

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

Honorable George C. James, Jr., Circuit Court Judge
Honorable Jocelyn Newman, Circuit Court Judge

RECEIVED

JUN 08 2017

THOMAS LEE GEDDIE,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002155

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

Laura R. Baer
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding that trial counsel rendered effective assistance where trial counsel failed to investigate and attack the legitimacy of the co-defendant turned prosecutorial witness Kelvin Green's alleged mental deficiencies and alleged lack of knowledge of the area where the shooting occurred?

STATEMENT OF THE CASE

On July 21, 2011, the Sumter County Grand Jury indicted Petitioner Thomas Geddie and co-defendant Kelvin Charles Green for murder. App. 438.

On June 4-7, 2012, Geddie appeared for trial before the Honorable W. Jeffrey Young and a jury. App. 1. Geddie was represented by Timothy Murphy, and the state was represented by assistant solicitor John Meadors. App. 1. Following two hours of deliberation, the jury sent a note saying that it was unable to agree upon a verdict. App. 288, l. 11 – 291, l. 1. Less than twenty minutes after the Allen¹ charge, the jury returned a verdict of guilty. App. 291, l. 1 – 297. Judge Young imposed a life sentence. App. 304.

Geddie was represented on direct appeal by chief appellate defender Robert M. Dudek, who perfected Geddie's appeal with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on October 25, 2013. App. 306. On June 11, 2014, the Court of Appeals dismissed Geddie's appeal following its Anders review. App. 321. The remittitur was sent on June 27, 2014. App. 323.

On October 6, 2014, Geddie filed his first application for post-conviction relief ("PCR"). App. 324. The state filed its return on January 7, 2015, and an amended return on February 23, 2015, correcting the omission of the direct appeal history in the original return. App. 340. On April 14, 2015, Geddie appeared before the Honorable George C. James, Jr. for an evidentiary hearing. App. 355. Geddie was represented by Fulton Casey Dale Cornwell,² and the state was

¹ Allen v. United States, 164 U.S. 492, 17 S.Ct. 154 (1896).

² PCR counsel Cornwell's license to practice law was suspended by this Court on February 17, 2017. Matter of Cornwell, 419 S.C. 238, 797 S.E.2d 395 (2017).

represented by assistant attorney general Daniel Gourley. App. 355. On July 24, 2015, Judge James filed an Order of Dismissal denying Geddie post-conviction relief. App. 390.

On August 7, 2015, Geddie filed a *pro se* notice of appeal with this Court. App. 400. On August 13, 2015, the Clerk of the Supreme Court sent a letter to PCR counsel advising him that he remained counsel of record unless relieved. App. 406. On September 21, 2015, Geddie wrote to the Clerk inquiring regarding the status of his appeal. App. 408. On October 1, 2015, this Court dismissed the notice of appeal for failure to order the transcript. App. 410. The remittitur was sent on October 19, 2015. App. 411.

On January 11, 2016, Geddie filed his second PCR application, alleging ineffective assistance of PCR counsel for failing to file a notice of appeal. App. 412. On April 13, 2016, the state filed its return and motion to dismiss all claims beyond Austin³ review. App. 422. On July 25, 2016, a hearing was held before the Honorable Jocelyn Newman. Geddie was represented by Timothy L. Griffith, and the state was represented by assistant attorney general Julie Coleman. App. 428. On October 11, 2016, Judge Newman filed a Consent Order Granting an Appeal pursuant to Austin. App. 434.

Geddie filed a timely Notice of Appeal from Judge Newman's Order and is simultaneously filing of his petition for writ of certiorari pursuant to King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868 (1992) ("When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order. At the same time this petition is served, petitioner shall serve and file an Austin petition addressing the questions from the previous post-conviction relief order.").

³ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

ARGUMENT

The PCR court erred in finding that trial counsel rendered effective assistance where trial counsel failed to investigate and attack the legitimacy of the co-defendant turned prosecutorial witness Kelvin Green's alleged mental deficiencies and alleged lack of knowledge of the area where the shooting occurred.

