

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

SEP 17 2018

S.C. SUPREME COURT

MOKEIA HAMMOND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000074

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
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 PRESENTED.....1

STATEMENT.....2

ARGUMENT.....3

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Did the PCR court err in denying Petitioner relief, where trial counsel failed to thoroughly cross-examine a co-defendant who cooperated with the State, where the witness's testimony about doing "a lick" served as the foundation for Petitioner's armed robbery conviction, where the witness who allegedly uttered this remark testified that he never said it?

STATEMENT

Mokeia Hammond was indicted for armed robbery, possession of a weapon during the commission during a violent crime, and murder by an Horry County grand jury during its August 2007 and October 2008 terms of court. App. 821 – 826. Represented by Ron Hazzard, Hammond proceeded to trial before the Honorable Benjamin H. Culbertson and a jury on March 9, 2009. App. 1 – 2. Donna Elder and Brad Richardson appeared on behalf of the State, and Verdell Barr represented Hammond's co-defendant, Richard Bill Niles, Jr.

The jury found Hammond guilty of armed robbery but returned not guilty verdicts for the other two charges. App. 741 ll. 1 – 9. Judge Culbertson sentenced her to fifteen years' incarceration. App. 764 ll. 11 – 14.

The South Carolina Court of Appeals affirmed her conviction and sentence. State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011). On February 9, 2012, she filed an application for post-conviction relief. App. 766 – 772. The State made its Return on or about May 24, 2012. App. 773 – 777. An evidentiary hearing was held before the Honorable William H. Seals on September 19, 2017. App. 778. Brana J. Williams represented Hammond, and Johnny James, Jr. appeared on behalf of the State. Counsel for Hammond verbally amended the application at the hearing. App. 781 l. 20 – App. 782 l. 21. The PCR court heard from Hammond and trial counsel.

An Order of Dismissal was signed on December 19, 2017 and filed on January 5, 2018. App. 811 – 820. The PCR court dismissed Petitioner's claim that trial counsel failed to adequately argue for directed verdict. App. 815.

This petition follows.

ARGUMENT

The PCR court erred in denying Petitioner relief, where trial counsel failed to thoroughly cross-examine a co-defendant who cooperated with the State, where the witness's testimony about doing "a lick" served as the foundation for Petitioner's armed robbery conviction, where the witness who allegedly uttered this remark testified that he never said it.

On April 9, 2007, Hammond and her fiancé, Richard Bill Niles, Jr. were in a car with Ervin Moore. App. 392 l. 8 – App. 401 l. 17. According to Moore, the three ended up in a Best Buy parking lot. Id. Niles allegedly indicated that they were going to "do a lick." Id. Moore understood that to mean a robbery. Id. The decedent, James Salter, drove his white Mustang alongside the car with Hammond, Niles, and Moore in it. Id. Moore supposedly got out to ensure that Salter had marijuana. Id. Moore testified that Niles then approached Salter's car and the two began fighting. Id. Niles, however, testified that Moore instigated the fight and that he returned fire in self-defense. App. 568 l. 11 – App. 570 l. 8. Niles indicated that he only fired two shots. Id. Hammond did not testify.

Both men testified that shots were fired, Niles got back into the car, and Hammond drove away. Id.; App. 392 l. 8 – App. 401 l. 17. Salter died from a gunshot wound to the chest. App. 534 l. 13 – App. 535 l. 8.

Moore pleaded guilty to manslaughter, robbery, and unlawful possession of a firearm in exchange for his testimony against Niles and Hammond at trial. App. 391 l. 17 – App. 392 l. 21. At the conclusion of the State's case-in-chief, counsel for Hammond moved for a directed verdict. App. 540 l. 7 – App. 542 l. 13. In response, the State noted Moore's testimony, and the motion was denied. App. 542 l. 16 – App. 544 l. 6. After both co-defendants rested, counsel for

Hammond renewed the directed verdict motion. App. 616 l. 24 – App. 624 l. 9. It was again denied. Id.

At the evidentiary hearing, Hammond’s application for post-conviction relief was amended through counsel to include the following:

[B]asically my client’s allegation is that her counsel was ineffective in his failure to sufficiently argue the lack of evidence presented. He failed to ask questions of certain co-counsel that was there. The other part of her PCR would be in the discussion that she relied on him and she didn’t testify. And so that’s part of what we’re going forth on, just those two issues, really, Your Honor.

