

Ralph Hayes #320369
Lieber Corr. Inst. Stone A-34
P.O. Box 205
Ridgeville, S.C. 29472-0205
April 2, 2018

Hon. Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

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APR 06 2018

S.C. SUPREME COURT

Re: Ralph Hayes v. State,
Appellate case No.: 2017-001593

Dear Clerk,

Enclosed for filing with the Court please my Pro se
Response to Johnson Petition for Writ of Certiorari.
Thank you for your assistance in this matter.

Sincerely Submitted,

Ralph Hayes
Ralph Hayes

Enclosure
file

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County S.C. SUPREME COURT
Honorable George C. James, Circuit Court Judge

RALPH BEVERLY HAYES,

PETITIONER,

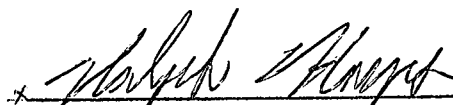
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2017-001593

PRO SE RESPONSE TO JOHNSON PETITION
WRIT OF CERTIORARI


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STATE OF SOUTH CAROLINA
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S.C. SUPREME COURT

Certiorari to Greenville County
Honorable George C. James, Circuit Court Judge

RALPH BEVERLY HAYES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2017-001593

CERTIFICATE OF SERVICE

The undersigned hereby declares under the penalty of perjury, §16-9-10(A)(2) of the S.C. Code of Laws (1976), that a true copy of Pro Se Response to Johnson Petition for a Writ of Certiorari in the above referenced case has been served upon the Honorable Daniel E. Shearouse, Clerk, Supreme Court of ~~South~~ South Carolina, Post Office Box 11330 Columbia, SC 29211 and Mr. DeShawn H. Mitchell, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2 day of April, 2018.



Ralph Hayes #320369
Lieber Court Inst. Stone A-34
P.O. Box 205
Ridgeville, SC 29472-0205
Pro Se Petitioner

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ISSUES PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to move to strike Jurors Adcock and Redding for cause.

STATEMENT

In October of 2011, the Greenville County Grand Jury indicted Petitioner for murder and possession of a weapon during the commission of a violent crime, indictment #2011-GS-23-7681. On October 15, 2012, Petitioner proceeded to jury trial before the Honorable G. Edward Welmaker. Caroline Hordbeck and Teal Johnson represented Petitioner at trial. Judy Munson and Wanda Adams prosecuted the case. The jury returned verdicts of guilty as charged. Judge Welmaker sentenced Petitioner to life in prison for murder and five years for the weapons charge. A timely notice of intent to appeal was filed and the direct appeal was perfected. In November of 2014, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences. State v. Hayes, Op. No. 2014-UP-385 (S.C. Ct. App. filed November 5, 2014). The South Carolina Supreme Court denied the petition for writ of certiorari on March 20, 2015.

On May 28, 2015, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on November 30, 2015. On June 14, 2016, an evidentiary hearing was held before the Honorable George C. James, Jr. Brian Johnson represented Petitioner at the PCR hearing. Patrick Schmeckpeper represented the State. In a written order signed July 22, 2016, Judge James denied relief and dismissed the application. A timely notice of intent to appeal was served on July 21, 2017. This pro se Petition for a Writ of Certiorari follows:

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to move to strike Jurors Adcock and Redding for cause.

During voir dire, Juror #1, Todd Adcock and Juror #164, revealed each of their fathers had been charged with criminal domestic violence (App. 22, LL 13-22) and (App. 23, LL 14-24, L.3). Upon questioning by the trial judge, Juror Adcock stated that his father had been "charged two years ago" (App. 22, LL 18-19); Juror 164, Erika Redding, revealed that she did not know the date because her father had been in and out of trouble so ~~at~~ much. (App. 23, LL 17-18).

Both Jurors stated they could be fair, although Juror Redding stated that "she did not think it would affect her ability to be a fair juror in the case." (App. 22, LL 20-20; 23, LL 19-24, L.3), trial counsel failed to strike Juror Adcock. At the time Juror Adcock was seated the Petitioner had used nine of his strikes-ten strikes. Trial counsel failed to move to strike Juror Redding, as Juror Redding was seated after the Petitioner had used all ten of his strikes. Trial counsel testified at the evidentiary hearing that she should have moved to strike Juror Redding, (App. 492-496, direct by state); and (502-504, questioning by PCR judge as PCR counsel did not cross-examine).

Trial counsel testified at the evidentiary hearing that she should have moved to strike Jurors Adcock and Redding. Counsel testified that the trial judge asked Juror Redding

"would that affect your ability to be a fair juror" and Redding answered that "I don't think so." The trial judge questioned her further "Do you believe in any way that if -- that if that event happened in your life with your family, would that affect your ability to be a fair juror?" And Redding said "No sir."

you could be fair to both sides?" "Yes, sir."

Trial counsel then testified that "I think at that point, that I ~~should have~~ don't know what the judge would've done, but at that point, that would've been the appropriate time to ~~make~~ move to strike for cause." (App. 495, L. 11-43, L. 5) (App. 49, L. 11-51, L. 17).

In the order of dismissal the PCR judge wrote, "This Court finds Applicant has failed to meet his burden with respect to his allegation that trial counsel was ineffective for failing to strike jurors Adcock and Redding for cause. Juror Adcock was seated at a time during jury selection when the Applicant had used nine of his ten strikes. Juror Redding was seated after the applicant had used all ten strikes. Even though Ms. Horlbeck [trial counsel] testified that she probably should have moved to strike Ms. Redding for cause, if such a motion had been made, it would likely not be granted. The same goes for Mr. Adcock."

The PCR judge also wrote "Both jurors stated that their fathers had been charged with criminal domestic violence. The trial judge properly asked follow-up questions, and both jurors stated they could be

fair. There was no basis to strike either of them for cause, so counsel was not deficient for failing to so move." And, "Further, even if both counsels were deficient with respect to this allegation, there is no evidence of prejudice because both jurors said they could be fair."

The PCR judge erred. Trial counsel was ineffective for not moving to strike jurors Adcock and Redding, especially in light of Ms. Redding's uncertainty about whether she could be a fair juror in this case. Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, and a fair trial, as well as his Fourteenth Amendment right to due process.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to a trial by an impartial jury. Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) ("In essence, the right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors. The failure to accord the accused a fair hearing violates even the minimal standards of due process." (internal quotation marks omitted)).

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test.

Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate ~~prejudice~~ counsel's representation was deficient, as is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability sufficient to undermine confidence in the outcome." Id.

Here, both jurors fathers had been charged with criminal domestic violence. Juror Adcock's father two years prior to Petitioner's trial. And, Ms. Redding's inability to recall date of incident and uncertainty allowed Petitioner to be tried by an impartial jury, thus, depriving Petitioner of his Sixth and Fourteenth rights to effective assistance of counsel where counsel failed to move to strike jurors, a fair trial and the due process of law.

CONCLUSION

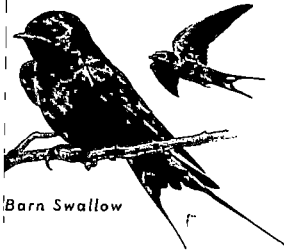
Based on the above argument, this Court should grant the Petition for Writ of Certiorari to allow further briefing on this issue.

Ralph Hayes
Ralph Hayes
Pro se Petitioner

This 2 day of April, 2018.

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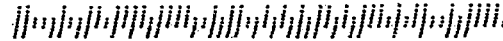
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