Relevant Facts

Co-defendant Kelvin Green testified at Petitioner Geddie's trial, admitting that he lured his drug dealer, Zanier Titus, to a secluded area under the pretense of a drug sale with the actual intention to rob him. App. 141, l. 21 – 142, l. 16; App. 146, l. 10 – 149, l. 24. Green further admitted that it was he alone that Titus and his passenger, Cedric Hilton, followed down a dirt road. App. 153, l. 20 – 156, l. 14. Green claimed that Geddie was in on the plot and that he dropped Geddie off in the woods before going to meet Titus. According to Green, he did not intend for anyone to get hurt and was shocked when he claims that Geddie fired an AK-47 rifle from the bushes. App. 153, ll. 10-16; App. 157, l. 18 – 160, l. 10. Even so, he purportedly allowed Geddie to get into his truck and drove to Geddie's house after the shooting. App. 160, l. 11 – 161, l. 23.

Green was identified by Cedric Hilton as the man who they followed down a dirt road and who approached the driver's side window and told Titus to turn out the lights. When Titus complied, against Hilton's warnings against it, shots were fired. App. 47, l. 14 – 50, l. 18; App. 56, l. 13 – 58, l. 10; App. 64, ll. 12-24; App. 65, l. 23 – 66, l. 8. Hilton was able to press the gas pedal with his hand and steer the car away, after which he ran to get help. App. 50, l. 19 – 51, l. 23; App. 58, l. 10 – 59, l. 13. Hilton did not see Green with a gun, but agreed that it was dark and that Green could have had a weapon. App. 57, ll. 6-12; App. 62, ll. 12-21; App. 64, l. 22 – 65, l. 4. Hilton also did not see anyone other than Green at the scene, though he speculated that there could have been someone in the bushes. App. 65, ll. 5-20; App. 68, l. 2 – 69, l. 15.

A beer bottle with Geddie's fingerprint was found near the tree line, a few feet from four fired bullet cartridges. App. 98, l. 23 – 99, l. 2; App. 128, l. 4 – 134, l. 14. Green claimed at trial that Geddie had a Budweiser beer bottle with him when he was allegedly dropped off in the woods. App. 157, ll. 4-17. However, Green failed to mention that fact in either of his statements to police. App. 176, l. 24 – 177, l. 23. In fact, in Green's first statement he did not mention Geddie at all. App. 173, ll. 1-10. At trial, Green further claimed that he was unfamiliar with the area where the incident occurred, claiming that it was Geddie who lived close by and chose the location. App. 151, l. 20 – 153, l. 3. Notably, Green pled guilty to armed robbery and acknowledged his understanding that he would be sentenced to only ten years in exchange for his testimony against Geddie. App. 168, ll. 1-18.

In the prosecutor's closing argument, he told the jury:

The facts and evidence, Kelvin Green. I am going to get to that. I am going to get into detail about it. But you saw his demeanor. He can't make this up. That's the general. He's the follower. He sends him to get folks. Bring him back while I am waiting, and I will take care of him. That's consistent with his demeanor and his actions.

App. 244, l. 22 – 245, l. 4. He later averred that Green "couldn't set this up." App. 256, ll. 12-19. In response, trial counsel argued that Green was not "demonic," rather: "He's just kind of pathetic. Pointing the finger of blame at someone else." App. 273, ll. 8-11. He argued that it does not take a mastermind or a lot of intelligence to "point the finger at somebody else," stating that even children do that. App. 271, ll. 4-17. Counsel further noted that Green provided very little detail regarding the supposed robbery-conspiracy. App. 268, ll. 20-25.

