

RECEIVED

JAN 30 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
Hon. George C. James, Circuit Court Judge

Appellate Case No. 2017-001749

Lamar Dontray Williams, ..... Petitioner.

v.

State of South Carolina, ..... Respondent.

PETITION FOR WRIT OF CERTIORARI

J. Falkner Wilkes, 12893  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
*Counsel for Petitioner*

## Statement of the Case

Petitioner was indicted by grand jury in Greenville County for the offense of murder (2011-GS-23-2011), first degree burglary (2011-GS-23-2010), kidnapping (2011-GS-23-2013), attempted armed robbery ((2011-GS-23-2012), conspiracy (2011-GS-23-2014), and possession of a weapon during the commission of a violent crime (2011-GS-23-2011). Larry H. Cooke, Esq., represented Petitioner at trial. Co-defendant Richey Boyd was tried jointly with the Petitioner. The Honorable Carmen T. Mullen presided over the trial February 13th through February 16th of 2012.

Petitioner was found guilty by a jury and was sentenced to concurrent terms of life for the burglary and murder charges, 20 years for attempted armed robbery, 30 years for kidnapping, 5 years for conspiracy, and 5 years for the weapons charge. Petitioner was remanded to the custody of the Carolina Department of Corrections where he is presently confined.

Petitioner appealed his conviction and the Court of Appeals affirmed in State v. Williams, Op. No. 2014-UP-262 (June 30, 2014). The remittitur was issued on July 16, 2014. The Petitioner timely filed a PCR action December 22, 2014. The Respondent filed a return June 3, 2015. An evidentiary hearing was held on June 14, 2016, at the Greenville County Courthouse. The Petitioner was represented by J. Falkner Wilkes, Greenville, and the Respondent by Patrick

Schmeckpeper, Office of the Attorney General. DeShawn Herman Mitchell of the South Carolina Office of the Attorney General has substituted as counsel and represents the Respondent in the present proceedings. A written order was entered July 2, 2016. Notice of appeal was timely filed and this petition follows.

## **Questions Presented for Review**

1. Does trial counsel's failure to properly investigate, prepare and present exculpatory, alibi, and impeaching evidence require reversal of the Petitioner's convictions?
2. Given the PCR court's finding that evidence of guilt was far from overwhelming, did the court err in its analysis of the issues?

## Argument

### I. COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE, OBTAIN AND PRESENT EVIDENCE TO SUPPORT THE THEORY OF THE CASE.

#### *Standard of Review*

“A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction ... has two components.” Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The defendant must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice. *Id.* To satisfy the first prong, a defendant must show counsel's performance “fell below an objective standard of reasonableness.” Franklin v. Catoe, 346 S.C. 563, 570–71, 552 S.E.2d 718, 722 (2001). “To prove prejudice, an applicant must show there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different.” *Id.* at 571, 552 S.E.2d at 723.

The applicant in a PCR hearing bears the burden of establishing his entitlement to relief. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law.” Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

This case rested heavily on the testimony of Scottie Butler and Jeff Dornberg. Butler and Dornberg were charged with the same offenses as the Petitioner. Prior to the Petitioner's trial Butler and Dornberg each entered into a plea deal in exchange for testimony against the Petitioner. The state held sentencing over their heads to obtain favorable testimony in the Petitioner's case.

At the time of his arrest in October of 2010, Butler gave a written statement to the police that he later admitted was, at least in part, a lie. (A. 488-489). Shortly afterwards Butler changed his story. (A. 460). Butler changed his story again in December of 2010, and prepared a written statement in his own handwriting stating that the Petitioner had nothing to do with the crimes. (A. 497). Butler changed his story again, and in exchange for his testimony, was allowed to plead guilty to Accessory after the Fact. All of Butler's other charges were dismissed. (A. 458-460; 488-490; 496).

Like Butler, Dornberg was charged with the same offenses as the Petitioner. A year and a half after his arrest, and only two weeks before the Petitioner's trial, Dornberg gave a written statement implicating the Petitioner in the crimes. (A. 520;530). As a result, Dornberg was also offered a plea deal. (A. 505). Dornberg pled guilty right before the Petitioner's trial. (A. 504). In exchange for his testimony all of Dornberg's original charges were dismissed. (A. 504-505).

