

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

JOHNNY RAY WILKINS,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001182

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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PETITIONERS.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Trial counsel erred in failing to develop an alibi defense to
present at petitioner’s trial. 3

CONCLUSION 4

PETITION TO BE RELIEVED AS COUNSEL 5

ISSUE PRESENTED

Trial counsel erred in failing to develop an alibi defense to present at petitioner's trial.

STATEMENT

Petitioner Johnny Ray Wilkins was convicted of armed robbery per jury trial held during the March 2018 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole and received a sentence of life imprisonment. App. 1-123. Timothy Ray represented petitioner at trial, and Assistant Solicitor Barry Barnette appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed by the South Carolina Court of Appeals. See State v. Wilkins, Op. No. 2011-UP-482 (filed October 28, 2011).

On June 13, 2013, petitioner filed a PCR application with the Spartanburg Office of the Clerk of Court. App. 125-140. The respondent filed a Return dated March 28, 2014, requesting that a hearing be held in response to petitioner's PCR action. App. 141-145.

A PCR hearing was convened on March 25, 2015, at the Spartanburg County Courthouse before Judge Roger L. Couch. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. App. 147- 175.

On May 17, 2018, Judge Couch signed an Order of Dismissal in the case. App. 177-184. Petitioner appealed Judge Couch's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to develop an alibi defense to present at petitioner's trial.

Petitioner was accused of committing armed robbery at a Li'l Cricket convenience store in Spartanburg County. At trial, Jaime McAbee testified that she was working as a cashier at the store on January 13, 2008, when a male entered wearing a mask and that the armed robbery occurred at that point. The store surveillance camera captured the event on videotape. App. 38, l. 3- p. 44, l. 5.

State's witness Robert Benson testified at trial and explained that he and petitioner were riding around on the date in question, and that they drove up to the store, and that petitioner took a gun and went inside the store, and that petitioner came out of the store with money in his possession. App. 45, l. 5- p. 53, l. 17. Both men were apprehended by local police shortly thereafter. App. 62, l. 1- p. 67, l. 8.

During the PCR hearing held in the case, petitioner testified that Miranda Allen would tell [counsel] where [he] was at the point of the time of the robbery, but that trial counsel did not call her as a witness at trial; and that had his alibi defense been presented, he would have been acquitted. App. 151, l. 23- p. 152, l. 7, l. 4; App. 156, l. 4-17; App. 159, lines. 13-20.

Trial counsel testified at the PCR hearing and stated that he spoke to Miranda Allen and concluded that she would have testified that she was with petitioner earlier on that date, but not when the armed robbery occurred, and therefore she could not provide an alibi defense. App. 164, l. 16- p. 165, l. 4; App. 171, l. 1- p. 172, l. 6.

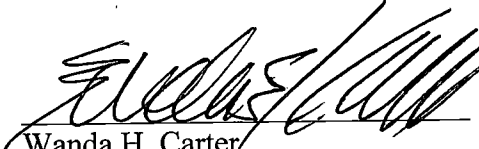
Counsel erred in failing to develop an alibi defense in petitioner's case. In Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991), the Court held that trial counsel was ineffective at a

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, 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, counsel for petitioner would request that this Court allow full briefing on the above raised issue.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of December, 2018.

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—————
PETITION TO BE RELIEVED AS COUNSEL
—————

Counsel for Johnny Ray Wilkins states that:

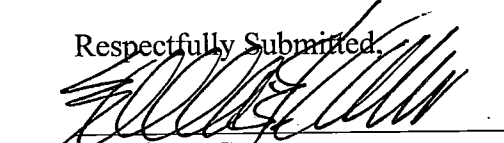
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Roger L. Couch, which was held on March 25, 2015, 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 Johnny Ray Wilkins.

Respectfully Submitted,

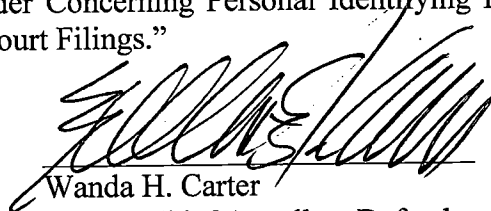


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of December, 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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This 5th day of December, 2018.

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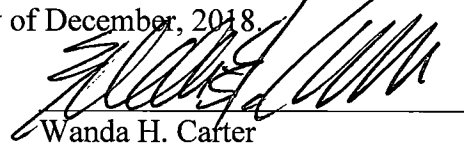
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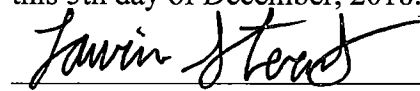
CERTIFICATE OF SERVICE

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 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 Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Johnny Ray Wilkins, #244320, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of December, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

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

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