

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County
Steven H. John, Circuit Court Judge

S.C. Supreme Court

TYRONE JACOBS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in failing to grant Petitioner relief from his conviction and sentence where trial counsel provided ineffective assistance by failing to hire an independent ballistics expert to testify on Petitioner's behalf to support his claim of self defense?

STATEMENT

In March 2007, the Horry County Grand Jury indicted Petitioner for murder. App. 430-431. Petitioner was tried before the Honorable Kristi Lea Harrington and a jury during the week of May 19, 2008. App. 1. Ralph J. Wilson represented Petitioner, and Jimmy A. Richardson, II represented the State. App. 1. The jury found Petitioner guilty as charged. App. 365 lines 7-9. Judge Harrington sentenced Petitioner to thirty years imprisonment. App. 373 lines 6-9. Thereafter, Petitioner filed a timely notice of appeal, and Joseph L. Savitz, III submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967) on Petitioner's behalf. The South Carolina Court of Appeals affirmed Petitioner's conviction on February 2, 2010 in an unpublished opinion. State v. Jacobs, Op. No. 2010-UP-081 (S.C. Ct. App. filed Feb. 2, 2010).

Petitioner filed an application for post-conviction relief (PCR) on February 15, 2011. App. 375 – App. 380. The Honorable Steven H. John presided over an evidentiary hearing on August 22, 2011. Petitioner was represented by Charles T. Brooks, III, and the state was represented by Christina J. Catoe. App. 384. On August 30, 2011, Judge John issued his order denying Petitioner relief from his conviction and sentence. App. 422 – App. 429.

This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in failing to grant Petitioner relief from his conviction and sentence where trial counsel provided ineffective assistance by failing to hire an independent ballistics expert to testify on Petitioner's behalf to support his claim of self defense.

During the PCR proceedings, Petitioner testified that trial counsel did not investigate his case thoroughly. App. 392 line 21 – App. 393 line 1; App. 394 lines 5-8. Petitioner testified that his defense was self defense. App. 402 lines 9-11. The victim, who was armed with a pool stick, and Petitioner engaged in a heated argument. App. 395 lines 18-24; App. 397 lines 3-8; App. 397 lines 19-24; App. 398 lines 1-24; App. 399 lines 19-24; App. 400 line 1 – App. 401 line 6.

Trial counsel testified he did not retain a ballistics expert for Petitioner's trial because there was never an issue regarding whether the bullets recovered from the victim's body and those recovered at the scene were from the same gun. App. 410 lines 3-16. Trial counsel further testified the victim suffered from at least four gunshot wounds, two of which were in the back. App. 409 lines 13-24. According to trial counsel, he received a ballistics report indicating the same gun fired all of the bullets. App. 409 line 25 – App. 410 line 4.

However, the trial record revealed that the local police department did not send the projectiles or shell casings to the State Law Enforcement Division (SLED) for testing. App. 200 lines 18-23. According to the local law enforcement official, all the prosecution could prove was that the weapon used “possibly would not be a revolver” because the shells were on the ground and a revolver would hold the shells. App. 202 lines 10-15. Local law enforcement was unable to determine if one of the shell jackets admitted into evidence was from a 9mm as the others were. App. 203 lines 2-13. The prosecution's witness was forced to admit that knowing that the jacket

was consistent with the other shell casings recovered would be relevant to the investigation and trial. App. 204 lines 5-10. In addition, the pathologist testified the victim suffered from three gunshot wounds, one in the left back, one in the left side and one in the right leg. Tr. 259 lines 6-9.

During closing arguments, trial counsel argued to the jury that Petitioner acted in justifiable self defense. App. 336 line 7 – App. 341 line 6. In addition, the trial judge instructed the jury as to self defense. App. 357 line 14 – App. 360 line 22.

To establish ineffective assistance of counsel, Petitioner must show trial counsel's performance fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability that the outcome at trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

In Strickland, 466 U.S. at 691, the United States Supreme Court held that “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” See McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (providing that “[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.”); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (holding that “[w]ithout a doubt, ‘[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.’”) (quoting Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986)).

The United States Supreme Court also held that “[i]n assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to

investigate further.” Wiggins v. Smith, 539 U.S. 510, 527 (2003). Specifically, “while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Lounds v. State, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (internal quotations omitted).

Because trial counsel failed to hire an independent expert witness to support Petitioner’s claim of self defense, trial counsel’s performance was constitutionally deficient for not adequately preparing for trial. See Id. at 462, 670 S.C. at 650 (finding that it “was not objectively reasonable given the defense theory of the case” for counsel not to call witnesses that were critical to his client’s defense).

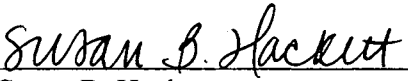
In this case, trial counsel failed “to discover all reasonably available mitigation evidence and reasonable available evidence tending to rebut any aggravating evidence introduced by the State” when he did not hire an independent expert to support Petitioner’s claim of self defense. See McKnight, 378 S.C. at 46, 661 S.E.2d at 360 (finding that counsel was ineffective in a homicide by child abuse case for: (1) calling an expert witness that undermined the defense; (2) failing to call an expert witness that supported the defense theory; and (3) in failing to challenge the State’s evidence).

Regardless of his chosen trial strategy, at a minimum, trial counsel had a duty to conduct a reasonable and independent investigation and to interview potential expert witnesses in his preparation for trial. See Ard, 372 S.C. at 331-32; 642 S.E.2d at 597 (finding that counsel has a duty to conduct a reasonable and independent investigation and to interview potential witnesses); see also Lounds, 380 S.C. at 460, 670 S.C. at 64.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the PCR court and grant him a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of May, 2012.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO Horry COUNTY
STEVEN H. JOHN, CIRCUIT COURT JUDGE

TYRONE JACOBS,

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STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone Jacobs 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 August 22, 2011. 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 Tyrone Jacobs.

Respectfully submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of May, 2012

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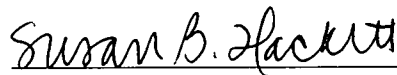
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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 Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Tyrone Jacobs, #328542, at Lee Correctional Institution this 3rd day of May, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day
of May, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.