Dornberg entered a plea to manslaughter with sentencing hanging over his head until after the Petitioner's trial. (A. 505). Dornberg's ex-girlfriend, Jennifer Burnette, testified that Dornberg had told her more than once that he (Dornberg) shot and killed the victim. (A. 582-589). The testimony of Burnette revealed no motive for her to lie. (A. 582-588).

The defense called Kristine Sterling as an alibi witness. (A. 589). Sterling was the Petitioner's girlfriend in 2010 and was living part-time at her apartment. (A. 591). Petitioner spent the night at Sterling's apartment the night before the alleged offenses occurred. (A. 593). Sterling testified that the next morning they woke up and drove to Laurens for the Petitioner to make a payment to a bondsman on an unrelated charge. (A. 593). They arrived in Laurens at the bonding company's office between 9:00 and 9:30 a.m. (A. 597). From there they drove to the social security office and then back to Sterling's apartment. (A. 594). Sterling testified that she was with the Petitioner the entire morning on the day that the offenses were alleged to have occurred. (A. 597).

Sterling's testimony was corroborated by the bondsman's receipt, dated October 18, 2010, given at the time of the Petitioner's payment. (A. 605). The bondsman, Iesha Scruggs, identified the receipt dated October 18, 2010, and confirmed that she gave it to the Petitioner between 8:30 and 10:00 a.m. on October 18, 2010. (A. 611-612).

The State's witnesses testified that they were with the Petitioner at the commission of the offenses, and that afterwards they drove Petitioner on a circuitous route which ended with the Petitioner being dropped off at Sterling's house in Waterloo. (A. 516-517). Dornberg testified that after the shooting Butler picked them up. (A. 517). They first took Willie Taylor back and dropped him off in the same neighborhood where they had picked him up. (A. 517). Butler then drove to Greenwood where Boyd was dropped off. (A. 517). After dropping off Taylor and Boyd, Butler and Dornberg supposedly drove to Waterloo and dropped the Petitioner off at Sterling's house. (A. 515). Butler testified similarly. (A. 479-480). Butler also testified that it was between 9:30 and 10:00 that morning when he dropped the Petitioner off at Sterling's house. (A. 480).

In the light most favorable to the State the offenses would have occurred shortly after 7:25 in the morning of October 18, 2010, off of Valley Road in Travelers Rest, South Carolina, in Greenville County. (A. 188; 196). In his argument for directed verdict Petitioner's trial counsel argued that it would be impossible to make it from the scene of the crime to Laurens by 10:00 a.m. (A. 628-629). The State's argument in reply was simply that two and a half hours would have been ample time for the Petitioner to commit the crimes and still arrive in Laurens prior to 10:00 a.m. (A. 630; 674-675). The State's argument was that it was not impossible. (A. 630). In closing argument the defense argued that it would

be impossible to make the drive as described by the State's witnesses and still leave the Petitioner enough time to get to the bondsman's office in Laurens by 10:00 a.m. (A. 557-558). Unfortunately, the defense failed to offer any evidence at trial to support the argument. (A. 69).

At the PCR the Petitioner offered evidence to show that it would be impossible for Butler to drive the route he and Dornberg claimed to have taken to drop the Petitioner off at Sterling's house in Waterloo, and still leave enough time for the Petitioner to make it to the bondsman's office in Laurens before 10:00 a.m. Petitioner offered the testimony of private investigators Paula Taylor and James Stewart. Taylor testified that she performed an analysis of the route allegedly driven as described by the state's witnesses during the Petitioner's criminal trial. (A. 16). For her analysis Taylor used both a 7:25 a.m. starting time based on the testimony of the victim's mother, and a 9:51 a.m. starting time based on the 911 call. (A. 17). Taylor calculated the shortest possible route between the scene of the crime and the places Butler and Dornberg claimed to have stopped on their way to allegedly drop off the Petitioner at Sterling's house. (A. 23-24). Taylor drove the route given by Butler and Dornberg while Stewart documented every stoplight, stop sign, and school zone. (A. 24). The offense occurred on October 18th, which was a school day in 2010. (A. 24).

