police printed photographs from the video footage from the bank cameras, which showed the individual’s face. App. 7, ll. 9 – 12.

In February of 2011, Travis Green spoke with police. App. 7, ll. 16 – 19. Green gave a statement saying that he knew Petitioner and had “some conversations with him shortly afterward where he had admitted to the bank robbery.” App. 7, ll. 16 – 19. Green told police that he had seen the still photographs published in the local newspaper and recognized Petitioner. App. 7, ll. 19 – 21. Green also “provided information that [Petitioner] was down in Georgia” at the time Green gave the statement to police. App. 7, ll. 21 – 22.

Based on Green’s information, the police developed a photographic line-up with Petitioner’s photograph included. App. 7, ll. 22 – 24. One of the bank tellers identified Petitioner as the individual who came in and robbed the bank on December 28, 2010. App. 7, ll. 22 – 24. In August of 2011, Petitioner was arrested in Georgia and brought back to Orangeburg to be served with a warrant for armed robbery. App. 8, ll. 1 – 3.

On November 7, 2011, the Orangeburg County Grand Jury indicted Petitioner for armed robbery and possession of a weapon during commission of a violent crime. App. 71. On February 11, 2013, Petitioner waived presentment to the Orangeburg County Grand Jury and pled guilty to entering a bank with the intent to steal. App. 4, ll. 16 – 19. In exchange for his guilty plea, the State recommended a seven-year prison sentence and dismissed the weapons charge. App. 35, ll. 1 – 13. Mark Wise represented Petitioner. App. 1. Don Sorenson represented the State. App. 1.

Judge Griffith sentenced Petitioner to seven years' imprisonment. App. 16, ll. 11 – 16. Defense counsel failed to file a notice of appeal.

### **PCR Hearing**

On June 30, 2014, Petitioner filed a PCR application alleging counsel failed to assist in preparing a defense for trial and misrepresented the total incarceration time Petitioner would serve by pleading guilty. App. 29.

On February 20, 2015, the State filed its return and partial motion to dismiss. App. 28. The State argued that Petitioner's PCR application "should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act," specifically, for filing his application "after the statutory filing period had expired." App. 29; S.C. Code Ann. § 17-27-45(a) (2003). An evidentiary hearing was held before the Honorable Maité Murphy on May 22, 2015. App. 33. Jonathan D. Waller represented Petitioner. J. Clayton Mitchell represented the State. App. 33.

At the hearing, the court found Petitioner's PCR application was not barred by the statute of limitations because he was on continuous lockdown in the department of corrections at the time the application would have been due to be filed. App. 46, l. 21 – App. 47, l. 12. This issue is addressed in Petitioner's return to the State's petition for writ of certiorari filed in this Court on June 23, 2016.

Petitioner asserted that defense counsel was not prepared to go to trial. App. 51, ll. 17 – 18. Petitioner thought he needed to try to "build [his] own defense" since defense counsel was not working on his case. App. 50, ll. 7 – 9. Petitioner asserted that he was in Georgia during the time of the robbery and had an alibi defense. App. 49, ll. 11 – 25. However, counsel did not provide "information" to Petitioner about any investigation. App. 52, ll. 3 – 7.

Counsel confirmed that Petitioner had always said that he did not commit the robbery and wanted a trial. App. 54, ll. 17 – 19. Counsel explained that the State made Petitioner a plea offer on November 28, 2012. App. 55, ll. 13 – 19. The State offered Petitioner a “ten to fifteen-year sentence” in exchange for pleading guilty to armed robbery. App. 55, ll. 13 – 19. However, Petitioner “was not interested.” App. 55, ll. 13 – 19.

The State then offered to let Petitioner plead to entering a bank with intent to steal about a month later on December 29, 2012. App. 56, ll. 19 – 24. The State also agreed to recommend a seven-year sentence. App. 56, ll. 1 – 2. Defense counsel confirmed that Petitioner told him that he had an alibi. App. 56, ll. 8 – 14. Counsel spoke to Petitioner’s stepmother, mother, and father, who were in Georgia with Petitioner during the time of the robbery. App. 56, ll. 18 – 21. However, counsel was not able to “nail down” the alibi during the eighteen months between Petitioner’s arrest and ultimate plea. App. 58, ll. 2 – 15.

Counsel explained:

“I don’t know that for the entire 18 months I was trying to nail down his alibi, and I don’t have my notes for the date that I spoke to his father, his stepmother, his mother, but there was a point I was more focused on Mr. Boykins’ case than other cases”

App. 59, ll. 21 – 25.

