

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

Joseph Christopher Walker -- Petitioner,

-vs-

State of South Carolina -- Respondent,

APPELLATE CASE NO. 2018-000752

PETITIONER'S PRO-SE JOHNSON
PETITION FOR WRIT OF CERTIORARI

Joseph C. Walker
SCDC# 285497
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, SC. 29669

Petitioner, pro-se

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JAN 24 2019

S.C. SUPREME COURT

ISSUE PRESENTED

ISSUE (A)

THE PCR COURT ERRED IN FINDING PETITIONER'S PLEA WAS NOT THE RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE THE EVIDENCE IN THE RECORD CONCLUSIVELY SHOWS PETITIONER TOLD THE PLEA JUDGE NUMEROUS TIMES HE WAS ACTUALLY INNOCENT OF AND DID NOT COMMIT THE MURDER CHARGE.

ISSUE (B)

THE PCR COURT ERR IN FINDING PETITIONER FAILED TO PRESENT COMPELLING EVIDENCE THAT COUNSEL COMMITTED EITHER ERRORS OR OMISSIONS IN HIS REPRESENTATION OF PETITIONER.

ISSUE (C)

THE PCR COURT ERR IN FAILING TO FIND COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHERE PETITIONER PRESENTED PROBATIVE EVIDENCE THAT COUNSEL UNPROFESSIONALLY ALLOWED ANOTHER ATTORNEY TO ASSERT HERSELF INTO THE CASE AND BY DOING SO ALLOWED THE OTHER COUNSEL TO PROVIDE PETITIONER WITH CONTRADICTORY AND CONFUSING ADVICE THAT RESULTED IN THE GUILTY PLEA.

STATEMENT OF THE CASE

Joseph Christopher Walker ("Petitioner"), pled guilty to voluntary manslaughter and three counts of distribution of cocaine base within proximity of a school before the Honorable D. Garrison Hill and was sentence to an aggregate thirty-year term. Petitioner was represented by C. Lance Sheek and the State was represented by L. Mark Moyer and Jennifer A.R. Tessitore. App.1-35. No appeal was taken.

On June 17, 2014, Petitioner filed a pro-se application for post conviction relief (2014-CP-23-3382). App.37-43. The Respondent filed their Return and Motion to Dismiss dated August 15, 2014, and an Amended Return January 7, 2015. App.45-46.

An evidentiary hearing was convened December 11, 2017 at the Greenville County Courthouse before the Honorable Robin B. Stilwell. App.78-115. Petitioner was present and was represented by appointed PCR counsel R. Mills Ariail, and the State was represented by Assistant Attorney General DeShawn H. Mitchell. On March 21, 2018, Judge Stilwell issued a written Order denying relief and dismissing the application. App.201-209.

A timely appeal was filed and Wanda H. Carter of the South Carolina Commission of Indigent Defense presented a Johnson petition for writ of certiorari on behalf of Petitioner. Petitioner's pro-se Johnson petition for writ of certiorari is as follows:

ARGUMENT

ISSUE (A)

THE PCR COURT ERRED IN FINDING PETITIONER'S PLEA WAS NOT THE RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHERE THE EVIDENCE IN THE RECORD CONCLUSIVELY SHOWS PETITIONER TOLD THE PLEA JUDGE NUMEROUS TIMES HE WAS ACTUALLY INNOCENT OF AND DID NOT COMMIT THE MURDER OFFENSE.

Petitioner submits the PCR Court erred in failing to find his guilty pleas were involuntary and the result of ineffective assistance. During the initial guilty plea Petitioner told the plea Judge numerous times he was innocent and did not commit the murder. The moment Petitioner told the plea Court he was not guilty of the murder charge the Plea Judge should have immediately refused to accept a plea to the murder and set that offense for trial. However, counsel intervened and after discussions with the State somehow turned the murder charge into an Alford plea and for reasons unknown the Plea Judge disregarded Petitioner's claim of innocence on the murder and accepted the Alford plea.

PLEA HEARING

The initial plea hearing was a convoluted "basket plea" resulting in five different individuals with unrelated charges entering pleas in front of the same judge simultaneously. During the initial plea proceeding, the solicitor apprised the plea judge of the facts of the case. The solicitor in essence summarized the facts as Petitioner being in a verbal altercation with an individual and Petitioner allegedly was supposed to have shot and killed the person, and also Petitioner was indicted on

numerous drug related offenses stemming from a controlled undercover drug sale., App.20, 1.14-p.22, 1.15.

