

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

—————
Certiorari to Lee County

Honorable D. Craig Brown, Circuit Court Judge

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YANISHA CATILIA BARR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001264

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JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where plea counsel failed to investigate and pursue a self-defense theory, where Petitioner had been abused by her neighbor on at least three occasions?

STATEMENT

Petitioner was indicted for murder by a Lee County Grand Jury during its June 2014 term of court. App. 105 – 106. Petitioner pleaded guilty to voluntary manslaughter before the Honorable Clifton B. Newman on October 9, 2014. Scott L. Robinson represented Petitioner, and John R. Gentry appeared on behalf of the State.

The facts presented at the guilty plea are as follows:

On July 20, 2013, the decedent's daughter called the Bishopville Police Department and requested a welfare check on her father. App. 9 l. 3 – App. 11 l. 9. When law enforcement arrived, officers found the door underneath the carport open and located blood in the kitchen area. Id. The decedent, George Hardoman, was found in the kitchen. Id.

Petitioner was neighbors with Hardoman and was identified as a suspect. Law enforcement investigators found dried blood outside her home near the door. Id. Petitioner was taken to the police department and interviewed. Id.

During the interview, officers noticed a small amount of blood in Petitioner's right ear. Id. That area was swabbed and tested; DNA results indicated that it was Hardoman's blood. Id. Hardoman had a total of 82 stab wounds and an additional 14 inside wounds, one of which resulted in a punctured lung. Id. The autopsy revealed that the wounds came from a knife and two-pronged fork. Id.

Petitioner pled guilty and was sentenced to thirty years' imprisonment. App. 7 ll. 16 – 20; App. 39 ll. 15 – 18.

Petitioner filed a timely application for post-conviction relief on October 8, 2015. App. 41 – 47. The PCR application contained allegations of ineffective assistance of counsel and alleged that Petitioner's plea was unconstitutional. App. 43.

The State filed its Return on or about December 18, 2015. App. 48 – 53. An evidentiary hearing was held on March 28, 2017 before the Honorable D. Craig Brown. App. 55. S. Bryan Doby represented Petitioner, and Julie A. Coleman appeared on behalf of the State. Petitioner and trial counsel testified at the hearing.

An Order of Dismissal was issued on May 2, 2017. App. 96 – 103. The PCR judge dismissed Petitioner’s application, finding that “Plea Counsel’s representation did not fall below the standards of professional norms in any manner.” App. 100. The Order of Dismissal also indicated that [Petitioner’s] plea was entered freely and voluntarily.” App. 101.

This Petition follows.

ARGUMENT

The PCR Court erred in denying Petitioner relief where plea counsel failed to investigate and pursue a self-defense theory, where Petitioner had been abused by her neighbor on at least three occasions.

Hardoman, who was “a good bit older” than Petitioner, was a neighbor of Petitioner’s. App. 67 ll. 4 – 8. Petitioner would go over to his house and dance for him. App. 67 ll. 14 – 19. He would pay for this. App. 67 ll. 20 – 22.

On July 22, 2013, the date of the alleged incident described in the indictment, Hardoman “asked [Petitioner] to do something and [she] didn’t want to” do it. App. 67 l. 23 – App. 68 l. 4. He started calling her names, and he threatened to kill her. App. 68 ll. 5 – 7. Although Hardoman did not hit Petitioner that night, he had hit her three times in the past. App. 66 l. 18 – App. 67 l. 3; App. 68 ll. 8 – 13.

Petitioner never reported the abuse to law enforcement because she was afraid that nobody would believe that an older man was hurting her. App. 74 ll. 8 – 14.

Plea counsel was appointed to represent Petitioner a few weeks following her arrest. App. 60 ll. 8 – 16. Petitioner recalled only one meeting between her and plea counsel. App. 60 ll. 17 – 24. They spoke for about an hour. App. 61 ll. 2 – 4. The two never discussed the possibility of using self-defense at trial. App. 68 ll. 22 – 25. Plea counsel never spoke with Petitioner about the discovery in her case until the week before her guilty plea. App. 64 l. 4 – App. 65 l. 1.

Petitioner suffered from previous mental health problems, and she notified plea counsel of her medical history. App. 62 l. 22 – App. 64 l. 3. Plea counsel could not recall whether he attempted to obtain any of Petitioner’s mental health records. App. 88 l. 22 – App. 89 l. 11.

There were no doctors called to testify at Petitioner's guilty plea. App. 88 ll. 9 – 16. A report from the South Carolina Department of Mental Health was submitted and read at Petitioner's guilty plea. App. 18 l. 14 – App. 22 l. 8; App. 88 ll. 17 – 21.¹

Petitioner correctly asserted that Counsel was ineffective, because he did not pursue a self-defense theory. 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 thoroughly interview Petitioner regarding prior abuse at the hands of Hardoman. Counsel testified at the evidentiary hearing:

I think [Petitioner] did tell me they had some bumps in the road in the past and that when he drank sometimes, he got a little bit angry. But mostly it was that he was belligerent and disrespectful to her and especially that evening. It triggered some emotion in her.

App. 78 l. 7 – App. 79 l. 17.

¹ The competency evaluation was sealed at the evidentiary hearing. App. 78 ll. 2 – 3.

Counsel was unsure whether Petitioner would be successful with a self-defense strategy. App. 80 l. 9 – App. 81 l. 11. He claimed that Petitioner never told him that Hardoman threatened her life right before she allegedly stabbed him. Id. However, had he asked additional questions during his interview with Petitioner, he could have elicited that information.

“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).

At the age of thirteen, Petitioner experienced some traumatic events involving a number of young boys in Bishopville. App. 23 l. 16 – App. 27 l. 20. Coupled with the abuse she faced from Hardoman, it is likely that a jury would have believed her story of self-defense. Counsel could have utilized the services of an expert witness to explain how the prior trauma impacted Petitioner, and how she reacted accordingly when Hardoman threatened to kill her.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant his petition for writ of certiorari to allow full briefing on this issue.

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

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Yanisha Catilia Barr 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 D. Craig Brown, which was held on March 28, 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 Yanisha Catilia Barr.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 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 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 and a copy of the Appendix have been served on Yanisha Catilia Barr, #361645, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 18th day of December, 2017.

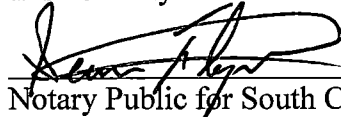


Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2017.



(L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/22