

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable John C. Hayes, Circuit Court Judge

ORIGINAL

RECEIVED

MAY 19 2017

S.C. SUPREME COURT

WILLIAM JOE PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000002

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Pachak
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

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

Trial counsel was ineffective in failing to investigate petitioner’s
limited mental abilities.....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL6

ISSUE PRESENTED

Whether trial counsel was ineffective in failing to investigate petitioner's limited mental abilities?

STATEMENT

Petitioner was convicted of accessory before the fact of murder at a trial held before the Honorable C. Victor Pyle, Jr. on June 10-12, 2014, in Greenville County. A life sentence was imposed. Cassandra Gorton, Esg. was defense counsel. Howard Steinberg, Esq. was the assistant solicitor. (App. p. 1-p.655).

Petitioner appealed his conviction and it was affirmed by the Court of Appeals on March 4, 2015. State v. Phillips, Op. No. 2015-UP-100. (App.656-p. 659)

Petitioner filed an application for post-conviction relief on August 7, 2015. (App. 660-p. 666). Amendments to the application that were dated October 10, 2016, were also filed. (App. p. 668-p. 670) Respondent filed a return dated January 29, 2016 and an amended return dated August 8, 2016 (App. p. 671-680). An evidentiary hearing was held on December 6, 2016, before the Honorable John C. Hayes, III. Petitioner was present and was represented by Rodney W. Richey, Esq. Respondent was represented by Patrick Schmeckpeper, Assistant Attorney General. Petitioner, defense counsel, and Joann Johnson testified at the hearing. (App. p. 681- p. 707). On December 8, 2016, Judge Hayes issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 708- p. 713).

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to investigate petitioner's limited mental abilities.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006).

In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E.2d 878 (2006).

Petitioner's mother testified at the evidentiary hearing that petitioner could not read and write. He went to school in a slow learning class. App. p. 686, lines 1-2). Petitioner testified that he

was in a slow learning class in school. He could not read or write. His attorney knew he could not read or write. (App. p. 688, lines 2-20).

Trial counsel testified that she knew petitioner's education level was low and that he was functionally illiterate. (App. p. 695, lines 14-19). She admitted she never had petitioner evaluated by anybody. (App. p. 702, lines 4-5).

Trial counsel was ineffective in not recognizing petitioner's limited mental abilities so she could make special accommodations for him to go to trial. She failed to investigate this. In And v. Catoe, 372 S.C. 318, 642 S.E. 2d 590, 597 (2007) that court wrote:

Without a doubt, “[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” *Thompson v. Wainwright*, 787 F. 2d 1447, 1450 (11th Cir. 1986); *see also Strickland v. Washington*, 466 U.S. at 691, 104 S. Ct. 2052. When evaluating the reasonableness of counsel's conduct, “the 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 similar case.” *Strickland v. Washington*, 466 U.S. at 691, 104 S. Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, “at a minimum, *332 counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Troedel v. Wainwright* , 667 F. Supp 1456, 1461 (S.D. Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir. 1987)(emphasis in original).

Trial counsel's failure to investigate petitioner's limited mental abilities constituted ineffective assistance of counsel as she could not properly prepare petitioner for trial or his case for trial.

CONCLUSION

Petitioner's conviction should be reversed.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of May, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable John C. Hayes, Circuit Court Judge

WILLIAM JOE PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,


RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Joe Phillips 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 John C. Hayes, which was held on December 6, 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 William Joe Phillips.

Respectfully Submitted,



Robert M. Pachak


Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of May, 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."



Robert M. Pachak
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 19th day of May, 2017.

RECEIVED

MAY 19 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable John C. Hayes, Circuit Court Judge

WILLIAM JOE PHILLIPS,

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 DeShawn H. Mitchell 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 William Joe Phillips, #355787, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of May, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of May, 2017.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022