

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Chesterfield County

Honorable Roger E. Henderson, Circuit Court Judge

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JAMES CURTIS TYNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001982

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JOHNSON PETITION FOR WRIT OF CERTIORARI

LaNelle Cantey DuRant  
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

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Did the PCR court err in not finding trial counsel ineffective for failing to conduct a sufficient and adequate investigation into Petitioner Tyner's case when Tyner declared his innocence and the only evidence against him was the testimony of two alleged co-defendants?

## STATEMENT

On December 31, 2010, Ralph Chapman and his wife were asleep in their home. The wife heard a knock on the door around six o'clock in the early morning, and thought maybe someone needed help. Her husband, went to the door, but he did not see anyone. Mr. Chapman then decided to go to the local truck stop for coffee. As he started to his truck, two men assaulted him and took his wallet. The two men ran to a car parked on the side of the road that was waiting with a driver, and drove away. App. 42, ll. 23 – App. 44, ll. 24.

Sergeant Wayne Jordan with the Chesterfield County Sheriff's Office was contacted by the captain of the Darlington County Sheriff's Office and asked to investigate this case. When Sergeant Jordan talked with Mr. Chapman, Mr. Chapman identified Bruce Wayne Walters as the primary suspect. Sergeant Jordan talked with Walters who gave a statement implicating Adam Quick and James Tyner. App. 79, ll. 11 – App. 81, ll. 25.

Sergeant Jordan took a statement from Adam Quick also who corroborated Bruce Wayne Walters' statement. Quick told that the three men - himself, Walters and Tyner- had been out drinking before the incident. Quick and Tyner worked together. Quick identified the get-away car as a burgundy Grand Prix that belonged to Tyner's roommate. Based on the two co-defendants' statements, Sergeant Jordan made the arrest on Petitioner Tyner. App. 81, ll. 22 – App. 82, ll. 14.

On March 22, 2011, the Chesterfield County Grand jury indicted Petitioner Tyner on the charges of assault and battery of a high and aggravated nature (ABHAN) and strong-arm robbery. App. 396 – App. 399. On June 18-20, 2012, Petitioner Tyner proceeded to trial before the Honorable Paul M. Burch and a jury. Petitioner Tyner was represented by Trey Cockrell, and the state was represented by Chris Jones. App. 1. Both co-defendants testified at trial

implicating Petitioner Tyner. App. 109, ll. 9 – App. 114, ll. 17; App. 122, ll. 24 – App. 128, ll. 22. Petitioner Tyner did not testify. App. 137, ll. 1 – 15.

The jury returned a verdict of guilty on both charges. App. 178, ll. 8 – 25. The trial judge sentenced Tyner to fifteen years on the strong-arm robbery charge and to three years on the ABHAN to run consecutive. App. 188, ll. 10 – 15.

Petitioner Tyner filed a timely notice of appeal which was perfected by Carmen Ganjehsani who was an appellate defender with the Division of Appellate Defense of the Commission on Indigent Defense. App. 369, ll. 1 – 24; App. 381. The Court of Appeals affirmed Petitioner Tyner's convictions and sentences on June 11, 2014. State v. Tyner, Op. No. 2014-UP-222 (Ct. App. filed June 11, 2014).

On March 2, 2015, Petitioner Tyner filed an application for post-conviction relief (PCR). The state filed a return on January 25, 2017. App. 380. An evidentiary hearing was held on July 17, 2017 before the Honorable Roger E. Henderson. Petitioner Tyner was represented by Lance S. Boozer, and the state was represented by Johnny E. James, Jr. App. 313.

At the PCR hearing, Tyner's PCR counsel told the court that one of Tyner's allegations was that his trial counsel was ineffective for failing to "properly investigate" his case. App. 317, ll. 10 – 25. Petitioner Tyner testified at the PCR hearing that his trial attorney failed to investigate his case. App. 323, ll. 14 – App. 324, ll. 6. If his attorney had investigated his case, Tyner believed that he would not be in prison. He said there were footprints and fingerprints at the scene that were not investigated. He was not at the scene, and the prints would show that. App. 327, ll. 1 – 18.

Petitioner Tyner stated that "lies put him in jail and lies were keeping him in jail." App. 328, ll. 1-2. He explained that the detective, Wayne Jordan, said that he did not have to do any investigation because he had the statements of the two co-defendants. Tyner testified that nothing

was ever said about the footprints and fingerprints as no investigation was done on them. App. 328, ll. 1 – 18.

If Tyner had known that his co-defendants were going to testify against him, he would have taken a plea deal because he had a “bad record” from his younger days. App. 337, ll. 2 – 9.

