

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Georgetown County
Honorable William H. Seals, Circuit Court Judge

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AUG 09 2018

S.C. SUPREME COURT

JAMES R. GLISSON, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000521

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
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(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to ensure that Petitioner received proper credit for time served in pretrial detention before he pled guilty?

STATEMENT OF THE CASE

The state alleged Petitioner committed a string of burglaries on or near Pawley's Island during November and December 2010. The properties involved were mainly rental houses or second homes near the beach. App. 87, l. 19 – 91, l. 24. Petitioner was also accused of committing a burglary in the same neighborhood in April 2014. App. 88, l. 24 – 89, l. 12. The allegations led to nineteen separate indictments. As part of a plea deal, Petitioner pled guilty to eight indictments. The remaining indictments were dismissed by the prosecutor. App. 68, l. 15 – 69, l. 17.

A Georgetown Grand Jury indicted Petitioner on May 18, 2011 for second degree burglary (non-violent), on June 15, 2011 for three counts second degree burglary (non-violent), on July 20, 2011 for second degree burglary (non-violent), on November 14, 2012 for two counts of first degree burglary, and on August 20, 2014 for second degree burglary (violent). App. 151-166.

On September 30, 2014, after pretrial motions were heard during his jury trial for first degree burglary, Petitioner ultimately pled guilty before the Honorable R. Knox McMahon. App. 1. Assistant Solicitor Alicia Richardson represented the state, and Ronald Hazzard represented Petitioner. App. 1. As part of the plea agreement, the state allowed Petitioner to plead guilty to the lesser included offense of second degree burglary (violent) for both counts of first degree burglary. He also pled guilty as indicted to a third count of second degree burglary (violent) and five counts of second degree burglary (non-violent). App. 68, l. 18 – 69, l. 14; App. 79, ll. 16-20.

Following the state's sentence recommendation, Judge McMahon sentenced Petitioner to fifteen years for both counts of second degree burglary (violent) that were reduced from first

degree burglary. He was given credit for one thousand one hundred and thirteen days time served. App. 100, l. 25 – 101, l. 6. Petitioner was sentenced to seven years for the third count of second degree burglary (violent) with credit for one hundred fifty three days time served. App. 101, ll. 7-12. Finally, he was sentenced to four years suspended to time served on each count of second degree burglary (non-violent). App. 101, ll. 13-18. All sentences were ordered to be served concurrently.

On April 24, 2015, Petitioner filed an application for post-conviction relief (PCR) alleging, *inter alia*, that he did not receive credit for the time he served in pretrial detention in Georgetown County. App. 107-113. The state filed a return to this application and partial motion to dismiss on February 21, 2017. App. 114-121. An evidentiary hearing was convened on November 29, 2017 before the Honorable William H. Seals, Jr. App. 122. Assistant Attorney General Johnny E. James, Jr. represented the state, and Steven W. Fowler represented Petitioner. App. 122.

At the hearing, Petitioner only went forward with his argument that he did not receive proper credit for the time he served in pretrial detention in Georgetown County. Petitioner argued he was supposed to receive credit for one thousand one hundred and thirteen days, the amount of time he served in pretrial detention, however, because of the way it was written on the sentence sheets, the Department of Corrections was not crediting his time properly. App. 129, l. 6 – 130, l. 1. Petitioner explained that he repeatedly wrote to plea counsel in an effort to correct this error to no avail. App. 131, l. 10 – 132, l. 2. He also wrote to Judge McMahon, who was the sentencing judge, and the Georgetown County Clerk of Court. App. 130, ll. 5-8; App. 132, ll. 13-16.

Ron Hazzard, Petitioner's plea counsel, claimed Petitioner had received credit for all the time he served in pretrial detention. Hazzard even alleged Petitioner was receiving "credit for a lot of time that technically he's not entitled to as part of his plea." App. 137, ll. 4-11. He claimed Petitioner was given credit for time he spent at the Georgetown County Detention Center on charges that were ultimately dismissed. App. 137, ll. 9-11. As far as his communication with Petitioner, Hazzard testified that he explained to Petitioner how his time served would be calculated before he pled guilty and, even after Petitioner pled guilty, he wrote Petitioner two lengthy letters addressing Petitioner's concerns regarding not receiving the proper credit. App. 137, ll. 15-25. Moreover, Hazzard said he reviewed the Department of Corrections website and, based on Petitioner's sentence start date and his admission date, it appeared the department gave Petitioner credit for one thousand one hundred and twenty days time served. App. 138, ll. 1-12.

