

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Frank R. Addy, Circuit Court Judge

ROBERT WILSON WOODS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001245

JOHNSON PETITION FOR WRIT OF CERTIORARI

LaNelle Cantey DuRant
Appellate Defender

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

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ISSUE PRESENTED

Did the PCR court err in not finding trial counsel ineffective for failing to request a mental competency evaluation for Petitioner Woods which was prejudicial to Woods because he had a long history of mental health problems?

STATEMENT

In September 2011, eight year old Minor lived with her mother, her younger brother and her mother's newest boyfriend, Petitioner Woods. App. 328; App. 129, ll. 16 – 25. Her mother, who worked in housekeeping at a Holiday Inn, had had several boyfriends. Woods moved in with Minor's mother about a week after they met. App. 317 – App. 318.

In 2011, just before she started third grade, Minor said that Petitioner Woods "put his private inside of her" when they were in her mother's room. The Minor said it happened one time. App. 130, ll. 1 – App. 134, ll. 7. Minor told her teacher about this because she was afraid that her mother may not believe her. Minor then talked to the counselor at school. Later she had to go to the doctor for a check. App. 134, ll. 8 – App. 135, ll. 21.

Dr. Nancy Henderson, a child abuse pediatrician in Greenville, examined the Minor on January 12, 2012 when the child was nine years old. App. 109, ll. 1 – 7; App. 112, ll. 13 – App. 113, ll. 16. Dr. Henderson testified at trial that the Minor told the doctor that she had been sexually assaulted when she was eight years old in her mother's house. Minor told Dr. Henderson that the man put his private part into her "butt." App. 118, ll. 18 – App. 119, ll. 25. Minor's physical exam was normal. App. 120, ll. 1 – 9.

In March 2013, the Greenville County Grand Jury indicted Petitioner Woods on the charges of criminal sexual conduct with a minor (CSC) first degree and committing a lewd act upon a child. App. 325 – App. 332. On April 8-9, 2013, Petitioner proceeded to trial before the Honorable Robert E. Hood and a jury. Woods was represented by Tim Sullivan, and the state was represented by Sustakovitch Sustakovitch. App. 1.

At trial, Petitioner Woods did not testify. App.2; App. 82. The Minor, who was ten at the time of trial, did testify and told how Woods allegedly had anal intercourse with her when she

was eight. App. 126, ll. 9 – App. 136. Dr. Henderson testified concerning her conversation with Minor about the alleged sexual assault. However, Dr. Henderson did not state the name of the person who allegedly assaulted minor. App. 118, ll. 18 – App. 120, ll. 9.

The jury found Woods guilty of both charges as indicted. App. 249, ll. 1 – 20. The judge sentenced Woods to twenty-five years on the CSC with a minor charge, and ten years on the lewd act charge suspended to five years probation and to run consecutive to the CSC with a minor charge. App. 257, ll. 5 – App. 258, ll. 24.

Trial counsel filed a notice of appeal which was perfected by the Division of Appellate Defense in the Commission of Indigent Defense. The South Carolina Court of Appeals affirmed Petitioner Woods' convictions and sentences on January 6, 2016. State v. Woods, Op. No. 2016-UP-001 (Ct. App. 2016). App. 317.

On March 22, 2016 Petitioner Woods filed an application for post-conviction relief (PCR). The state filed a return on August 26, 2016. App. 316. An evidentiary hearing was held on February 20, 2018 before the Honorable Frank R. Addy. Woods was represented by Brian Johnson, and the state was represented by Deshawn H. Mitchell. App. 290.

Woods testified at the PCR hearing that he had ineffective assistance of counsel from his trial attorney because his trial attorney should have had Woods evaluated for mental health issues. App. 295, ll. 8 – App. 296, ll. 25. Woods testified that he had a long history of mental health issues. He said that he was first evaluated when he was three years old and took medication for years. As he got older, he started hearing voices. When he was previously incarcerated, he received treatment. App. 296, ll. 20 – App. 297, ll. 24.

Woods continued to testify that he had a bipolar disorder as well as paranoid schizoaffective disorders and mood swings. App. 298, ll. 1 – 19. He said that he was currently

taking Prozac for depression; Risperdal for mood swings; and Remeron to help him sleep. App. 300, ll. 1 – App. 301, ll. 23. Woods testified that he told his attorney of these mental health issues and his medications, but his attorney never followed up on any of it. App. 301, ll. 2 – 23.

Woods believed that if he had been able to understand the conversation with his trial attorney, which he could not do due to the medication, then the outcome of his trial would have been different. He wanted his case remanded for a new trial. App. 301, ll. 22 – App. 302, ll. 14; App. 300, ll. 8 – App. 301, ll. 16.

Trial counsel testified at the PCR hearing that Woods told him that he did not do this sexual assault and that he wanted a trial. Trial counsel testified that he did not think Woods did this either. App. 308, ll. 1 – 13. Trial counsel then testified that he never saw any indication that Woods did not understand trial counsel's questions. Trial counsel said that he did not see any problems with Woods' "mental situation." Counsel believed that woods understood the charges against him, and that Woods was able to participate with counsel in his defense at trial. Counsel stated that Woods knew what they were doing. App. 308, ll. 25 – App. 310, ll. 20.

Trial counsel testified that if he had known about Woods' mental health history, he would have had him evaluated. However, counsel was not aware of Woods' mental health history until he discussed it with PCR counsel. App. 311, ll. 1- 25.

The PCR judge issued an order on May 8, 2018 denying Woods' PCR application and dismissing it with prejudice. App. 316 – App. 324. The PCR judge found that trial counsel was not ineffective for failing to request a competency evaluation as counsel testified that he experienced no problems communicating with Woods. The judge found trial counsel's testimony concerning communicating with Woods to be "very credible." App. 322.

In addition, the PCR judge wrote that the PCR counsel "alluded" to a competency evaluation done prior to the PCR hearing although that evaluation was not made part of the record. The judge found that Woods did not show any prejudice from trial counsel not having Woods evaluated.

ARGUMENT

The PCR court erred in not finding trial counsel ineffective for failing to request a mental competency evaluation for Petitioner Woods which was prejudicial to Woods because he had a long history of mental health problems.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel’s performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

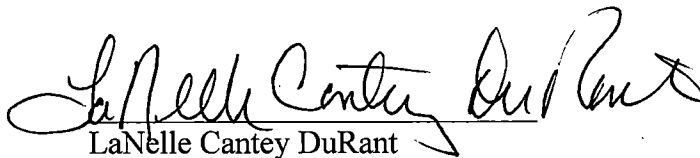
A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

In Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the Supreme Court held that in determining whether the applicant alleging ineffective assistance of counsel has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial. In addition, the PCR court should consider the strength of the state’s case in light of all the evidence presented to the jury.

The PCR court erred in finding that Petitioner was not prejudiced by trial counsel failing to request a mental competency evaluation for him.

CONCLUSION

Based on the above, certiorari should be granted, and Petitioner's convictions and sentences vacated, and the case remanded for a new trial.

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L".

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of February, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Frank R. Addy, Circuit Court Judge

ROBERT WILSON WOODS,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Wilson Woods 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 Frank R. Addy, which was held on February 20, 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 Robert Wilson Woods.

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of February, 2019.

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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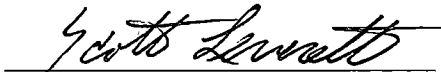
RESPONDENT

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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 Robert Wilson Woods, #305393, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of February, 2019.


LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.