

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

DAVID W. CHILES, JR.,

V.

STATE OF SOUTH CAROLINA,

ORIGINAL
RECEIVED
PETITIONER NOV 19 2018
S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2018-000602

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to present alibi testimony in petitioner’s case because the state’s evidence was not overwhelming in that there was no identification or forensic evidence presented at trial, and because the only piece of evidence submitted against petitioner by the state was a statement given by petitioner’s brother, who assigned guilt to petitioner, but later recanted and declared the statement to be untrue.3

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ISSUE PRESENTED

Trial counsel erred in failing to present alibi testimony in petitioner's case because the state's evidence was not overwhelming in that there was no identification or forensic evidence presented at trial, and because the only piece of evidence submitted against petitioner by the state was a statement given by petitioner's brother, who assigned guilt to petitioner, but later recanted and declared the statement to be untrue.

STATEMENT

Petitioner David W. Chiles was found guilty of conspiracy, armed robbery, and possession of a weapon during the commission of a violent crime per jury trial held during the November 2014 term of the Greenville County General Sessions Court before Judge Alexander S. Macaulay. Petitioner was sentenced to imprisonment for a period of twenty years. App. 1-612. Marcus Smith represented petitioner at trial and Assistant Attorney General Jeff Weston appeared on behalf of the state. Petitioner appealed, but the South Carolina Court of Appeals dismissed the appeal on March 18, 2016. See State v. Chiles, Op. No. 2016-UP-108 (S.C.Ct. App. filed March 2, 2016). Kathrine Hudgins, Esquire, of the South Carolina Commission on Indigent Defense (Appellate Defense Division) represented petitioner on direct appeal.

On March 7, 2017, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 614-619. The respondent filed a return dated November 3, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 620-624.

A PCR hearing was convened on December 15, 2017, at the Greenville County Office of the Clerk of Court before Judge Robin B. Stilwell. App. 626-664. Petitioner was present at the hearing and represented by Rodney Richey, and Assistant Attorney General DeShawn Mitchell appeared on behalf of the state. On March 21, 2018, Judge Stilwell issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 667-675.

Petitioner appealed Judge Stilwell's Order. This petition follows.

ARGUMENT

Trial counsel erred in failing to present alibi testimony in petitioner's case because the state's evidence was not overwhelming in that there was no identification or forensic evidence presented at trial, and because the only piece of evidence submitted against petitioner by the state was a statement given by petitioner's brother, who assigned guilt to petitioner, but later recanted and declared the statement to be untrue.

Petitioner, and petitioner's girlfriend (Precious Harris), and petitioner's brother (Keith Williams) were charged with the armed robbery of a McDonald's Restaurant in Greenville County that occurred on June 26, 2011. Williams gave a statement confessing his role in the robbery, and implicating petitioner and Harris in the robbery as well. Then, Williams pled guilty and subsequently testified on behalf of the state's case against petitioner and Harris, who were both tried jointly. At trial, Williams recanted his statement and was examined as a hostile witness. At the close of the trial, Harris was found not guilty of conspiracy and armed robbery, but petitioner was found guilty of armed robbery, conspiracy, and possession of a weapon during the commission of a violent crime. In this case, the three witnesses who were present at the scene could not identify petitioner or Williams as a perpetrator. Also, there was no forensic evidence that existed in the case and nothing was videotaped because the restaurant cameras were not working. The only piece of evidence presented by the State was a statement given by Keith Williams (petitioner's brother), which he later recanted.

At trial, restaurant employees Michael Culbertson (cashier) and Quinzell Davis (dishwasher) testified that they were the last ones who remained at the store along with manager Precious Harris when the events in question unfolded. Culbertson stated he had just left the restaurant and was standing outside nearby talking to William Michael Adams when he saw two

men wearing masks and in possession of a gun enter the store, jump the counter, and then exit. App. 94, l. 1-p. 105, l. 14. Adams testified that he saw the two masked faced men enter the restaurant with a gun, and that the men “robbed the place.” App. 120, l. 4-p. 127, l. 24. Neither Culbertson nor Adams could identify the perpetrators. Quinzell Davis stated that he saw the two men enter and jump the counter, and that one male pointed a gun at him and took him to the back while Harris was in the back counting the money. Davis added that shortly thereafter both men ran out and away. App. 133, l. 15- p. 136, l. 5; App. 190, l. 24-p. 192, l. 22; App. 204, l. 17- p. 205, l. 15; App. 210, l. 9- p. 211, l. 12; App. 215, l. 23- p. 216, l. 3.

Officer Deven Hooper stated that he confiscated Harris’ cell phone and that after she was interviewed by police as a suspect, he found a number in her phone for Keith Williams (petitioner’s brother). App. 240, l. 2 - p. 241, l. 4. Williams gave a statement informing police that he drove petitioner to McDonald’s and that petitioner called Harris to find out if the store was empty, and that they both went in, and that petitioner held the gun and put the money in the bag. However, Williams recanted at trial and stated that what was in the statement was untrue. App. 274, l. 22- p. 228, l. 10.