Investigator Stewart is retired from law enforcement and certified in

accident reconstruction. (A. 28-29). At the PCR hearing Stewart was qualified as an expert in accident reconstruction which involved timing frequency of traffic lights, analysis of speed, distance, and related calculations. (A. 29). Stewart performed an analysis of light sequencing, traffic hindrances, and other information relevant to the potential for driving the route in a given amount of time. (A. 30-33). Stewart calculated that given the distance involved in the route necessary to make the stops claimed by Butler and Dornberg, they would have had to drive over 90 miles an hour without having to stop at any of the 56 traffic signals, or any of the stop signs, or have any other hindrances for 108 miles, just to make it to Sterling's house by 10:00 a.m. (A. 33-34). Taylor and Stewart drove the route repeatedly the same day of the year that the crimes occurred (October 18th, a school day) with consistent results. (A. 35). On one trip Stewart noted four sheriff patrol cars in Greenville County, seven highway patrol cars, three sheriff's patrol cars in Laurens County, four Greenwood city police units, and three state transport police units along 108 mile route. (A. 35). Stewart testified that in his opinion it would be impossible to make the trip according to the testimony of Dornberg and Butler within the given times. (A. 37).<sup>1</sup>

Petitioner's alibi was contradicted only by testimony of the circuitous getaway, the impossibility of which was clearly central to the defense's theory of

---

<sup>1</sup>Stewart, qualified as an expert, gave his opinion without objection by the State.

the case. This is evident by counsel's argument to the jury. Despite his jury argument, it is clear that defense counsel made no effort to investigate or offer any evidence to contradict the testimony of Butler and Dornberg. When questioned at the PCR about whether he conducted any kind of analysis as to whether the route given by Dornberg and Butler were even possible, counsel responded that he "really never thought that was important simply because my client wasn't there". (P. 44). He admitted that given the evidence it would have been a legitimate thing to establish in the defense. (P. 45).

"[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. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014).

Here, evidence as to the distances and time necessary for the state's witnesses to travel the route allegedly taken as a 'getaway' from the crime scene constitutes alibi evidence. The time and distance necessarily involved in the state's version of the alleged events are impossible given the Petitioner's presence at the bondsman's office prior to 10:00 a.m. Here, the testimony relating to the

impossibility of the state's theory of the case would have not only discredited the testimony of Dornberg and Butler, but also corroborated the testimony of the alibi witness Christina Sterling. The record is clear that the defense made no effort to investigate or present evidence to prove that facts necessary for the defense of the case.

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case and where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). In the present case trial counsel failed to give any reason whatsoever for failing to investigate any potential for a challenge to the testimony of Butler and Dornberg. In such cases this Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable “only to the extent that reasonable professional judgment supports the limitations on the investigation.” See Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (quoting Wiggins v. Smith, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)). Here, there was no evidence to show professional judgment employed in limiting counsel’s investigation, and therefore, counsel is not entitled to any favorable presumptions.

At the PCR hearing trial counsel admitted there was a legitimate basis for

investigating the ‘getaway’ story by Butler and Dornberg. Yet the record fails to show professional judgment as the basis for counsel’s failure to do so. Clearly, trial counsel simply did not consider it. Decisions made in ignorance of relevant, available information cannot be characterized as strategic. *See, e.g., Porter v. McCollum*, 558 U.S. 30, 39–40, 130 S.Ct. 447, 175 L.Ed.2d 398 (2009) (finding counsel’s failure to “even take the first step of interviewing witnesses or requesting records” did not reflect reasonable professional judgment); *See also Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014).

A criminal defense attorney has a duty to perform a reasonable investigation. *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 597. “[W]hile 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 331–32, 642 S.E.2d at 597 (*internal quotes and citation omitted*). *Lounds v. State*, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008). Here the Petitioner was prejudiced by trial counsel's failure to subpoena and call witnesses who would have supported the testimony of the Petitioner's alibi witness, refuted the testimony of Butler and Dornberg, and supported the theory of the Petitioner’s defense.

Here, the PCR court specifically found that “the evidence against the Petitioner was far from overwhelming.” (A. 9). In light of this finding the PCR

court failed to properly analyze the impact of the testimony of Taylor and Stewart as to the defense of the Petitioner's case. Although Taylor and Stewart's testimony were credible, the PCR court found no prejudice in the failure to present such evidence, finding instead that trial counsel effectively cross-examined Butler and Dornberg *as to their bias*. The PCR court's analysis is clearly flawed. The evidence at issue does not relate to at all to bias, but rather shows the story about the Petitioner being with Dornberg and Butler in their big 'getaway' to be false. Not only would this discredit their testimony, it more importantly constitutes alibi evidence. In addition to corroborating the testimony of Sterling, it also shows directly that the Petitioner could not have committed the crime and made a 'getaway' as testified to by Dornberg and Butler.