Trial counsel testified Tyner never expressed any interest in pleading guilty as Tyner was “adamant” that he was not guilty. App. 346, ll. 20 – 24; App. 352, ll. 16. Trial counsel testified that “no fingerprints were done at the scene.” Tyner’s name was only brought in through the two co-defendants. App. 346, ll. 7 – 14.

Trial counsel felt Tyner had a “triable” case which meant there were issues but it was still a case that in counsel’s opinion “had a substantial possibility of an acquittal but there was a fifty-fifty range.” App. 345, ll. 18 – App. 346, ll. 5.

When asked if he had conducted any additional investigation of the case either personally or through an investigator, counsel said that he had driven by the Chapman’s residence and had gone to the gas station where there were “supposedly” other observations. App. 347, ll. 16 – 22. He had wanted to talk to Tyner’s girlfriend, Wanda, because she was his alibi witness according to Tyner. However, Tyner and Wanda had a big altercation the night before she was to come in. She was no longer going to be his alibi according to Tyner. App. 348, ll. 1 – App. 352, ll. 9.

The PCR judge issued an order on September 5, 2017 denying Petitioner Tyner’s PCR application and dismissing it with prejudice. App. 380 – App. 395. The PCR judge found that Petitioner Tyner had not presented any evidence at the PCR hearing regarding trial counsel’s failure to properly investigate his case. The judge’s order provided that Tyner failed to show “any deficiency” on the part of trial counsel. App. 387 – App. 388.

Petitioner Tyner’s PCR counsel filed a notice of appeal. This petition follows.

## ARGUMENT

The PCR court erred in not finding trial counsel ineffective for failing to conduct a sufficient and adequate investigation into Petitioner Tyner's case when he declared his innocence and the only evidence against him was the testimony of two alleged co-defendants.

Failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Counsel representing a criminal defendant has a duty to conduct a reasonable investigation, which encompasses the defendant's right to interview potential witnesses against him. State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of the claim of ineffective assistance of counsel, while 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.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional

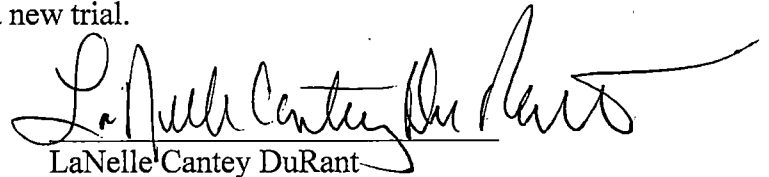
errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733.

Trial counsel was ineffective for not fully investigating Petitioner Tyner's case. Although the state may not have taken fingerprints or footprints, trial counsel could have had that completed. Trial counsel could have talked with the co-defendants to be better prepared to cross examine them on their inconsistencies.

**CONCLUSION**

Based on the above, certiorari should be granted; Petitioner Tyner's convictions and sentences reversed and the case remanded for a new trial.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of April, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Chesterfield County

Honorable Roger E. Henderson, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

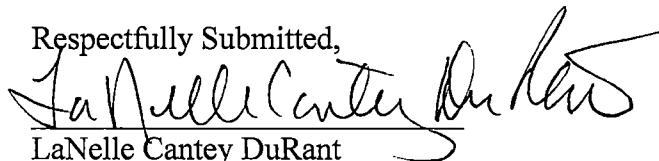
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Counsel for James Curtis Tyner states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge Roger E. Henderson, which was held on July 17, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for James Curtis Tyner.

Respectfully Submitted,



LaNelle Cantey DuRant

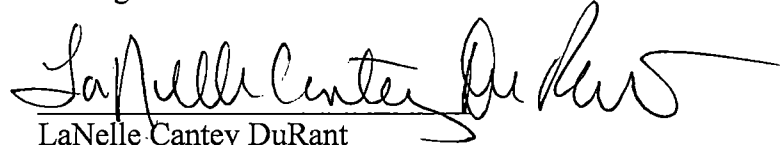
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of April, 2018.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her 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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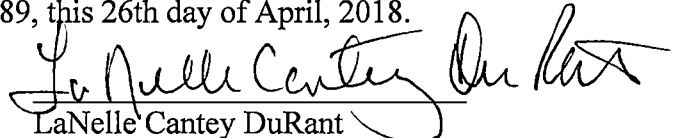
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STATE OF SOUTH CAROLINA,

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 Johnny Ellis James, Jr., 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 James Curtis Tyner, #270696, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 26th day of April, 2018.




LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of April, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.