At the PCR hearing held in the case, petitioner testified that he informed counsel that he was with his mother at her house when the robbery occurred, and that she was available to testify to this alibi, but that counsel did not in effect pursue the alibi defense. App. 637, l. 14 - p. 638. l. 9; App. 639, l. 25- p. 640, l. 23.

Petitioner’s mother, Jackie Williams, testified at the PCR hearing and stated that petitioner was living with her at the time of the robbery, (App. 642, l. 11-17; App. 643, l. 15-18), but that counsel did not ask her about it. Ms. Williams testified as follows:

Q. Was your son with you the night of the robbery or not?

A. Yeah, as far as I know. Like I say, it's been some time because he does live with me. App. 646, lines 12-15.

Trial counsel testified at the hearing and admitted that there was a lack of evidence against petitioner and that the only piece of evidence was petitioner's brother's statement, which the brother recanted; and admitted that an alibi defense would have benefitted petitioner's case. App. 659, l. 14 - p. 660, l. 18; App. 649, l. 10 -p. 650, l. 1; App. 657, lines 10-24.

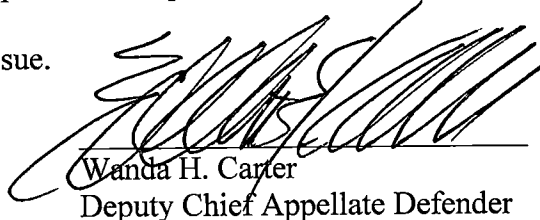
Counsel erred in failing to present an alibi defense via petitioner's mother's testimony that petitioner was with her in her house at the time the robbery occurred, especially where the state's case lacked sufficient evidence as there was only one piece of evidence (statement) against petitioner that existed in the case, which was ultimately deemed to be incompetent evidence (statement recanted by the brother) at trial. In Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991), the Court held that trial counsel was ineffective at a burglary and rape trial in failing to present an alibi witness who would have testified that he saw the defendant leave a lounge fifteen minutes prior to the conclusion of the time of the rape. Compare also, Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989), where the Court held that counsel was ineffective in failing to call alibi witnesses for trial where the state's theory was that the defendant entered and robbed a convenience store at 3 a.m. because the defendant testified that he was home by 1 am on that morning, and also because his older brother would have testified that he saw the defendant sleeping in his room after 1 a.m., and his nephew would have testified that he was on the porch at 1 a.m. and saw the defendant arrive home at that time, and his younger brother would have testified that he helped the defendant inside the house after he came home, as all of this collectively would have provided crucial proof in support of his alibi defense.

Here, since there was only one piece of evidence presented by the state, which was a single statement that connected petitioner to the crime that was later recanted by the author, then the state's evidence was insufficient and therefore an alibi defense in conjunction with the state's underwhelming evidence would have greatly benefitted petitioner's defense. Also, petitioner desired to testify in connection with his alibi defense, which would have benefitted his defense also. During the PCR hearing, petitioner stated that he wanted to testify at trial. App. 643, l. 4-21.

A defendant has a right to present witnesses in his defense. Faretta v. California, 422 U.S. 806 (1975). Also, a defendant has a right to testify at trial in his defense under the due process clause of the Fourteenth Amendment, which guarantees that no one shall be deprived of liberty without due process of law, and under the compulsory process clause of the Sixth Amendment that grants the defendant the right to call witnesses, and under the Fifth Amendment's privilege against self-incrimination, which includes the opportunity of a defendant to testify as a corollary to the privilege against compelled testimony. State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013), citing to Rock v. Arkansas, 483 U.S. 44 (1987), and Faretta v. California, 422 U.S. 806 (1975). In Rivera, the Court reversed because the defendant's was denied his right to testify in his defense at trial (despite the position that **“preventing [the defendant] from testifying may have been an advantageous strategic decision ...[because this position]..had no basis in the law”**) and that the denial of the right to testify at trial could not have been harmless as it was considered structural error. Here, counsel's failure to develop an alibi defense on petitioner's behalf at trial constituted deficient representation in violation of petitioner's Sixth Amendment right to competent legal representation at trial because but for this omission, a reasonable probability exists that the outcome of petitioner's trial would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

This 19th day of November, 2018.

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Honorable Robin B. Stilwell, Circuit Court Judge

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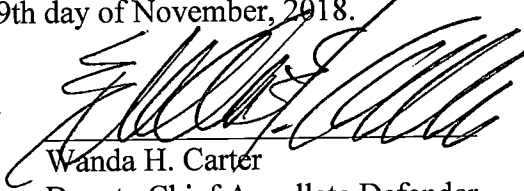
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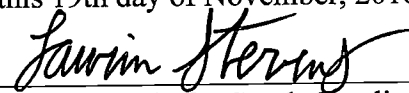
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on David W. Chiles, Jr., #362035, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of November, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 19th day of November, 2018.

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