After the State's summary of the facts the following colloquy between Petitioner and the Court was recorded:

THE COURT: Okay, Thank You. And you heard the summary. **Is that what happened in these cases, sir.?**

DEFENDANT WALKER: **NO, SIR.**

Actually, I'm pleading, sir, to keep from -- I'm already service a life sentence, sir. **This murder charge and -- I didn't** -- but I was out there selling drugs and everything, sir. So it's like I'm stuck between a rock and a hard place, sir. App.22, 1.15-23.

As is seen in the above,, after the Solicitor summarized the factual basis of the charges, Petitioner adamantly told the Court, "**No** that is not what happened."(emphasis original and added).

Upon further colloquy the Court said: Mr. Walker I noticed on this acknowledgment of rights form, you said you were threatened with trial and another life sentence. App.23, 1.10-12. Petitioner then advised the plea Court that: "I'm telling you I'm going to -- I'm entering the plea. But I just wanted to put it out there that, you know, I'm basically, being forced, also sir. App.24, 1.15-17.

The Court advised Petitioner that he didn't have to plead to that, but the Court just had to make sure that Petitioner was pleading freely and voluntarily, and nobody is coercing you or threatening you as you seem to be claiming they are. App.24, 1.23-p.25, 1.11, and the following was recorded:

DEFENDANT WALKER: You asked me if -- was I being threatened. Is that what you're asking me, sir?

THE COURT: You already told me you felt threatened. You wrote on this sheet that you felt threatened. So obviously you want to withdraw your plea, which I'll gladly let you do.

DEFENDANT WALKER: No, I'm not -- what I'm saying is, sir, the murder charge period. If I could take it to trial, I would sir. That's --

App.25, 1.12-20.

As is seen Petitioner told the Court he felt he had been threatened and the Court acknowledged such. Petitioner's statements to the Court plainly express his contentions regarding the murder charge.

Counsel (Sheek) intervened and told the Court "He's expressing concern over the murder charge." App.26, 1.24-25. The Court asked Petitioner if he needed a break to speak with counsel and Petitioner replied in pertinent part: "I'm willing to plea to the drugs, and I want to take the murder charge to trial because I'm falsely accused, sir." But the drug charges, I want to plead to it, sir. That's what I was talking about. App.27, 1.7-16.

Subsequently, after brief discussions, Petitioner plead guilty to the drug offenses, and was somehow persuaded to plea under Alford to the murder, without regards to claims of innocence to the Court.

PCR HEARING

During the PCR Plea Counsel ("Sheek") testified that: "Petitioner had a charge for attempted murder, App.100, 1.23-p.101, 1.5); Then he had multiple distribution charges which

was part of an undercover operation. They were using a CI, video tapes were retained on all of these instances. And there was a murder charge unrelated to any of those facts, were pretty much as Mr. Walker just testified, the facts attaching him to that murder, the facts were somewhat tenuous." App.101, 1.6-13. Sheek testified that "Mark (solicitor) wanted Mr. Walker to plead to the murder, but Mr. Walker was adamant that he didn't have anything to do with the murder." App.103, 1.2-5. Sheek said: "I always felt the murder was defensible, I always told Mr. Walker that I felt it was defensible. He maintained his innocence in that." App.103, 1.22-24. Sheek further stated: "I told Mr. Moyer that Mr. Walker was just adamant that he was not going to admit to having any part of that murder." App.105, 1.15-17.

As was clearly seen by Counsel's own testimony during the PCR hearing and the colloquy during the plea hearing itself, Petitioner claimed his actual innocence of the murder charge from the onset of the proceedings. Counsel provided no reasonable strategy or rationale explanation why he let his client claiming his actual innocence plead guilty to 30-years for the offense, whether disguised as Alford or not. An applicant with respect to a guilty plea, must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases. Lockhart, 474 U.S. at 56. This is

easily seen here, in such that no reasonably competent attorney would suggest or persuade a client claiming their innocence to enter a plea to 30-years.

ISSUE (B)

THE PCR COURT ERRED IN FINDING PETITIONER FAILED TO PRESENT COMPELLING EVIDENCE THAT COUNSEL COMMITTED EITHER ERRORS OR OMISSIONS IN HIS REPRESENTATION OF PETITIONER.

