

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to Lexington County

RECEIVED

R. Lawton McIntosh, Circuit Court Judge

AUG 06 2018

S.C. SUPREME COURT

RANDALL EARL SIGHTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002415

AMENDED JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in refusing to grant petitioner a new trial because the public defender's office that represented petitioner also represented another client who was currently being prosecuted for shooting petitioner?

STATEMENT

On June 7, 2001, petitioner pled guilty to two counts of trafficking in methamphetamine, second offense, before the Honorable Edward B. Cottingham. App. 1 -3, l. 9. Jonathan D. Waller of the Attorney General's Office represented the State. App. 1. Sarah A. Hahn represented petitioner. App. 1. Judge Cottingham sentenced petitioner to concurrent fifteen-year terms of imprisonment. App. 19, ll. 12 – 19.

On September 23, 2011, petitioner filed a PCR application. App. 21. The transcript of the original PCR hearing was lost; therefore, on September 8, 2017, a reconstruction hearing was held before the Honorable R. Lawton McIntosh. App. 34. John Harrison Strom represented petitioner at the hearing. App. 34. William Joseph Maye represented the State. App. 34. At the end of the hearing, the parties and Judge McIntosh agreed the record of the original PCR hearing had been adequately reconstructed. App. 106, ll. 19 – 23. Andrew Farley represented petitioner at the original hearing and Walt Whitmire represented the State. App. 117. Judge McIntosh's original denial of petitioner's application was dated October 6, 2014. App. 117. Petitioner did not appeal.

On October 15, 2014, petitioner filed another PCR application seeking a belated appeal of his first PCR. App. 129-31. On April 16, 2016, a hearing was held before the Honorable Perry H. Gravely. App. 141. Aimee Zmroczek represented petitioner and Johnny James and Johanna C. Valenzuela represented the State. App. 141. App. 145, ll. 9 – 23. On August 2, 2016, Judge Gravely issued an order granting petitioner a belated appeal of his first PCR and this order was amended to correct a citation on October 18, 2016. App. 165. App. 174. This petition follows.

ARGUMENT

The PCR court erred in refusing to grant petitioner a new trial because the public defender's office that represented petitioner also represented another client who was currently being prosecuted for shooting petitioner.

Vincent Pinkard shot petitioner Randall Sightler. App. 48, ll. 1 – 3. The Lexington County Public Defender's Office represented both Pinkard and Sightler. App. 48, ll. 1 – 25. The Lexington County Solicitor's Office perceived a conflict of interest in prosecuting both Pinkard for shooting Sightler and Sightler on drug charges at the same time. App. 8, ll. 8 – 16. App. 71, ll. 15 – 23. The Attorney General assumed the prosecution of Sightler on his drug charges. App. 8, ll. 8 – 16. App. 71, ll. 15 – 23.

At the reconstructed PCR hearing, petitioner explained that he perceived a conflict of interest in the public defender representing both him and Pinkard, his assailant. App. 47, l. 13 – 49, l. 12. Although he could not remember the specifics, he remembered discussing the conflict with plea counsel. App. 49, ll. 5 – 12. Sightler brought the conflict to his lawyer's attention and wrote letters. App. 50, l. 4 – 51, l. 21. While Sightler could not say for sure that the lawyers handling the cases at the public defender's office discussed his case, he assumed they did because they all worked together. App. 51, ll. 2 – 21.

Plea counsel did not recall ever representing Pinkard. App. 80, ll. 17 – 20. Plea counsel explained their office handled conflicts by assigning different attorneys and paralegals "so no paralegal is working on another attorney's case and vice versa." App. 81, ll. 4 – 15. While the office made "every effort" to screen conflict defendants and keep their files separate, on cross-examination, plea counsel admitted the files were not locked. App. 92, ll. 8 – 19. The employees all had access to the same database. App. 92, ll. 8 – 19. While she was not aware

that anyone tried to access Sightler’s file, she admitted, “Is that possible in any case, maybe.” App. 92, ll. 8 – 19. She did not perceive a conflict of interest under the rules and claimed her representation of Sightler was not encumbered. App. 92, l. 20 – 93, l. 6.

