

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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ORIGINAL

Certiorari to Spartanburg County  
Honorable Frank R. Addy, Circuit Court Judge

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ANTOINE L. SHIELDS,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000711

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to conduct a proper investigation, which would have led to the discovery of exculpatory evidence from Petitioner's codefendant, Tobias Rogers, and where there is a reasonable probability that Petitioner would not have pled guilty but would have proceeded to trial if counsel had learned Rogers denied Petitioner was involved in the armed robbery?

## STATEMENT OF THE CASE

The state alleged Petitioner was involved in the armed robbery of an off duty law enforcement officer in the parking lot of an apartment complex during the early morning hours of July 20, 2014. App. 15, l. 19 – 17, l. 22. Shortly after the robbery, Petitioner was seen driving a car that matched the description provided by the officer of the vehicle involved in the robbery. Tobias Rogers was the front seat passenger. The men were arrested after Petitioner parked the car. The officer's debit card was found on Rogers' person. There was evidence that Rogers had used the debit card mere minutes before. App. 15, l. 19 – 17, l. 22.

Petitioner vehemently denied any involvement in the armed robbery. App. 54, ll. 7-10. Before he pled guilty, he told his counsel that he was asleep in the passenger seat of the vehicle when Rogers woke him up and asked him to drive. He drove to an ATM at Rogers' behest and then to Rogers' apartment where he parked the car and was ultimately arrested. App. 88, ll. 2-21. This account was consistent with the officer's statement. The officer maintained that only one individual was involved in the armed robbery. App. 55, ll. 7-12.

On October 23, 2014, almost four months before Petitioner pled guilty, Rogers gave a signed written statement confirming Petitioner's account of events. He maintained that Petitioner was asleep in the car when Rogers robbed the officer. App. 112.

Despite this evidence, Petitioner's counsel advised Petitioner to plead guilty. Counsel testified at the evidentiary hearing that he had never seen Rogers' October 23, 2014 statement and never spoke to Rogers about his or Petitioner's involvement (or lack thereof) in the armed robbery of the officer. App. 98, l. 25 – 100, l. 8. Essentially, counsel admitted that he did little to investigate the case. Based on counsel's testimony, it appears the only reason he advised Petitioner to plead guilty was because of the timeframe in which Petitioner was found in the car

that matched the description of the vehicle involved in the robbery with Rogers who had the officer's debit card on his person. Petitioner and Rogers were arrested approximately twenty five minutes after the robbery occurred. App. 87, l. 19 – 88, l. 21; App. 89, ll. 13-23.

A Spartanburg County Grand Jury indicted Petitioner on September 29, 2014 for three counts of armed robbery and three counts of possession of a weapon during the commission of a violent crime. App. 128-133. Petitioner waived presentment to the grand jury for the offense of first degree assault and battery. App. 134-135. On February 11, 2015, he pled guilty as indicted before the Honorable Letitia H. Verdin. App. 1. Petitioner's plea to two counts of armed robbery and two counts of possession of a weapon during the commission of a violent crime were pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). App. 2, l. 5 – 3, l. 20. Solicitor Barry Barnette represented the state, and Michael Morin represented Petitioner. App. 1. Judge Verdin sentenced Petitioner to twenty one years for each count of armed robbery, ten years for first degree assault and battery, and five years for each count of the weapons offense. All sentences were ordered to be served concurrently. App. 31, ll. 19-25.

On June 25, 2015, Petitioner filed an application for post-conviction relief (PCR) alleging the claim argued in this petition. App. 34-40. The state filed a return to this application dated February 16, 2016. App. 41-44. Petitioner filed an amended application on November 1, 2016. App. 45. An evidentiary hearing was convened on November 7, 2016 before the Honorable Frank R. Addy. App. 46. Assistant Attorney General Alicia A. Olive represented the state, and Susannah Ross represented Petitioner. App. 46.

At the evidentiary hearing, Tobias Rogers testified consistent with his October 23, 2014 statement. He maintained that Petitioner was not involved in the armed robbery and was asleep in the car when Rogers committed the robbery. Rogers asserted Petitioner "had no knowledge of

the crime of the robbery.” App. 76, l. 10 – 78, l. 15. Rogers also identified another signed written statement he provided in which he confirmed Petitioner was not involved in the armed robbery. This statement was dated August 8, 2016, which was shortly before the evidentiary hearing. App. 113.

Petitioner testified that he asked his counsel to speak with Rogers, but counsel “never took the time to interview any of [his] witnesses.” App. 54, ll. 7-17. He asserted that if counsel would have conducted a proper investigation, he would not have pled guilty, but instead would have insisted on proceeding to trial. App. 58, ll. 6-11. This assertion was corroborated by counsel’s testimony where he said he and Petitioner “talked about going to trial several times . . . while we were discussing the case and talking about the evidence.” App. 94, ll. 10-14. Petitioner was confident that if he had gone to trial he would have been found not guilty because “no evidence points towards [him] committing a crime.” App. 58, ll. 12-18. He again denied any involvement in the armed robbery. App. 58, ll. 19-20.