ISSUE (C)

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To save the Court's time, Petitioner addresses these issues together since the facts of one encompasses the other.

On November 29, 2017, Petitioner wrote PCR Counsel (R. Mills Ariail) a letter of correspondence, App.117-1B8, providing PCR Counsel with a packet containing e-mails and other materials to be amended and authenticated as exhibits in support of his PCR claims. In addition, Petitioner requested that PCR Counsel subpoena Cassandra Gorton, esquire, securing her presence at the PCR hearing. Id.

The PCR hearing was convened December 11, 2017. At the onset of the hearing PCR Counsel acknowledged that Petitioner provided him with the packet of evidence. PCR Counsel made the entire packet as a "whole" an exhibit for the Court. The State opposed, but the Court allowed the amendment, finding this was an important proceeding for Petitioner and the Court made the entire packet Court's Exhibit 1, marked for identification and received

into evidence. App.81, 1.20-p.83, 1.2.

Petitioner's issue here was somewhat convoluted because it involved two different attorneys. Petitioner was initially court appointed Cassandra Gorton ("Gorton") to represent him on the attempted murder, murder and three drug related offenses.

Petitioner testified he later retained C. Lance Sheek ("Sheek") to represent him on the charges and therefore Gorton was no longer his counsel and no longer represented him. However, at a later date Petitioner was charged with an intimidating of witness charge, and Gorton was re-appointed by the Court to represent him solely on the intimidation of witness offense.

Petitioner testified that after being re-appointed Gorton continually came and visited Petitioner week after week at the detention center and was discussing the attempted murder, murder and drug charges even though she no longer represented Petitioner on those charges, as a result of Petitioner retaining Sheek for those offenses.

Petitioner testified that Gorton made it her duty to act as counsel on those charge and was still giving Petitioner advice and assisting with those cases.

Petitioner testified he didn't feel comfortable because Gorton was asking questions regarding certain issues on those charges. Petitioner testified that he let Sheek know about it at a meeting at the courthouse and Sheek let Petitioner bring to his attention in front of Gorton. App.83, 1.4-p.85, 1.25.

Petitioner testified there was a lot of things being back and forth and Gorton even provided Petitioner with a reprimand where

Sheek apparently had been reprimanded by the bar association. App.85, 1.25-p.86, 1.3.

Petitioner testified Gorton told him that he needed to fire Sheek because Sheek wasn't representing Petitioner. App.86, 1.3-4. Petitioner testified that Gorton continued to come and visit him after he left the detention center and was being housed at Kirkland, and Gorton also wrote Petitioner while being housed at Perry Correctional Institution, which is supported by the evidence in the packet, Court's Exhibit 1, App.86, 1.4-8.

Petitioner testified that he let Sheek know he felt pretty much confused to make a plea and that he wanted a trial. Petitioner was adamant he wanted a trial on the murder charge and somewhat not the same about the drug charges. Petitioner said he asked Gorton to contact Sheek for him and she said she did. App.86, 1.10-16.

Petitioner testified he believed Sheek had been told that he was a solicitor again with the Eighth Circuit, in Greenwood, SC. and that Sheek just never really paid any attention to the upcoming plea proceeding after Petitioner had been tried and sentenced for the attempted murder and being housed at Kirkland. App.86, 1.17-23. Petitioner testified that Sheek never came to visit him or got into contact with Petitioner, so Petitioner had the mother of his children, Tamika Dennis ("Dennis") drive to Sheek's office to speak with him and at that time Sheek's paralegal Katrina Davis provided Dennis with the packet of e-mails and correspondences (Court's Exhibit 1), and even though they continued to call Sheek contact was inevitable. App.86,

1.23-p.87, 1.5.

Petitioner testified he never really spoke to Sheek again until the very day of the plea, but Gorton and Sheek told Petitioner that since he went to trial and was found guilty on the attempted murder charge, there was no need to go to trial anymore. App.87, 1.6-16.

Petitioner testified that for the remaining charges he told Sheek and Gorton he wanted to go to trial on the murder charge because it was just allegations thrown on him and he wanted to get into the facts so he could fight that, but Gorton was representing him a little bit more than Sheek and both were telling him to plea it out. App.87, 1.18-p.88, 1.5.

