

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JAN - 3 2017

S.C. SUPREME COURT

LEONARD B. GOODWIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001173

JOHNSON PETITION FOR WRIT OF CERTIORARI

Laura R. Baer
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding that trial counsel rendered constitutionally effective assistance of counsel where she did not properly advise Petitioner regarding his right to testify?

STATEMENT OF THE CASE

On January 11, 2010, the Charleston County Grand Jury indicted Petitioner Leonard Goodwin for the murder of his adult step-son, Eric Robinson. App. 878 – 879.

On May 31 to June 3, 2011, Goodwin appeared for trial before the Honorable Kristi L. Harrington and a jury. App. 1. Goodwin was represented by Cassandra Winslow Woosley and Beattie Butler, and the state was represented by assistant solicitors E. Culver Kidd and Adam Young. App. 2. Though admittedly a circumstantial case, the state's theory was that Goodwin shot Eric during an argument and hid his body in the crawl space underneath the house where they resided. App. 636 – 650.

On the third day of trial, Judge Harrington advised Goodwin regarding his general right to testify and gave him overnight to think about it. App. 580, l. 10 – 583, l. 16. On the fourth day of trial, Judge Harrington asked Goodwin if he recalled her advice regarding the right and consequences of testifying from the day prior. App. 618, ll. 10-20. Goodwin indicated that he did not have any additional questions, had met with both of his attorneys, and did not intend to testify. App. 618, l. 21 – 619, l. 19.

The jury returned a verdict of guilty. App. 681 – 685. Judge Harrington sentenced Goodwin to life imprisonment. App. 696.

Goodwin was represented on direct appeal by appellate defender's Breen Stevens and Benjamin Tripp, who filed the Final Brief of Appellant on May 23, 2013. App. 698 – 731. The state, represented by senior assistant attorney general Melody Brown, filed its Final Brief of Respondent on May 23, 2013. App. 732 – 782. On December 11, 2013, the Court of Appeals affirmed Goodwin's conviction in an unpublished opinion. App. 783 – 785; State v. Goodwin,

Opinion No. 2013-UP-448 (Ct. App. filed Dec. 11, 2013). The remittitur was issued on December 30, 2013. App. 786 – 787.

On July 8, 2014, Goodwin filed his application for post-conviction relief (“PCR”). App. 788 – 823. The state filed its return on May 22, 2015. App. 824 – 829.

On December 16, 2015, an evidentiary hearing was held before the Honorable Deadra L. Jefferson. App. 830. Goodwin was represented by Christopher Murphy, and the state was represented by assistant attorney general J. Rutledge Johnson. App. 830. At the beginning of the hearing, PCR counsel explained that they intended to pursue two allegations – ineffective assistance of counsel for failing to advise Goodwin to testify in his own defense and ineffective assistance of counsel for failing to call alibi witnesses. App. 833, ll. 13-22. Both Goodwin and trial counsel, Cassandra Woosley, testified at the hearing. App. 831.

Regarding the right to testify, Goodwin said that he and his trial counsel had not discussed whether he should testify prior to his trial though he had consistently indicated his desire to do so. App. 839, ll. 22-24; App. 842, ll. 3-8. However, Goodwin did speak with his attorneys for approximately five minutes after the trial judge addressed him and asked if he was going to testify on his own behalf. App. 839, ll. 15-21; App. 840, ll. 3-11. Even then, they never discussed the “pros and cons” of testifying. App. 839, l. 25 – 840, l. 2. Rather, trial counsel, without explanation, told Goodwin “it would [be] best that you did not testify.” App. 840, ll. 12-19; App. 841, l. 9 – 842, l. 2; App. 842, ll. 9-15. The reason that Goodwin told the trial judge that he did not want to testify was because he was following his lawyer’s advice. App. 842, l. 19 – 843, l. 10.

Trial counsel Woosley said that Goodwin had always maintained his innocence and said that he wanted “to say his side of story.” App. 848, ll. 22-24; App. 854, ll. 2-8. According to

Woosley, she prepared Goodwin to testify at his trial by going over his direct and potential cross-examinations. App. 849, l. 19 – 850, l. 4; App. 854, ll. 9-17. However, when she and her co-counsel met with Goodwin during the trial to discuss whether he would testify, Woosley alleged that Goodwin “said at the point that he did not want to testify.” App. 850, ll. 5-9. Though she admitted that **she could not specifically recall their conversation**, Woosley thought she would have told him that if he did not testify the defense would have the last closing argument, which she thought was important in his case. App. 850, ll. 10-17; App. 852, l. 24 – 853, l. 3; App. 855, ll. 8-18. Woosley denied advising Goodwin not to testify, saying that it was his decision. App. 852, ll. 21-23.

