

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

CHARLIE TYLER ROBINSON,

RECEIVED

FEB 21 2018

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001853

JOHNSON PETITION FOR WRIT OF CERTIORARI

Victor R Seeger
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

INDEX i

ISSUE PRESENTED1

STATEMENT2

ARGUMENT

The PCR judge erred when he denied Petitioner’s motion for a
continuance because Petitioner’s discovery documents were lost or
stolen and he could not present his claim for ineffective assistance
of counsel without them.....3

Relevant Facts3

Discussion4

CONCLUSION8

PETITION TO BE RELIEVED AS COUNSEL9

ISSUE PRESENTED

Whether the PCR judge erred when he denied Petitioner's motion for a continuance because Petitioner's discovery documents were lost or stolen and he could not present his claim for ineffective assistance of counsel without them?

STATEMENT

In October 2011 the Anderson County Grand Jury indicted Petitioner for murder. App. *. On April 19, 2013, Petitioner entered a guilty plea to voluntary manslaughter before the Honorable Alexander Macaulay. App. 1. Rame Campbell represented the state and Norman Epps represented Petitioner. Id. The solicitor recommended a sentence range of ten to twenty-five years. App. 3, ll. 10 – 12. Judge Macaulay sentenced Petitioner to twenty-five years. App. 39, ll. 4 – 8.

On August 23, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 42 – 48. On January 14, 2015, the state filed its return. App. 50 – 53. On February 9, 2015, an evidentiary hearing was held before the Honorable R. Lawton McIntosh. App. 54. Hugh Welborn represented Petitioner and Walt Whitmore represented the state. Id. Judge McIntosh issued an Order of Dismissal.

This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred when he denied Petitioner's motion for a continuance because Petitioner's discovery documents were lost or stolen and he could not present his claim for ineffective assistance of counsel without them.

Relevant Facts

Allegedly on July 18, 2011, Chad Bell, Walter Chase Alley, Holly Whitfield and, Petitioner, Charlie Tyler Robinson killed Glenn Craft at his home during the commission of a burglary. App. 13, ll. 6 – 8.

The state's evidence was the four entered Craft's home in an attempt to find money. App. 18, l. 1. Craft eventually woke up. App. 18, ll. 18 – 21. Craft was shot and the group fled with his wallet, and Craft died that later that night. App. 19, ll. 22 – 23; App. 20, ll. 2 – 3. Afterwards, the group went their separate ways until they were brought in on the current charges. App. 27, ll. 21 – 22.

Petitioner did not attempt a direct appeal, but did timely file a petition for PCR which alleged plea counsel did not properly investigate the facts of his case. App. 42 – 48.

At PCR, Petitioner requested a motion for continuance because his discovery documents were lost or stolen while in South Carolina Department of Corrections (SCDC) custody. App. 59, ll. 19 – 22. Petitioner required those documents to have a meaningful PCR hearing for ineffective assistance of counsel, but the PCR judge denied his motion for continuance because Petitioner could not specifically state what evidence he would present if he had his discovery documents. App. 59, ll. 23 – 24; App, 10, ll. 2 – 4. This was an error and that error prejudiced Petitioner.

Discussion

“The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon’s, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). The South Carolina Rules of Criminal Procedure provide that the presiding judge may grant a continuance based upon “a showing of good and sufficient legal cause.” Rule 7(c), SCRCrimP. As such, “[t]he granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.” State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006) (“An abuse of discretion occurs when the trial court’s ruling is based on an error of law”).

“It is axiomatic that determination of [a motion for continuance] must depend upon the particular facts and circumstances of each case.” State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) (quoting State v. Babb, 299 S.C. 451, 454-455, 385 S.E.2d 827, 829 (1989)). While “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process,” the decision must rest upon, “the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” Ungar v. Sarafite, 376 U.S. 575, 589, 84 S.Ct. 841, 850 (1964).

In Winkler v. State, 418 S.C. 643, 795 S.E.2d 686 (2016), this Court held the trial judge erred when he denied Winkler’s continuation to investigate evidence of brain damage. Id. at 663,

795 S.E.2d at 697. After conviction, Winkler filed an application for post-conviction relief and was appointed counsel. Id. at 659, 795 S.E.2d at 695. Two months into the representation counsel suspected Winkler suffered from brain damage. Id. at 660, 795 S.E.2d at 695. Counsel requested funding to investigate, which was approved, and hired a neuropsychologist. Id. Counsel moved to extend the deadlines in the scheduling order by ninety days. He explained that testing and analysis would require approximately ten weeks. Id. at 660-661, 795 S.E.2d at 696. The judge extended the deadline for filing an amended application, but refused to extend the PCR trial date. Id. at 661, 795 S.E.2d at 696.