PCR Counsel making sure asked Petitioner if he was raising any issue that Sheek was saying one thing and Gorton saying another and Petitioner was confused? Petitioner replied: "I was confused because I didn't know who was actually representing him during the plea because the only person he talked to was Cassandra Gorton and he wanted to talk to Sheek about it so he could weigh his options and go to trial and also to see exactly what trial strategy would be used at trial, but he couldn't get in contact with Sheek at all. App.88, 1.6-19.

Petitioner testified that during the plea he was allowed to plea under Alford and that Sheek advised him he could still fight because he still had his rights. App.90, 1.2-21.

Petitioner testified that when the judge asked him if he'd been threatened, at the time Gorton had come to see him at Kirkland and Gorton told him they were trying to give him a life

sentence for each charge and Gorton showed Petitioner e-mails where the solicitor said if Petitioner won his appeal and decided to go to trial it would give the solicitor five more times to LWOP him which means life without parole, so it scared me when Gorton showed him the e-mail. App.91, 1.4-24.

Trial Counsel ("Sheek") testified that he was retained, and Petitioner had an attempted murder charge, App.100, 1.16-p.101, 1.5; and then he had the multiple distribution of crack cocaine charge and proximity charges, and those were part of an under cover operation using a CI and videos were retained on all those incidents. And then there was the murder charge "unrelated" to any of the those facts. Were pretty much as Mr. Walker just testified, the facts attaching him to that murder were somewhat tenuous, App.101, 1.6-15.

Sheek testified, "as Petitioner indicated" Cassandra Gorton was involved and she provide Sheek with a notebook which she had created. It listed information that was missing that they followed up with the State to get and on several occasions Sheek drove to the detention center to meet with Petitioner, his previous testimony was correct. Sheek said initially they didn't know what charges would be proceeding first so they were kind of sketchy, going over everything, nothing in depth until they identified which case they were going to try. App.101, 1.19-p.102, 1.5. Sheek testified that [they] were meeting with Petitioner when the State served the LWOP notice, which put Petitioner at risk for LWOP on the remaining charges. So [they] met with Petitioner after he was served. App.102, 1.12-20.

During cross-examination Sheek testified that Petitioner

retained him on all the charges except the intimidation of a witness that occurred while Petitioner was in jail and that Gorton still represented Petitioner on that. App.106, 1.14-22. Sheek testified that he was aware that after he was retained and took over the initial charges that Gorton still represented Petitioner on the other charge, and that Gorton had indicated to him that when she would visit Petitioner that he had questions involving the charges Sheek was representing. Sheek said Gorton asked him if he had a problem with them having discussions and that he allegedly spoke with Petitioner and he didn't have a problem with it just so long as he (Sheek) knew what the nature of those discussions were. App.107, 1.3-14. Sheek admitted that from some of the e-mails it appeared Gorton was doing some work of the case and asking Paul Salvaggio to check on some items, App.107, 1.15-21. Sheek testified that he was not aware of whether it created any confusion for Petitioner, but he did ask Gorton to go down, just as Petitioner indicated so they could both talk with Petitioner together so there wouldn't be any confusion. App.108, 1.2-5. Sheek said he couldn't recall if there any issue regarding Gorton saying one thing and Sheek saying another. Sheek said he recalled Petitioner asking some questions in that regard, but it wasn't in vain, to his recollection. App.108, 1.11-18. PCR Counsel asked, "so there was nothing that stood out to you to say, hold on, I got to stop this and get Ms. Gorton out of this because she's saying something different", and Sheek said, "no, if that was going on I wasn't aware of it, even though he understood that's what Petitioner testified to, App.108, 1.19-p.109, 1.1. Sheek was asked if at any time did

Petitioner tell you I'm not going to do this because Ms. Gorton told me this or that, and Sheek responded "I don't recall, App.109, 1.2-7.

Sheek said that at the time the we entered the plea, we had already tried the attempted murder and I remember as I say, he was in a terrible position as far as negotiations and I told him that the notice of appeal, had been filed on the attempted murder conviction and that he also had some PCR avenues that would be available to him that I wasn't comfortable advising him on, you know, whether or not I was ineffective. App.111, 1.2-11.

Sheek said he didn't know if Gorton continued to speak and work with Petitioner after he'd been convicted, App.111, 1.16-21. During redirect PCR Counsel asked Sheek "if Ms. Gorton ever told him that she went down to Kirkland after Petitioner's conviction and Sheek said "I could not with absolute certainty say she's never said that, I don't recall. App.112, 1.14-20.