At the PCR hearing, Geddie said that he knew Kelvin Green for three to four months prior to the shooting incident. Geddie said that the Kelvin Green who testified "wasn't the [Kelvin] Green that he knew." He believed that Green was "play acting" at the trial, but said that

trial counsel never challenged Green's demeanor. App. 364, l. 10 – 366, l. 25. Geddie further asserted that Green was lying about not knowing the area where the incident took place, which trial counsel could have shown had he conducted a reasonable investigation. App. 369, ll. 10-14.

Trial counsel agreed that Geddie brought Green's demeanor to his attention, telling him that Green "appeared not to be acting straight." App. 375, l. 25 – 376, l. 5; App. 377, ll. 2-3. Counsel recalled the prosecutor saying to him that "Mr. Green is not the kind of guy that would concoct a plan like that" and that Green was "just kind of slow." App. 376, l. 22 – 377, l. 1. At trial, Green "did come across as really slow." App. 377, ll. 3-4. Trial counsel was not sure whether it was an act, but said that he argued his simplicity in his closing – averring that Green was like a child trying to shift blame for his actions to someone else. App. 377, ll. 6-9. Trial counsel reiterated that he "really thought the case was close" and still did at the time of the PCR hearing, but "it came out the way it came out." App. 377, ll. 10-12.

The PCR court found that trial counsel provided effective assistance with respect to investigation and with respect to his cross-examination of Green at trial. App. 396 – 398. The court found: "Trial counsel cross-examined Green extensively and a predominant part of his closing argument attacked Green's credibility." App. 397.

Discussion

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). Courts

evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668).

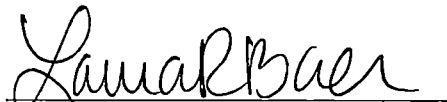
First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). “Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. The main evidence against Geddie was Green's testimony. No one saw Geddie at the scene, there was no way to determine when or how Geddie's fingerprint got on the beer bottle found near the incident, and there was no weapon ever recovered. The only person against whom there was a mountain of evidence was Kelvin Green. Green's cell phone was found at the scene, Green was identified by the victim's passenger as the person who they followed to a dark and secluded area, and Green admitted that he lured the victim there to rob him. The only way that Green could save himself was to cast blame on some third party. The state argued that Green was “slow” and unable to coordinate such a plan on his own, such that someone else must have been involved. The prosecutor even elicited testimony that Green received a disability check. App. 140, ll. 15-23. When Geddie communicated to counsel that Green's “slow” demeanor was a façade, it was incumbent upon trial counsel to investigate the validity of Green's purported

deficiencies. Additionally, counsel failed to investigate Green's knowledge of the incident location, leaving the prosecution free to suggest – as it did – that Geddie was the only one who was familiar with the location where the shooting took place. App. 247, ll. 5-11; App. 261, l. 23 – 262, l. 2. Trial counsel's attempt to argue otherwise in his closing was thwarted because it lacked evidentiary support. App. 270, l. 7 – 271, l. 1. While trial counsel did not sit silent during his opportunity to cross-examine Green, his failure to investigate and attack Green's credibility in these key areas was not reasonable. The PCR court's denial of Geddie's original post-conviction relief application should accordingly be reversed.

CONCLUSION

Based on the foregoing, Petitioner Thomas Lee Geddie 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 8th day of June, 2017.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Lee Geddie states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's evidentiary hearing before the Honorable George C. James, Jr., which was held on April 14, 2015, and, 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 Thomas Lee Geddie.

Respectfully Submitted,




Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of June, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari pursuant to Austin v. State 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

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

This 8th day of June, 2017.

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA

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THOMAS LEE GEDDIE,

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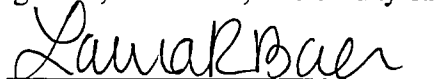
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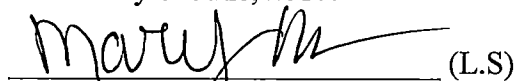
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari pursuant to Austin v. State and a copy of the Appendix in the above referenced 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 pursuant to Austin v. State and a copy of the Appendix have been served on Thomas Lee Geddie, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 8th day of June, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 8th day of June, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2017.