PCR counsel argued that in light of the circumstantial nature of the evidence against Goodwin, it was prejudicial error not to call him to the stand to testify and refute the state’s evidence. Without his testimony, there was no real benefit to maintaining the last closing argument. App. 856, l.20 – 857, l. 12.

Judge Jefferson ruled that Goodwin failed to meet his burden proof, finding that his testimony was not credible. App. 859, ll. 4-13. She found Woosley’s testimony and the trial transcript persuasive on the allegation regarding the right to testify. App. 860, l. 22 – 866, l. 24. Judge Jefferson filed a formal Order of Dismissal on May 16, 2016. App. 869 – 877.

This appeal follows.

ARGUMENT

The PCR court erred in finding that trial counsel rendered constitutionally effective assistance of counsel where she did not properly advise Petitioner regarding his right to testify.

One of the paramount rights of a criminal defendant is his right to testify in his own defense or to remain silent and not have that silence held against him. U.S. Const. Amend. V; S.C. Const. art. I, section 12. Trial counsel was deficient in failing to properly advise Petitioner Goodwin regarding his right to testify, instead telling him only that if he did testify the defense would lose the right to argue last to the jury. Goodwin was prejudiced because, in this completely circumstantial case, his testimony was important to explain the various pieces of evidence that the solicitor used to build its case, a consideration that far outweighed who argued last to the jury.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. A PCR judge's findings should not be upheld if there is no probative evidence to support them. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V; see also Malloy v. Hogan, 378 U.S.

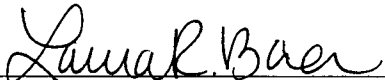
1, 84 S.Ct. 1489 (1964); S.C. Const. art. I, section 12. “The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions.” Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000); Rule 609, SCRE. If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant’s failure to testify cannot be held against him or considered by the jury in any manner during its deliberations. State v. Gunter, 286 S.C. 556, 335 S.E.2d 542 (1985). **“A defendant’s decision to testify or not must be made with knowledge of the consequences of either choice.”** Brown, 340 S.C. at 594, 533 S.E.2d at 310. “Failure to inform a client of his Fifth Amendment rights and the consequences of exercise and waiver of those rights falls below an objective standard of reasonable representation.” Id. at 595, 533 S.E.2d at 310.

Here, trial counsel confirmed that Goodwin had expressed his intention to testify at his trial throughout her representation of him. However, when it came time to make the final decision of whether to do so at trial, trial counsel provided Goodwin with no explanation of the “pros and cons” of testifying other than that the defense would retain last closing argument if he did not testify. While the PCR court placed much focus on the general “advice of rights” by the trial judge, the trial judge could not and should not provide a defendant with advice regarding how his testimony would aid or detract from the defense in his particular case. Rather, it was the responsibility of trial counsel to inform Goodwin of the practical consequences of testifying or not testifying *in his case*. See Brown, 340 S.C. at 594, 533 S.E.2d at 310. The evidence against Goodwin was purely circumstantial. While certainly the burden of proof remained on the state, Goodwin’s testimony was paramount to provide rational and innocent explanations of the state’s

evidence in order to support a finding of reasonable doubt. Trial counsel's failure to recognize and discuss with Goodwin the importance of his testimony to his defense made it impossible for Goodwin to make an informed decision regarding whether to testify. Thus, trial counsel's advice was deficient and there is a reasonable probability that his testimony would have altered the outcome of his trial. The PCR court's contrary findings were unsupported.

CONCLUSION

Based on the foregoing, Appellant Leonard B. Goodwin respectfully requests that this Court grant the petition for writ of certiorari and allow further briefing on the issue raised herein.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of January, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leonard B. Goodwin 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 before Judge Deadra L. Jefferson, which was held on December 16, 2015. In her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Leonard B. Goodwin.

Respectfully Submitted,



Laura R. Baer

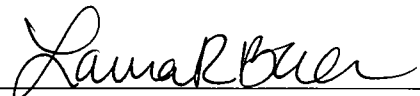
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of January, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Laura R. Baer
Appellate Defender

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This 3rd day of January, 2017.

ATTORNEY FOR PETITIONER

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CERTIFICATE OF SERVICE
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Leonard B. Goodwin, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of January, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2017.

Rhonda Demese Foxworth (L.S)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.