

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Tanya A. Gee, Circuit Court Judge

Appellate Case No.: 2016-000615

RECEIVED
FEB 22 2019
SC Court of Appeals

Robert Troy Taylor,.....Respondent-Petitioner,

vs.

State of South Carolina,.....Petitioner-Respondent.

MOTION TO WITHDRAW CROSS-APPEAL

Pursuant to Rule 260 (c), SCACR, Respondent-Petitioner, through his undersigned counsel, respectfully petitions this Court to allow him to withdraw his cross-appeal following the issuance of the Order on January 25, 2019 denying Petitioner-Respondent's Petition for Writ of Certiorari and granting Respondent-Petitioner's petition on the following issue:

Did the PCR court err by failing to find trial counsel ineffective for not arguing against the imposition of a sentence of life imprisonment without the possibility of parole "based upon Rule 404(b), SCRE, and [section] 17-25-50 [of the South Carolina Code] (2003)," which resulted in the issue being unpreserved for appellate review?

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on December 31, 2014. Petitioner-Respondent (P-R) filed a Return on June 8, 2015. On October 14, 2015, Respondent-Petitioner (R-P), through

counsel, filed an Amendment to Application for Post Conviction Relief, which amended the Application by adding the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to prepare and investigate prior to trial, which resulted in a failure to present a reasonable defense at trial. See Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). Specifically, but not limited to:
 - a. Ineffective assistance of trial counsel for failure to investigate the scene and be aware of notice from the State regarding time and place of the alleged incident. (Transcript pp. 240-9).
 - b. Ineffective assistance of trial counsel for pursuing a primary defense (as was addressed pretrial, during trial motions, in closing and in post-trial motions) based upon venue, which was unreasonable based upon information that should have been obtained from a minimal investigation.
 - c. Ineffective assistance of trial counsel for failure to speak to witnesses prior to trial and call witnesses on Applicant's behalf at trial.
 - d. Ineffective assistance of trial counsel for failure to properly prepare witnesses utilized at trial.
 - e. Ineffective assistance of trial counsel for failure to utilize exculpatory and rebuttal evidence.
2. Ineffective assistance of trial and appellate counsel in the handling of the Batson motion matter at trial and on appeal.
3. Ineffective assistance of trial counsel for failure to properly impeach and/or cross-examine the State's witnesses at trial.
4. Ineffective assistance of trial counsel for the handling of the expert testimony of Gaye Allen-Cook. Specifically, but not limited to:
 - a. Failure to request information regarding her findings / opinions prior to trial and to discuss such with her.
 - b. Failure to object to and/or move to suppress her testimony.

- c. Alternatively, newly discovered evidence that Gaye Allen-Cook would not have taken the stand for the State if given the opportunity to review the case and would have been willing to assist with the defense of Applicant.
5. Ineffective assistance of trial counsel in closing argument, for:
 - a. Appealing negatively and prejudicially to the jury with the story used to illustrate counsel's argument regarding venue, and
 - b. Focusing solely on venue, which the trial court later ruled was not a proper question for the jury.
6. Ineffective assistance of trial counsel for failure to make a proper arguments against the imposition of a sentence of life without parole based upon Rule 404(b), SCRE, and S.C. Code 17-25-50 (2003). Ineffective assistance of counsel for failure to properly preserve arguments regarding the imposition of a sentence of life without parole for appeal. Alternatively, ineffective assistance of appellate counsel for failing to properly raise the argument made at trial against the imposition of a sentence of life without parole.
7. Ineffective assistance of trial counsel in the handling of reconsideration and/or post trial motion.
8. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal:
 - a. Objection regarding verbal statement of victim regarding time and place.
9. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On November 19, 2015, an evidentiary hearing was conducted at the Sumter County Courthouse in front of the Honorable Tanya A. Gee. R-P was present and represented by Tricia A. Blanchette, Esquire. P-R was represented by Daniel Gourley, Assistant Attorney General. R-P testified along with Gaye Allen Cook, William Eddie Brown, Chad Bernard, Nick Everett, Linda Taylor, John Pezzullo, Michelle Gallagher, Tonya Morton, Pete Skidmore, Jeremy A. Thompson, Esquire, and Charles D. Barr, Esquire. R-P introduced nineteen exhibits. The lower court had before her a copy of the

admitted exhibits, the records of the Williamsburg County Clerk of Court, the trial transcript, the appellate court filings, the Appendix from R-P's Georgetown County conviction, and R-P's records from the South Carolina Department of Corrections.