App. 782 l. 22 – App. 783 l. 5. Counsel’s above remarks notwithstanding, the Order of Dismissal only contained a ruling on one issue: “Failure to Adequately Argue for Directed Verdict” and omitted altogether the issue of counsel’s advice regarding Hammond’s decision not to testify. Notably, the Order of Dismissal found that:

Counsel condemned Moore’s “doing a lick” testimony as a ludicrous statement. Nonetheless, Counsel identified it as the crux of Applicant’s conviction and as the key to establish her guilt under hand-of-one, hand-of-all. When asked why he did not question Moore as to whether Applicant heard the “doing a lick” statement, Counsel replied that doing so would have been asking Moore to speculate.

App. 818. The speculation presumably could have been avoided if Hammond testified, but that issue was not listed in the Order of Dismissal.

Petitioner correctly asserted that trial counsel was ineffective, because counsel could have more thoroughly cross-examined the two witnesses who were in the car at the time that the “do a lick” statement was made. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the

defendant. Id. at 687. “[T]he court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Strickland at 690).

First, to be entitled to PCR, the applicant must show that counsel's performance was deficient. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing Strickland v. Washington, supra). In this regard, trial counsel failed inquire about the volume of the radio on the car or ask detailed follow-up questions about whether Hammond would have or could have heard the “do a lick” comment. Such conduct falls within the gamut of deficiency, especially considering those remarks laid the foundation for Hammond’s conviction.


Trial counsel noted that the decedent worked for Niles: “Mr. Niles provided drugs, the [decedent] sold the drugs and returned the money to Mr. Niles. He had no reason to do a lick or rob a person who worked for him.” App. 787 l. 20 – App. 788 l. 1. Counsel agreed with the assertion that the only reason the jury would have to convict Hammond was Moore’s testimony that a discussion supposedly took place between Niles and Hammond in the front seat of the car about doing a lick. App. 788 ll. 11 – 19; App. 796 ll. 1 – 9. Niles denied uttering such a remark, so counsel should have pressed Moore in greater detail in order to cause vacillation. App. 561 ll. 18 – 25. The evidence used to convict Hammond originated from a cooperating co-defendant who testified in exchange for lesser charges; counsel should have aggressively questioned Moore about this statement such that either his directed verdict motion would have been granted or the jury would have found Hammond not guilty on the armed robbery charge as well. Without proof that Hammond overheard this remark or understood its meaning, the case should not have been submitted to the jury.

“The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

Prejudice in Hammond’s case manifested itself in the two-time denial of the motion for a directed verdict as well as the resulting conviction for armed robbery. Additionally, the Court of Appeals opinion revolves around Moore’s testimony that “he heard the announcement that they were going to ‘do a lick’ and understood this to mean they were going to commit a robbery.” State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011). Had counsel adequately cross-examined Moore on this assertion or suggested that Hammond testify in her defense, it likely would have affected the outcome of the directed verdict motions, the jury’s verdicts, or Hammond’s direct appeal.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant her petition for writ of certiorari to allow full briefing on this issue, reverse the charges against her, and remand the case for a new trial.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

MOKEIA HAMMOND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

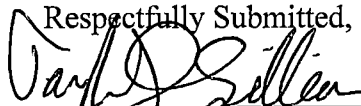
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mokeia Hammond 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 William H. Seals, which was held on September 19, 2017, 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 Mokeia Hammond.

Respectfully Submitted,



Taylor D. Gilliam

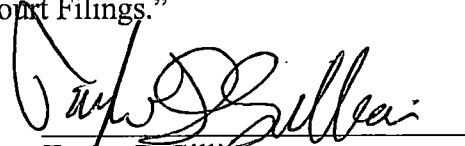
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 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."



Taylor D Gilliam
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 17th day of September, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

MOKEIA HAMMOND,

PETITIONER

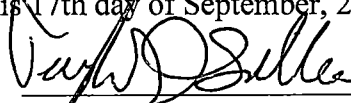
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

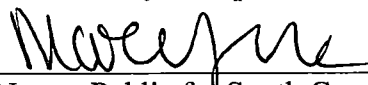
CERTIFICATE OF SERVICE

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 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 Mokeia Hammond, #333772, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 17th day of September, 2018.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of September, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027