The PCR judge ultimately found Petitioner's claim concerning not receiving proper credit for time served was not cognizable in an action for post-conviction relief. App. 149. The judge maintained PCR is only proper when the application collaterally attacks the validity of an individual's conviction or sentence. App. 148-149. The judge stated, "Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction." App. 149. Finally, the judge concluded a "claim for time served is a non-collateral attack of a conviction and may only be pursued under the Administrative Procedures Act." App. 149. Consequently, the judge denied Petitioner relief. App. 149-150.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to ensure that Petitioner received proper credit

for time served in pretrial detention before he pled guilty, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to ensure that Petitioner received proper credit for time served in pretrial detention before he pled guilty.

Petitioner spent over one thousand days in pretrial detention before he ultimately pled guilty on September 30, 2014. During his sentencing hearing, the plea judge ordered that Petitioner receive credit for this time served. However, as of the date of his evidentiary hearing, Petitioner had not received proper credit due to the way the sentencing judge completed the sentence sheets. App. 129, l. 6 – 130, l. 1. Despite alerting plea counsel to the fact that he was not receiving proper credit for time served, counsel did nothing to assist Petitioner. App. 130, l. 2 – 132, l. 2. This constitutes deficient performance. Petitioner was prejudiced by counsel's failure because, as of the evidentiary hearing, Petitioner had not received proper credit for the significant time he served in pretrial detention before he pled guilty.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance

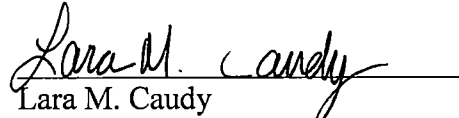
was deficient” and fell below reasonable professional norms, and the deficient performance prejudiced Petitioner. Strickland, 466 U.S. at 687. Under the second prong, Petitioner must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

Plea counsel was ineffective because he failed to ensure that Petitioner received proper credit for the time he served in pretrial detention before he pled guilty. The sentencing judge ordered Petitioner receive credit for one thousand one hundred and thirteen days time served. However, the Department of Corrections failed to credit Petitioner correctly. Despite receiving numerous letters from Petitioner advising him of this error, plea counsel did nothing to rectify the problem. This constitutes deficient performance. Petitioner was prejudiced by counsel’s failure because, as of the evidentiary hearing, Petitioner had not received proper credit for the significant time he served in pretrial detention before he pled guilty. Consequently, Petitioner respectfully requests this Court reverse the ruling of the PCR judge.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of August, 2018.

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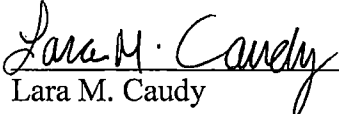
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James R. Glisson, Jr. states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the records and transcript of Petitioner's post-conviction relief hearing, which was held on November 29, 2017 before the Honorable William H. Seals, and, in her opinion, seeking certiorari from the order of dismissal is without merit.
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 the Court relieve her as counsel for James R. Glisson, Jr.

Respectfully Submitted,



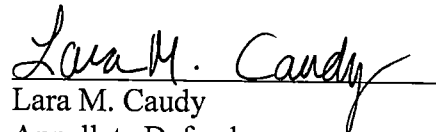
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 9rd day of August, 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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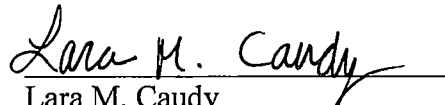
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CERTIFICATE OF SERVICE

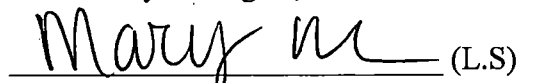
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served upon James R. Glisson, Jr., #285319, at Marion County Detention Center, 2715 Hwy. 76 East, Mullins, SC 29574, this 9th day of August, 2018.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of August, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.