

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

BRIAN STAPLETON,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001402

JOHNSON PETITION FOR WRIT OF CERTIORARI

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PETITIONER

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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where plea counsel provided ineffective assistance of counsel which resulted in an involuntary guilty plea where counsel failed to perform an adequate investigation?

STATEMENT

On March 25, 2011, a grand jury in Spartanburg County indicted Petitioner for criminal sexual conduct with a minor, first degree. App. 82. Petitioner pled guilty under North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (U.S. 1970) to criminal sexual conduct, first degree, before the Honorable J. Derham Cole on June 20, 2013. App. 21 ll. 14 – 23. Susan Shaver Reese represented the State, and J. Roger Poole represented Petitioner.

The facts presented at the guilty plea by the prosecution were as follows:

On January 8, 2011, Petitioner spent the night at a family member's house in Spartanburg County following a cookout. App. 14 l. 12 – App. 15 l. 9. A minor female in the home awoke in the early morning of January 9, 2011 and ran into her stepfather's room. App. 15 ll. 17 – 18. She told him that Petitioner had raped her. App. 15 ll. 19 – 20. The stepfather saw Petitioner pass by his bedroom door following the minor's entry and subsequent claim of rape. App. 15 ll. 21 – 22. The stepfather grabbed a baseball bat and entered the room where Petitioner was supposed to be sleeping. App. 15 ll. 22 – 24. According to the prosecution, the stepfather claimed that Petitioner was in the room presenting to be asleep. App. 15 ll. 22 – 25.

The minor's mother called law enforcement, and officers located Petitioner in the woods pretending to be asleep wearing a pair of jeans. App. 16 ll. 9 – 14. Officers found Petitioner's shoes and socks in the minor's bedroom. App. 16 ll. 16 – 18. After a sexual assault examination was conducted at the hospital, bruising was located around the minor's genitalia. App. 16 ll. 18 – 24. At the time of the conduct giving rise to the indictment, the minor was ten years old. App. 17 ll. 7 – 8.

Judge Cole accepted Petitioner's guilty plea and sentenced him to twenty-five years' imprisonment. App. 21 ll. 24 – 25; App. 26 ll. 1 – 4.

Petitioner's appeal before the South Carolina Court of Appeals was dismissed on or about September 5, 2013. App. 29. He filed a timely application for post-conviction relief on May 12, 2014. App. 28 – 35. It contained allegations of ineffective assistance of counsel, including claims that counsel was ineffective for "failing to do an adequate investigation." App. 30.

The State made its Return on or about November 18, 2014. App. 36 – 40. An evidentiary hearing was conducted on November 9, 2015 before the Honorable Larry B. Hyman. App. 42. Alicia Olive represented the State, and Petitioner was represented by J. Brandt Rucker. App. 42. Petitioner and Counsel Poole testified during the hearing.

On March 14, 2016, Judge Hyman issued his order denying Petitioner relief. App. 70 – 80. In particular, he found that Petitioner failed to meet his burden of proof; Counsel Poole "demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina." App. 74 – 65. Furthermore, Judge Hyman found that Petitioner failed to show that an additional investigation should have been done or what it would have uncovered. App. 76.

This Petition follows.

ARGUMENT

Did the PCR Court err in denying Petitioner relief where plea counsel provided ineffective assistance of counsel which resulted in an involuntary guilty plea where counsel failed to perform an adequate investigation?

Petitioner testified that he only met with Counsel Poole once, four days before the guilty plea, even though Poole represented him for twenty-nine months. App. 47 ll. 16 – 25. During this meeting, Petitioner and Poole discussed discovery and trial strategy. App. 48 l. 5 – App. 50 l. 1. However, the discovery was incomplete, according to Petitioner, as Poole had failed to obtain the forensic lab testing. App. 55 ll. 20 – 25. Petitioner had attempted to obtain the records himself, but he did not know the legal process. App. 56 ll. 9 – 13. He wrote letters to Poole regarding the reports which he had hoped to secure, but Poole never replied to them. App. 51 l. 19 – App. 53 l.258; App. 56 ll. 1 – 4.

Petitioner correctly asserted that Counsel was ineffective, because he did not perform an adequate investigation prior to the acceptance of Petitioner's guilty by the court. 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, Counsel failed to investigate any other individuals who have committed the crime. App. 62 ll. 13 – 16. Additionally, Counsel neglected to follow up on contradictory statements made by the minor's grandmother. App. 61 l. 21 – App. 62 l. 20. Petitioner's testimony indicated that Counsel only met with him once; as a result, Petitioner was unsure whether the discovery which had been provided to him was complete. He wrote letters to Counsel in an attempt to gather additional evidence, but Counsel neither responded nor followed up with subpoenas. Such conduct falls within the gamut of deficiency.

“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). As evident from Petitioner's testimony, the prejudice in his case manifested itself in his plea which was made without full knowledge of evidence that could have provided him with additional defenses; his plea would not have been entered had Petitioner been provided that information. App. 50 l. 18 – App. 51 l. 7.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari and allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of March, 2017.

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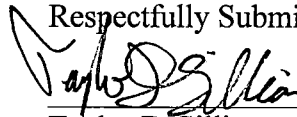
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brian Stapleton 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 Larry B. Hyman, which was held on November 9, 2015, 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 Brian Stapleton.

Respectfully Submitted,

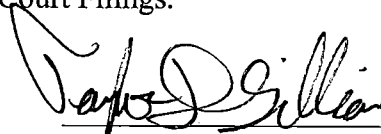


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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."



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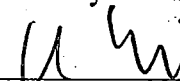
CERTIFICATE OF SERVICE

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 a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Brian Stapleton, #308556, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 13th day of March, 2017.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of March, 2017.

 _____ (L.S)

Notary Public for South Carolina
My Commission Expires: 5/12/2025