

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Grace Gilchrist Knie, Circuit Court Judge

CHRISTOPHER GENE MARTIN,

**ORIGINAL
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S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000929

JOHNSON PETITION FOR WRIT OF CERTIORARI

Kathrine H. Hudgins
Appellate Defender

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

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to provide Petitioner with a written copy of the statement made to police by Jessica Ramsey, the mother of Petitioner's child, that she heard Petitioner admit to stabbing someone?

STATEMENT

In May of 2014, the Cherokee County Grand Jury indicted Petitioner, Christopher Gene Martin, for attempted murder, indictment #2014-GS-11-513. On August 11, 2015, Petitioner proceeded to jury trial before the Honorable R. Keith Kelly. Don Thompson represented Petitioner at trial. Clifton Sams prosecuted the case. The jury found Petitioner guilty of the lesser included offense of assault and battery of a high and aggravated nature. Judge Kelly sentenced Petitioner to twenty (20) years. A timely notice of intent to appeal was served on August 13, 2015, and on April 18, 2016, a brief pursuant to Anders v. California, 386 U.S.738 (1967), was filed on Petitioner's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Martin, Op. No. 2016-UP-465 (S.C. Ct. App. filed November 9, 2016).

On March 27, 2017, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return, partial motion to dismiss and a motion for a more definite statement on November 2, 2017. On January 29, 2018, an evidentiary hearing was held before the Honorable Grace Gilchrist. Rodney W. Richey represented Petitioner at the PCR hearing. Valerie Giovanoli represented the State. On May 9, 2018, Judge Gilchrist signed a written order denying relief and dismissing the application. On May 16, 2018, Petitioner served a timely notice of intent to appeal. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to provide Petitioner with a written copy of the statement made to police by Jessica Ramsey, the mother of Petitioner's child, that she heard Petitioner admit to stabbing someone.

On January 27, 2014, Petitioner was at home with his girlfriend and mother of his child, Jessica Ramsey, his friend, Billy Henderson, and Henderson's girlfriend Libby. (App. p. 73, lines 1-12). Nathan Hoffman went to Petitioner's home to buy cigarettes. (App. p. 71, lines 4-14). Hoffman testified that while he was inside Petitioner's home to buy cigarettes, Henderson accused Hoffman of flirting with Libby. (App. p. 73, lines 14 – 25). According to Hoffman when Henderson raised his arm to strike Hoffman and Hoffman moved to defend himself, Petitioner jumped up and started yelling, 'no, not in my house. You are not going to disrespect me here.' (App. p. 73, line 24 – p. 74, lines 1-5). Hoffman testified that he left Petitioner's home, they exchanged words, Petitioner followed him down the street and stabbed him with a knife. (App. p. 75-77).

One day after the incident Jessica Ramsey gave a statement to the police. (App. p. 137, lines 2-9). At trial Jessica was called as a witness by the State. She testified that Petitioner chased Hoffman and when he returned, "He [Petitioner] said that he had to hurry and go because he had stabbed somebody." (App. p. 130, lines 18-19).

During the PCR hearing Petitioner testified that he did not receive discovery material from trial counsel. (App. p. 324, lines 4-19). Although trial counsel testified that he discussed Jessica's testimony with Petitioner prior to trial, he admitted that he did not give the discovery material to Petitioner. (App. p. 330, line 9). It appears that Petitioner did not receive a copy of the written statement Jessica provided to the police until after Petitioner's conviction.

In the order of dismissal the PCR judge found that Petitioner failed to prove that trial counsel was deficient and wrote, “Counsel also met with Applicant his fiancé to discuss her possibly testifying and also discussed Applicant’s right to testify with him.” (App. p. 347). The order fails to address trial counsel’s failure to provide a written copy of Jessica’s statement to Petitioner. The PCR judge erred in refusing to find trial counsel ineffective for not providing Petitioner with a copy of Jessica’s statement.


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 counsel's representation was deficient, which 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 is a probability sufficient to undermine confidence in the outcome.” Id.

Trial counsel was ineffective in failing to provide a written copy of Jessica’s statement to Petitioner. Petitioner was prejudiced by the deficient performance. While trial counsel may have discussed Jessica’s potential testimony with Petitioner, the discussion may not have

conveyed the devastating impact of the testimony in the same way a written copy of the statement would have. During the PCR hearing trial counsel testified that Petitioner turned down a plea offer from the State which would have allowed a plea to ABHAN for twelve (12) years. (App. p. 331, lines 14-25). Although Petitioner denies stabbing Hoffman, if he had been provided with a written copy of Jessica's statement, he may have sought a plea pursuant to North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of November, 2018,

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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CHRISTOPHER GENE MARTIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Gene Martin states:

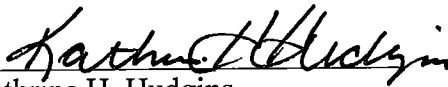
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Grace Gilchrist Knie, which was held on January 29, 2018, 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 Christopher Gene Martin.

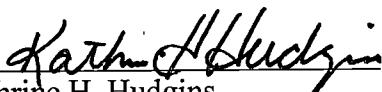
Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of November, 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."


Kathrine H. Hudgins
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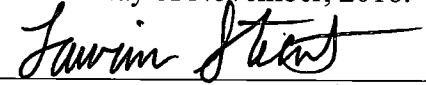
RESPONDENT

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 Jordan Cox, 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 Christopher Gene Martin, #307574, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of November, 2018.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of November, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.