The Sixth Amendment entitles a criminal defendant to representation by an attorney unencumbered by a conflict of interest. See Cuyler v. Sullivan, 446 U.S. 335, 345-50 (1980). See also Gonzales v. State, 419 S.C. 2, 9, 795 S.E.2d 835, 839 (2017); U.S. Const. amend. VI. Petitioner “need not demonstrate prejudice if there is an actual conflict of interest.” Lomax v. State, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008) (holding plea counsel ineffective for simultaneously representing a husband and wife). See also Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001) (finding an actual conflict of interest arising from simultaneous representation of husband and wife).

Under this Court’s recent decision in Gonzales, it does not matter whether plea counsel recognized the conflict of interest. Gonzales at 11-12, 795 S.E.2d at 840. The attorney in Gonzales had a conflict of interest when he simultaneously represented the defendant and his mother’s boyfriend on drug charges. Id. The failure to pursue cooperation for the defendant in Gonzales to the benefit of the boyfriend led this Court to reverse. Id.

Plea counsel here stated she had no conflict of interest “according to the rules.” App. 92, l. 24 – 93, l. 1. She likely was referring to Rule 1.10(e) of the Rules of Professional Conduct. Rule 1.10(a) imputes conflicts between lawyers in a firm. See SCACR 407, RPC 1.10(a). “While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so” Id. While Rule 1.10(a) would prohibit a law firm from representing both petitioner and Pinkard, Rule 1.10(e) carves out an exception for public defenders. See SCACR 407, RPC 1.10(e).

Rule 1.10(e) states that a lawyer in a public defender's office "shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter" if two requirements can be met. See SCACR 407, RPC 1.10(e). First, the lawyer must be "screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client." See SCACR 407, RPC 1.10(e)(1). Second, the lawyer must retain authority "over the objectives of the representation." See SCACR 407, RPC 1.10(e)(2).

In petitioner's case, the public defender did not meet the criteria necessary to be exempted from the imputed conflict rule. First, plea counsel conceded that their files are not locked. All employees have access to the same database. The screening measure contemplated by the rule appears to be, in petitioner's case, based on the assumption that other lawyers will not look in a file.

Second, petitioner testified that plea counsel's performance was impaired. App. 45, l. 20 – 47, l. 4. She failed to enforce the terms of the plea agreement made with the State. App. 45, l. 20 – 47, l. 4. The State agreed to make no sentencing recommendation, but two police officers spoke at the plea and asked Judge Cottingham to impose the maximum sentence. App. 12, ll. 1 – 22.

Plea counsel admitted being surprised by the officers' request. App. 76, ll. 8 – 21. She also admitted that she should have stopped the plea hearing and asked whether Sightler wanted to continue. App. 76, l. 21 – 77, l. 1. She believed the plea judge based his sentence in part on the officers' request for the maximum sentence. App. 77, l. 9 – 79, l. 20. Plea counsel testified, "It seems to me like the judge listened to what the officers had to say, and seemed to take it to heart." App. 95, ll. 12 – 18. At the plea, counsel asked Judge Cottingham to consider the

minimum sentence of five years, but the court imposed a fifteen-year sentence. App. 18, 1. 7 – 19, 1. 19. Under these circumstances, plea counsel could not satisfy the requirements necessary to fall under the exception to the imputed conflicts rule. Because petitioner is not required to demonstrate prejudice, this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

Suzan B. Hackett for
David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2018.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randall Earl Sightler states:

1. He is an 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 proceedings before Judge R. Lawton McIntosh 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 Randall Earl Sightler.

Respectfully Submitted,

Suzan B. Hackett for
David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of August, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Amended Johnson Petition for Writ of Certiorari Pursuant to Austin v. State 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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David Alexander
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Johnson Petition for Writ of Certiorari Pursuant to Austin v. State in the above referenced case has been served upon W. Joseph Maye, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Amended Johnson Petition for Writ of Certiorari Pursuant to Austin v. State has been served on Randall Earl Sightler, #311918, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 6th day of August, 2018.

Suzan S. Hackett for
David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2018.

Cristina Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.