By order filed March 17, 2017, Judge Addy denied Petitioner relief. App. 116-126. The judge found plea counsel conducted a thorough investigation and properly advised Petitioner that there was sufficient evidence to convict him at trial. App. 120. The judge maintained that Petitioner failed to point to any information or evidence counsel failed to uncover due to his alleged lack of investigation. App. 120. For whatever reason, the judge found Tobias Rogers’ testimony at the evidentiary hearing to be “completely lacking in credibility.” App. 121. Consequently, the judge concluded Petitioner failed to show there was a reasonable probability that he would not have pleaded guilty but would have proceeded to trial but for counsel’s deficient performance. App. 121.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to conduct a proper investigation, particularly into Tobias Rogers, and advised Petitioner to plead guilty even though Petitioner vehemently denied any involvement in the armed robbery, this petition for writ of certiorari follows.

## ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to conduct a proper investigation, which would have led to the discovery of exculpatory evidence from Petitioner's codefendant, Tobias Rogers, and where there is a reasonable probability that Petitioner would not have pled guilty but would have proceeded to trial if counsel had learned Rogers denied Petitioner was involved in the armed robbery.

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to conduct a proper investigation, which would have led to the discovery of exculpatory evidence from Petitioner's codefendant, Tobias Rogers. Rogers gave a written statement nearly four months before Petitioner pled guilty where he asserted Petitioner was asleep in the car when Rogers committed the robbery, which was consistent with Petitioner's account of events. Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability that Petitioner would not have pled guilty but would have insisted on proceeding to trial if counsel had learned Rogers denied Petitioner was involved in the armed robbery.

"The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel." Bailey v. State, 392 S.C. 422, 432, 709 S.E.2d 671, 676 (2011) (citing U.S. Const. amend. VI and Strickland v. Washington, 466 U.S. 668 (1984)). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686; see Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is

whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Petitioner must prove counsel's performance was deficient and fell below reasonable professional norms, and "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, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52 (1985); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); and Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

"Without a doubt, '[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.'" Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986) (alteration in original). "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 particular case.'" Id. (quoting Strickland v. Washington, 466 U.S. at 690). "Moreover, while the scope of a reasonable investigation depends upon a number of issues, 'at a minimum, counsel has the duty to interview potential witnesses

and to make an *independent* investigation of the facts and circumstances of the case.” *Id.* at 331-332, 642 S.E.2d at 597 (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)) (emphasis in original).

In this case, plea counsel’s performance was deficient as it fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 687-688. It is evident from the evidence presented at the evidentiary hearing that plea counsel was ineffective for failing to conduct a proper investigation. If counsel would have properly investigated before advising Petitioner to plead guilty, he would have discovered exculpatory evidence from Petitioner’s codefendant, Tobias Rogers. Rogers provided a signed written statement nearly four months before Petitioner’s guilty plea where he confirmed Petitioner’s account of events, namely that he was asleep in the car when Rogers committed the robbery. App. 112. Rogers testified consistent with this statement at the evidentiary hearing. He maintained that Petitioner “had no knowledge of the crime of the robbery” and was asleep in the car when Rogers robbed the off duty law enforcement officer. App. 77, ll. 13-23. This testimony corroborated Petitioner’s account of events and was consistent with the officer’s statement that only one person was involved in the robbery. Consequently, the PCR judge erred by finding Petitioner “failed to point to any information or evidence [c]ounsel failed to uncover.” App. 120.

Petitioner was prejudiced by counsel’s deficient performance because if counsel would have conducted a proper investigation and uncovered the exculpatory evidence from Tobias Rogers, Petitioner would not have pled guilty, but instead would have insisted on proceeding to trial. Petitioner asserted at the evidentiary hearing that if counsel would have thoroughly investigated, he would not have pled guilty, but would have gone to trial instead. App. 58, ll. 6-11. This assertion was corroborated by counsel’s testimony where he said he and Petitioner “talked about

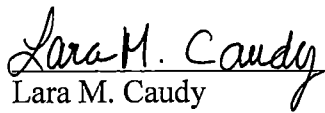
going to trial several times . . . while we were discussing the case and talking about the evidence.” App. 94, ll. 10-14.

Consequently, the PCR court erred by finding Petitioner failed to prove plea counsel was ineffective and that he suffered prejudice as a result. Respectfully, this Court should reverse the ruling of the PCR court, vacate Petitioner’s convictions and sentence, and remand for a new trial.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November, 2017.

STATE OF SOUTH CAROLINA  
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ANTOINE L. SHIELDS,

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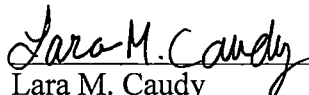
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Antoine Lamar Shields 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, which was held on November 7, 2016 before the Honorable Frank R. Addy. In her opinion, seeking certiorari from the order of dismissal is without merit.
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 Antoine Lamar Shields.

Respectfully Submitted,

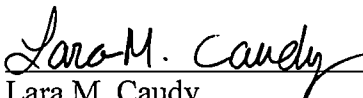
  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November, 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."

  
Lara M. Caudy  
Appellate Defender

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Defense  
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ATTORNEY FOR PETITIONER

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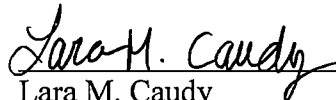
RESPONDENT

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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 and a copy of the Appendix in the above referenced case have been served upon Valerie Garcia Giovanoli, 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 upon Antoine Lamar Shields, #363038, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 6th day of November, 2017.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6th day of November, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.