### **Order of Dismissal**

On August 18, 2015, the PCR court issued an order denying the merits of Petitioner’s application. App. 62. However, the judge wrote that Petitioner “was not barred by the statute of limitations and that the time limits should be tolled due to Applicant’s circumstances of incarceration.” App. 66.

The court found that Petitioner's allegation that "he did not plead guilty knowingly and voluntarily because he believed he had a viable alibi defense" was without merit. App. 68. The court held that Petitioner "failed to demonstrate counsel's performance was unreasonable." App. 69.

Petitioner appealed the order of dismissal. This petition for writ of certiorari follows.

## ARGUMENT

I. The PCR court erred by finding counsel provided effective representation where counsel failed to fully investigate Petitioner’s alibi defense and adequately prepare for trial since Petitioner only pled guilty because counsel was not fully investigating his alibi defense and Petitioner did not think counsel was prepared to go to trial.

Defense counsel was ineffective for failing to thoroughly investigate Petitioner’s alibi defense and failing to prepare for trial. Defense counsel confirmed that Petitioner maintained his innocence since the start of his case. Had counsel prepared Petitioner’s defense, Petitioner would not have pled guilty and would have insisted on going to trial. Respectfully, the judge’s finding that Petitioner was not credible was arbitrary.

“[C]ounsel had a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland v Washington, 466 U.S. 668, 691 (1984); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). The duty to investigate includes the “duty to investigate alibi witnesses identified by a defendant.” Walker, 407 S.C. at 405, 756 S.E.2d at 147. Counsel’s “failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable.” Id.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland, 466 U.S. at 685 – 86 (1984). In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel’s assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel’s performance was deficient. Hill, 474 U.S. at 58 – 59. Whether counsel was “deficient” turns on whether the guilty plea was entered voluntarily,

knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 56 (1985) (“The longstanding test for determining the validity of a guilty plea is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’” (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970))).

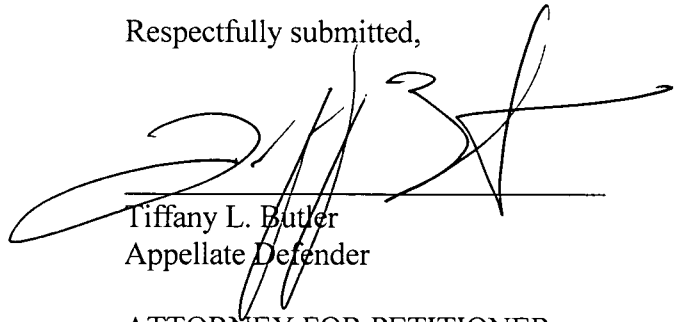
Second, the applicant must show that he was prejudiced by counsel’s deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show that there is a reasonable probability that “but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

Here, counsel was ineffective for failing to fully investigate Petitioner’s alibi defense and prepare for trial. Both Petitioner and counsel agreed that Petitioner wanted a trial from the beginning and that he maintained his innocence. Petitioner told counsel that he was in Georgia during the robbery and provided names of three witnesses. Although counsel stated that he spoke with the witnesses, he failed to build the alibi defense during the **entire eighteen months** that Petitioner was awaiting his day in court. Counsel could not even state whether or how “the alibi would have worked out,” as he failed to “nail that down before [Petitioner] entered into the plea.” App. 57, ll. 18 – 22. Had counsel fully investigated Petitioner’s alibi defense and adequately prepared for trial, Petitioner would not have plead guilty. Instead, Petitioner would have insisted on going to trial.

CONCLUSION

For the reasons argued above, Petitioner Dyzshon Boykins respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of July, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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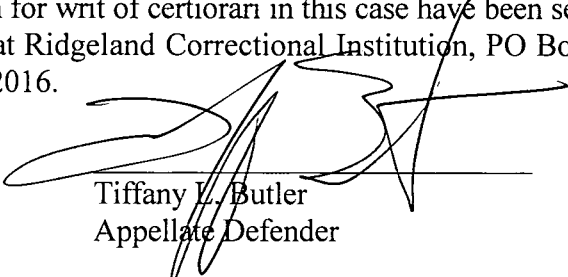
APPELLATE CASE NO. 2015-002513

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari in this case have been served on Clay Mitchell, Esquire and Dyzhon Boykins at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 11th day of July, 2016.



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Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day  
of July, 2016.

Christian Ford (L.S.)  
Notary Public for South Carolina  
My Commission Expires: March 1, 2026.