The PCR Court stated the matter would be taken under advisement and the Court would consider all the documents provided by Petitioner and read in conjunction with the transcript. App.112, 1.24-p.113, 1.6. Petitioner advised the Court that he asked that Gorton be there today because he has a lot of allegations because he was dealing with two counsel representing him for the same charges, and he didn't know PCR Counsel didn't try to get her here. PCR Counsel stated the allegations are ineffective assistance in regards to Sheek and Petitioner testified to what he believed and it was probably hearsay, in regards to what she (Gorton) said and some of those

items, I think he got in what he needed and I don't know based on what he asked me to put through Ms. Gorton how that prove Sheek ineffective and I've also been able to put information through e-mails that are related to her showing items that he wanted to raise. Petitioner told the Court and he feels like he was represented by two attorneys for the same charges and thought they both be here today so they can both be on the stand so I can raise my issues and put my claims on the record and then it's like a magic trick because he was there but he's not ineffective for not being there period and allow me to proceed with Gorton giving all this. The PCR Court asked Petitioner if in the application and in all the documents he said what his issues were with Gorton, then even though in all honesty a good portion of this is not admissible, if Petitioner fully articulated what Gorton did or didn't do then it would be considered. App.113, 1.10-p.115, 1.13.

Petitioner submits he had the burden of proof during PCR. Rule 71.1(e), SCRCP. This encompasses the preponderance of the evidence standard. During the hearing Petitioner articulated the underlying claim with clarity, and clear and convincing evidence (Court's Exhibit 1)(e-mails and correspondence) showing Sheek knew about Gorton blatantly engaging in unprofessional judicial misconduct by injecting and asserting her representation into Petitioner's case where she was not counsel and was providing advice where she ought not have. See Rules of Professional Conduct SCACR 407, Rule 8.4(e), specifically admonishes that it is professional misconduct for the lawyer to engage in conduct prejudicial to the administration of justice.

The PCR Court erred in overlooking and deflecting the abundance of evidence that was presented during the PCR hearing to include a fortior of exhibits, i.e. e-mails, correspondences etc. The PCR Court's findings are not supported by the record. Petitioner's PCR was no mere passing of his constitutional claims. The PCR Court's reliance on counsel's talismanic incantation conjured up by counsel is refuted by the e-mails. Counsel's testimony during the hearing in no way supports a finding of reasonable representation that overcomes the accused's lawyer's talisman that defeats the charge of constitutional ineffectiveness. Rather, counsel's alleged actions and choices are in direct contravention of the e-mails and correspondences in the record.

The boast of the law is that there can be no wrong without a remedy. *Messervy v. Messervy*, 82 S.C. 559, 64 S.E. 753, 753 (1909); see also *Page v. Winter*, 240 S.C. 516, 126 S.E.2d 570, 574 (1962)(Justices Bussey and Lewis dissenting, "the right to habeas corpus is too important to be impartial. U.S. Const. art. I, §9, and S.C. Const. art. V, §5, and the overarching concern of the judicial system is to do justice, "not to protect convictions").

Counsel erred in allowing Gorton to assert herself with the case after she was relieved of counsel when Sheek was retained, which Gorton's involvement violated Petitioner's right to competent counsel at the plea proceeding as guaranteed by the Sixth Amendment. *Hill v. Lockhart*, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition and order full briefing on the merits of the issue raised herein.

Respectfully Submitted,

/s/ Joseph C. Walker

Joseph C. Walker, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari in Greenville County
Honorable Robin Stilwell, Circuit Court Judge

Joseph Christopher Walker -- Petitioner,

-vs-

State of South Carolina -- Respondent,

APPELLATE CASE NO. 2018-000752

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JAN 22 2019

P.C.I. MAILROOM

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Pro-Se Johnson Petition on the attorney for Respondent, Megan Harrigan Jameson, esq., Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC. 29201.

Sworn to and Subscribed Before Me

This 22 day of January 2019.

Tamara Conwell
NOTARY PUBLIC

Respectfully Submitted,

/s/ Joseph C. Walker

Joseph C. Walker, pro-se

MY COMM. EXPIRES September 25, 2023
My Commission Expires

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JAN 24 2019

S.C. SUPREME COURT

#285497/Q3B-123

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