Winkler was unable to obtain the recommended PET scan because of elevated blood glucose levels. Id. Thereafter, counsel helped Winkler get treatment for his previously undiagnosed diabetes. Id. Despite receiving weeks of diabetes treatment, Winkler's blood sugar was still too high to perform an accurate study of his brain and additional time was needed for treatment and analysis. Id. Counsel requested a continuance of six months to file his final amended PCR application and to adjust other dates, which included the trial. This request was denied. Id. at 662, 795 S.E.2d at 696

This Court explained that the PCR statute, much like the Rules of Criminal Procedure, stated additional time should be granted, "if 'good cause is shown to justify a continuance.'" Id. at 662, 795 S.E.2d at 697, (quoting S.C. Code Ann. § 17-27-160(c)). This Court found the PCR court abused its discretion when it denied Winkler's second motion for additional time because Winkler presented, "good cause," for the continuance. Id. at 663, 795 S.E.2d at 697. This Court found no evidence to support the PCR judge's finding that PCR counsel had, "'ample opportunity,'" to investigate and develop the evidence related to potential brain damage. Id. Thus, Winkler provided, "good cause," to justify a continuance. Id. According to the Court, the

PCR court's denial of the continuance request, "left PCR counsel in a position from which they could not present evidence to support the claim that trial counsel was ineffective for failing to investigate Winkler's brain damage." Id.

In State v. McMillian, 349 S.C. 17, 24, 561 S.E.2d 602, 605 (2002), this Court held the trial court abused its discretion when it denied McMillian's motion for continuance to obtain the transcript of his first trial in order to prepare for his second trial. McMillian made a timely request for the transcript of his first trial, but his second trial started before he received it. Id. at 19, 561 S.E.2d at 603. He moved for a continuance to obtain the transcript in order to impeach a witness against him, but his request was denied. Id. The Court found the PCR court abused its discretion because, "[t]he only 'neutral' witness for the state during McMillian's second trial was Dorothy Williams Rumph." Id. at 21, 561 S.E.2d at 604. Therefore the Rumph's credibility, "was essential to McMillian's defense," and the crucial nature of Rumph's testimony could not be overstated. Id. The Court concluded that, "the verdict hinged upon her credibility," and without the transcript from the first trial, "McMillian was hindered in his ability to impeach her." Id. at 23, 561 S.E.2d at 605.

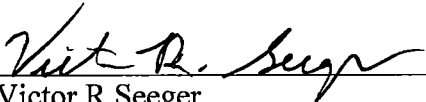
In the instant case, the PCR judge's denial of Petitioner's motion for continuance, as in Winkler, prevented Petitioner from accessing the evidence necessary to support his claim of ineffective assistance of counsel. Petitioner testified at the PCR hearing that he had no evidence to present because his discovery materials were lost or stolen at SCDC. App. 7, ll. 10 – 20. The PCR judge asked Petitioner what specific evidence he could produce if he had his discovery documents. App. 7, ll. 8 – 9. This Court held in Winkler, that Winkler was not required to present any specific evidence that he suffered from neurological and cognitive impairments for a

continuance to be granted, *only that good cause be shown*. Winkler, at 646, 795 S.E.2d at 688.
(emphasis added)

Petitioner's PCR hearing, similar to McMillian, hinged on a single witness's testimony. Plea counsel's testimony was crucial to Petitioner's PCR claim and, like in McMillian, the denial of the motion for continuance hindered Petitioner's ability to impeach the crucial witness's testimony. There was good cause for Petitioner's motion for continuance because Petitioner needed his discovery documents to show how plea counsel handled his case ineffectively. Therefore, the PCR judge abused his discretion when he required Petitioner to go beyond a showing of good cause and specifically state what evidence would be presented from the discovery materials as a prerequisite for a continuance.

CONCLUSION

Petitioner respectfully requests this Court grant certiorari and order a full briefing on the issue presented.



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of February, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

CHARLIE TYLER ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

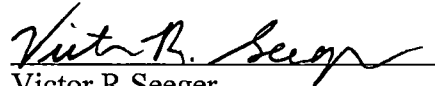
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charlie Tyler Robinson 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 post-conviction relief hearing before Judge R. Lawton McIntosh, which was held on February 9, 2015, 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 Charlie Tyler Robinson.

Respectfully Submitted,

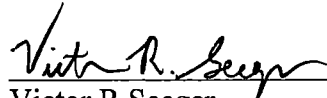


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of February, 2018.

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."



Victor R Seeger
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 21st day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

—————
CHARLIE TYLER ROBINSON,

PETITIONER

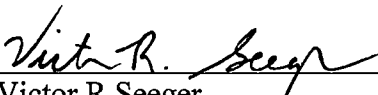
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

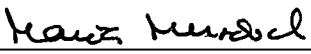
—————
CERTIFICATE OF SERVICE
—————

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 Lindsey McCallister, 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 Charlie Tyler Robinson, #335823, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of February, 2018.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of February, 2018.

 (L.S).
Notary Public for South Carolina
My Commission Expires: July 3, 2023