In order to prove counsel was ineffective, the PCR Petitioner must show: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984);

Rhodes v. State, 349 S.C. 25, 561 S.E.2d 606 (2002). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

Moreover, "when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.'" Ard v. Catoe, 372 S.C. 318, 331, 642

S.E.2d 590, 596 (2007) (*quoting Strickland v. Washington*, 466 U.S. at 695, 104 S.Ct. 2052). In the present case, where evidence of guilt was far from overwhelming, the jury's inability to consider the evidence at issue is more than sufficient to undermine confidence in the outcome of the Petitioner's trial. The decision of the PCR court should therefore be reversed and the Petitioner granted a new trial.

**II. TRAIL COUNSEL WAS INEFFECTIVE FOR FAILING TO ATTEMPT TO LOCATE AND PRESENT TESTIMONY OF KEY WITNESS.**

At the criminal trial the State offered the testimony of the Wendy Ann Bridges. Bridges knew Dornberg and Butler. (A. 390). Dornberg dated a friend of Bridges. (A. 390). Bridges testified that five days after the incident the Petitioner gave her a bag with a gun in it and told her to take it to the Cadillac Apartments and give it to "Glenn". (A. 393-395). Glenn was described by Bridges as a black man with one leg. (A. 395). Neither the state nor the defense called Glenn as a witness at the criminal trial. Defense counsel testified at the PCR that he was aware prior to trial that Bridges would testify that she took a gun from the Petitioner and delivered it to Glenn Shannon, the one-legged man at the Cadillac Apartments in Laurens. (A. 52-55). Defense counsel admitted that he failed to search for or attempt to interview Shannon. (A. 55-56). Bridges testified as

expected at trial and the defense had nothing in at trial in reply. Having made no effort to find and present Shannon at trial, defense counsel argued to the jury:

“You know, this idea of finding a one-legged man - - they had his name, one-legged, you know, over in that community everybody knew who a one-legged man by the name of Glenn was. And that girl said that’s who she gave the gun to. Nobody had found this mysterious man, Glenn. It’s kind of like the TV program *The Fugitive*. Everyone is looking for the one-armed man, and they all felt like he never existed. If there’s a one-legged man, through all the police officers in Greenwood that know everybody there in that little town, there ain’t no one-legged man. I don’t know whether that happened or not.”

(R. 653-654).

At the PCR Petitioner presented Shannon Glenn as a witness. Shannon was a disabled veteran, and indeed, a one-legged black man that frequented the Cadillac Apartments in Greenwood. (A. 45-49). Shannon testified that he was the only one-legged black man at the Cadillac Apartments in 2010, and had never been contacted by anyone about the Petitioner’s criminal trial. Shannon denied anyone ever having brought him a bag with a gun in it. (A. 46).

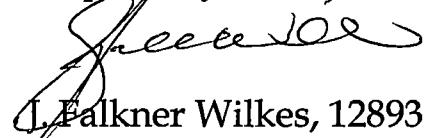
As argued more fully above, a criminal defense attorney has a duty to perform a reasonable investigation. *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 597. “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Id.*

at 331–32, 642 S.E.2d at 597 (*internal quotes and citation omitted*). Lounds v. State, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008). Here the Petitioner was prejudiced by counsel’s failure to present Shannon’s testimony to refute Bridges’ allegations. As a result the decision of the PCR court should be reversed.

### **Conclusion**

Based on the foregoing, the decision of the circuit court should be reversed and the Petitioner granted a new trial on all charges.

Respectfully submitted,



J. Falkner Wilkes, 12893  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
(864) 271-6035 *facsimile*

*Counsel for Petitioner*

January 26, 2018.

RECEIVED

JAN 30 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
Hon. George C. James, Circuit Court Judge


Appellate Case No. 2017-001749

Lamar Dontray Williams, ..... Petitioner.  
v.  
State of South Carolina, ..... Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent with the Petitioner's *Petition for Writ of Certiorari*, and the *Appendix* by depositing a copy in the United States Mail, postage prepaid, on January 26, 2018, addressed to counsel of record as follows:

DeShawn Herman Mitchell, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
J. Falkner Wilkes, 12893  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
*Counsel for Petitioner*