

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

QUENTIN L. PATRICK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001090

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ORIGINAL

RECEIVED

FEB 13 2017

S.C. SUPREME COURT

INDEX

INDEX.....1

ISSUE PRESENTED2

STATEMENT3

ARGUMENT5

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Whether the PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance after his request to be relieved as counsel was not granted yet he continued to represent Petitioner?

STATEMENT

After being indicted for murder, two counts of assault and battery with the intent to kill, and assault with the intent to kill by a Sumter County grand jury during its April 2009 term, Petitioner pled guilty on all four charges before the Honorable W. Jeffrey Young on October 8, 2013. App. 1; 63 – 64. Ernest Finney served as the Solicitor on for the State and John Clark represented Petitioner. App. 1. The facts presented by the prosecution at the guilty plea were as follows:

On October 31, 2008, the decedent was trick-or-treating with family members. App 7 line 20 – App. 8 line 11. After he knocked on the door of Petitioner’s home, “an AK-47 assault rifle opened fire, expending 30 cartridges within a matter of 5 seconds or so.” App. 8 lines 12 – 25. The decedent was hit by a bullet in the head and other family members were shot as well. App. 8 line 22 – App. 9 line 9. Petitioner and his girlfriend were arrested. App. 9 lines 6 – 9.

Petitioner pled guilty to all four counts, and the court accepted his plea. App. 9 line 10 – App. 16 line 19. The plea judge sentenced Petitioner to a term of 30 years for the murder charge, 20 years for the first assault and battery with intent to kill charge, 20 years for the second assault and battery with intent to kill; and 10 years for the assault with the intent to kill charge. App. 24 line 21 – App. 25 line 14. These sentences were to be served concurrently. App. 25 lines 13 – 14. The South Carolina Court of Appeals dismissed Petitioner’s appeal pursuant to Rule 203(d)(B)(iv).

He filed a timely application for post-conviction relief on August 3, 2015. App. 27 – 33. Petitioner’s application contained allegations of ineffective assistance of counsel, namely that plea counsel was focused more on receiving funds for his representation as opposed to the representation itself. App. 29.

The State made its Return on October 19, 2015. App. 34 – 38. An evidentiary hearing was conducted on March 18, 2016 before the Honorable Brooks P. Goldsmith. App. 40. Daniel Gourley, II represented Petitioner, and Timothy Griffith represented the State. Plea counsel testified during the hearing.¹

On April 21, 2016, Judge Goldsmith issued his order denying Petitioner relief. App. 57 – 62. He found Petitioner's claim that plea counsel was ineffective for filing a motion to be relieved and not representing Petitioner to the fullest extent to be meritless. App. 61. This Petition follows.

¹ Neither Petitioner nor a guardian on his behalf was present at the hearing, seemingly in contravention of Rule 17(c), SCRCP.

ARGUMENT

The PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance after his request to be relieved as counsel was not granted yet he continued to represent Petitioner.

Plea counsel was retained by Petitioner's mother and terms were agreed to regarding the representation. App 47 lines 3 – 14. According to plea counsel, Petitioner's mother failed to fulfill her obligations to him under the contract. App. 47 lines 15 – 17. Plea counsel therefore filed a motion to be relieved which was subsequently denied or withdrawn. App. 47 lines 18 – 25.

Petitioner correctly asserted that Counsel was ineffective, because he was not fully committed to Petitioner's defense following the alleged breach of contract with Petitioner's mother. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Id. at 687. “[T]he court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Strickland at 690).

First, to be entitled to PCR, the applicant must show that counsel's performance was deficient. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing Strickland v.

Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). In this regard, plea counsel sought to withdraw his representation “due to a funding issue.” App. 52 lines 18 - 24.

“The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). The prejudice in Petitioner’s case manifested itself in the form of a guilty plea as opposed to a jury trial. While the latter could have allowed Petitioner the opportunity to prove his innocence, the former was less time-extensive for counsel and thereby a more efficient use of his time. Had Petitioner been provided effective assistance of counsel, he may have opted for a jury trial and been found not guilty.

Testimony from plea counsel regarding the facts of Petitioner’s case indicated that the weapon used in the shooting was defective—when the trigger was pulled, the gun would not stop shooting. App. 50 line 18 – App. 51 line 2. As a result, a jury could have concluded that “he didn’t intend to kill anyone and [] he was acting out of fear and self-defense.” App. 51 lines 10 – 12. However, because plea counsel encountered a “funding issue”, he was more inclined to accept Petitioner’s choice to plead guilty.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on this issue.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

QUENTIN L. PATRICK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

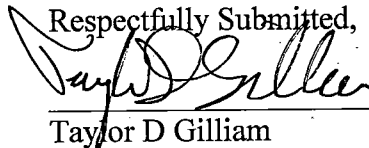
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quentin L. Patrick states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
 2. He has reviewed the record of petitioner's trial before Judge Brooks P. Goldsmith, which was held on March 18, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. He 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 him as counsel for Quentin L. Patrick.

Respectfully Submitted,

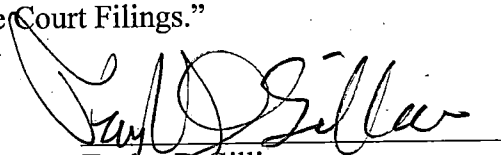


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of February, 2017

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of 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."



Taylor D. Gilliam
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 13th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

QUENTIN L. PATRICK,

PETITIONER

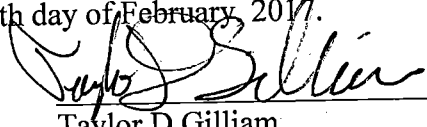
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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 Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Quentin L. Patrick, #17248-101 at USP Coleman I, 846 NE 54th Terrace in Sumterville, FL 33521, this This 13th day of February, 2017.

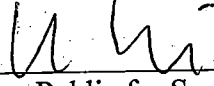


Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this This 13th day of February, 2017



Notary Public for South Carolina

(L.S)
My Commission Expires: 5/12/2025