

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Spartanburg County

RECEIVED

Honorable Edward W. Miller, Circuit Court Judge

NOV 08 2017

KEITH LETMON,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000973

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

INDEX

INDEXi

ISSUE PRESENTED1

STATEMENT2

ARGUMENT4

CONCLUSION7

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

ISSUE PRESENTED

Did the PCR Court err in holding that Petitioner received effective assistance of counsel, where trial counsel failed to investigate all of the alibi witnesses provided by Petitioner prior to Petitioner's trial on a murder charge?

STATEMENT

In the early morning hours of July 25, 2011, a shooting occurred outside Anthony Copeland's home. App. 23 ll. 22 – 24. Along with three other people, Copeland was in his front yard when Cedric Moss was shot. App. 115 l. 20 – App. 116 l. 6. Two eyewitnesses seemingly identified Petitioner as the shooter, although others who were present at the time of the shooting were not able to identify anyone. App. 25 l. 23 – App. 13 l. 1; App. 28 ll. 8 – 22; App. 46 l. 2 – 47 l. 11.

Petitioner was indicted by a Spartanburg County Grand Jury in September 2011 for murder. App. 470 – 471. On December 10, 2012, Petitioner proceeded to trial before the Honorable J. Derham Cole and a jury. App. 14. Derrick B. Balsa represented the State, and Matthew W. Shealy represented Petitioner. The State chose not to move forward with two weapons charges. App. 22 ll. 19 – 24.

During Petitioner's trial, counsel alluded to the failure to investigate allegation—namely, that Petitioner had provided counsel with names of potential witnesses who counsel chose not to call at trial. App. 97 ll. 8 – 16. At the PCR evidentiary hearing, Petitioner testified that counsel did not attempt to contact the witnesses until a week before trial. App. 427 ll. 1 – 15.

The jury found Petitioner guilty as indicted. App. 402 ll. 7 – 16. Judge Cole sentenced Petitioner to life in prison. App. 406 ll. 20 – 24.

On June 29, 2015, Petitioner filed a timely application for post-conviction relief. App. 409. He alleged that he received ineffective assistance of counsel. App. 411. The State filed its Return on or about February 16, 2016. App. 415. Petitioner subsequently amended his post-conviction relief application on October 14, 2016, adding thirty-one additional claims. App. 419 – 422.

An evidentiary hearing was conducted before the Honorable Edward. W Miller on January 30, 2017. App. 423. Rodney W. Richey represented Petitioner, and Caitlin B. Hastings represented the State. Petitioner and trial counsel testified at the hearing.

An Order of Dismissal was issued on March 29, 2017 and filed on April 6, 2017. App. 462. The PCR judge dismissed Petitioner's application based upon a finding that Petitioner "failed to show that Counsel was deficient or that [Petitioner] was prejudiced by any alleged deficiency." App. 466.

This Petition follows.

ARGUMENT

The PCR Court erred in finding that Petitioner received effective assistance of counsel, where trial counsel failed to investigate all of the alibi witnesses provided by Petitioner prior to Petitioner's trial on a murder charge.

Prior to the evidentiary hearing in his case, Petitioner sought time and funding to hire an investigator in order to locate alibi witnesses. App. 425 l. 19 – 426 l. 11. Although Petitioner offered the names of ten witnesses who would testify in his defense, trial counsel never fully investigated those individuals and what their testimony would entail. App. 426 ll. 14 – 25. Petitioner testified accordingly at the evidentiary hearing:

[During] the course of me being incarcerated in Spartanburg County, I didn't have the proper means to be able to try and find these people, and counsel didn't try to find - - didn't try to contact these people until a week prior to me going to trial. So things ... of significance to me was [of] no significance to them because ... counsel, he didn't try to get in touch with these people until a week before trial. So that's 18 months after [the alleged crime] happened. So they don't remember exactly.

App. 427 ll. 1 – 11.

Additionally, Petitioner indicated that PCR counsel neither contacted these witnesses nor called them to testify at the evidentiary hearing.¹ App. 431 l. 13 – 432 l. 3. PCR counsel noted that he met with Petitioner on October 16, 2016 at the Department of Corrections. App. 429 ll. 3 – 4. Eleven days prior to that meeting, PCR counsel claimed to have written Petitioner a letter memorializing a conversation they had about witnesses. App. 432 ll. 6 – 21.

¹ PCR counsel had been representing Petitioner “[s]ince at least October of ’16.” App. 429 l. 2.

The PCR judge denied Petitioner's request and allowed the hearing to proceed. App. 433

ll. 9 – 12. Petitioner objected:

Me - - me and [PCR counsel] have no legal - - no legal - - nothing legal, nothing, nothing. We haven't had a ten-minute conversation the two or three times that we've talked, so how is he going to properly represent me when we've talked, so how is he going to properly represent me when we haven't went over nothing, no strategy, no nothing? We haven't went over nothing, nothing. This is - - this is a serious matter. We haven't gone over nothing, nothing.

App. 433 ll. 15 – 21.

One of Petitioner's main claims of ineffective assistance of counsel was that his trial counsel failed to interview potential alibi witnesses. App. 435 ll. 2 – 6; App. 436 ll. 11 - 18. PCR counsel was unable to locate those witnesses. Petitioner suggested that he would not have been convicted or received a life sentence had counsel fully investigated the alibi witnesses. App. 437 l. 18 – 438 l. 7.

Petitioner correctly asserted that trial counsel was ineffective, because he neither fully investigated nor called the alibi witnesses to testify at Petitioner's trial. 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, supra). In this regard, trial counsel failed to speak with each alibi witness offered by Petitioner. Petitioner's testimony, as outlined above, indicated that the witnesses would have proven his innocence. Such conduct falls within the gamut of deficiency; the witnesses were not called at trial or at the PCR hearing.

“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).

In this capacity, there is a strong likelihood that the witnesses would have placed Petitioner at a location other than Copeland's home, had trial counsel called them at his trial. This testimony would have countered the State's identification witnesses and led the jury to believe in Petitioner's innocence.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his application for post-conviction relief, reverse the charges against him, and remand the case for a new trial.

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

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

KEITH LETMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

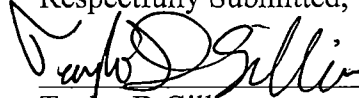
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keith Letmon 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 Edward W. Miller, which was held on January 30, 2017, 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 Keith Letmon.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of November, 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."



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 8th day of November, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Edward W. Miller, Circuit Court Judge

KEITH LETMON,

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 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 on Keith Letmon, #214137, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of November, 2017.

Susan B. Slack for

Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

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

A. H. _____ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025