Thereafter, counsel for R-P submitted a proposed Order as requested. On February 19, 2016, the Honorable Tanya A. Gee issued a revised version of the proposed Order Granting Application for Post Conviction Relief, which was filed on February 24, 2016.

On or about March 23, 2016, P-R filed a Notice of Intent to Appeal, and R-P filed a Notice of Cross-Appeal on March 28, 2016. After the filing of the Petition for Writ of Certiorari and Return by each party, the appeal was transferred to the South Carolina Court of Appeals. On January 25, 2019, the above referenced Order was issued, from which this Motion follows.

GENERAL SESSIONS PROCEDURAL HISTORY

R-P is presently confined in the South Department of Corrections pursuant to orders of commitment from the Williamsburg County Clerk of Court. R-P was true bill indicted at the May 2006 term of the Williamsburg County Grand Jury for criminal sexual conduct-second degree and kidnapping (2006-GS-45-176). Prior to R-P's Williamsburg charges, R-P pled guilty to three charges out of Georgetown County.¹

¹ R-P was indicted in Georgetown County for two counts of lewd act upon a minor (2004-GS-22-44 & 2005-GS-22-523). On April 20, 2006, R-P waived grand jury presentment on another Georgetown County charge, criminal sexual conduct with a minor- second degree (2006-GS-22-361), and pled guilty to all three charges. R-P was represented by R. Scott Joye, Esquire, and Delton W. Powers, Jr., Esquire at his plea. Mr. Joye, Esq. served as R-P's primary counsel. The Honorable Edward B. Cottingham sentenced R-P to concurrent eight-year terms, suspended to five years of active time and three years of probation. R-P did not file a direct appeal.

R-P filed an Application for Post Conviction Relief on April 3, 2007. An evidentiary hearing took place at the Horry County Courthouse on November 20, 2008. R-P was present and represented by Tara Dawn Shurling, Esquire. P-R was represented by Christina J. Catoe, Assistant Attorney General. The Honorable

Undersigned counsel has confirmed with legal counsel for the South Carolina Department of Corrections that the Georgetown County sentences have been completed.

On July 10, 2007, R-P proceeded to trial before the Honorable George C. James, Jr. He was represented by Charles David Barr, Esquire. R-P was convicted as indicted. On July 12, 2007, Judge James sentenced R-P to life without the possibility of parole for kidnapping and criminal sexual conduct-second degree.

A timely Notice of Appeal was filed on R-P's behalf. Jeremy A. Thompson, Esquire represented R-P on appeal. On June 6, 2012, the South Carolina Court of Appeals affirmed R-P's conviction and sentence. State v. Taylor, 399 S.C. 51, 731 S.E.2d 596 (Ct. App. 2012). R-P sought certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court denied certiorari on April 3, 2014. The Remittitur was issued on April 7, 2014.

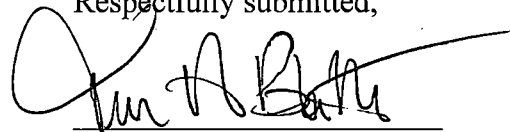
GROUND IN SUPPORT OF REQUEST FOR WITHDRAWAL

1. Attached is an Affidavit of Respondent-Petitioner, which is incorporated by reference as grounds in support.
2. By way of Order dated January 25, 2019 denying the State's Petition for Writ of Certiorari, the new trial granted by the late Honorable Tanya A. Gee on February 24, 2016 is a final ruling, and Respondent-Petitioner is requesting a withdrawal to pursue the relief granted in 2016.
3. Respondent-Petitioner has been fully advised by counsel regarding the possible benefits of obtaining a ruling on the issue on which certiorari was granted, but Respondent-Petitioner has voluntarily chosen to request withdrawal.
4. Counsel has been informed that Petitioner-Respondent does not oppose Respondent-Petitioner's request and such information could be contained herein.

Michael G. Nettles issued an Order of Dismissal on January 16, 2009. A Notice of Appeal was timely filed, and R-P sought certiorari. Certiorari was denied June 21, 2013. The Remittitur was issued on July 26, 2013.

Therefore, based upon the foregoing, Respondent-Petitioner would respectfully request that this Court allow him to withdraw his pending cross-appeal, so he can move forward with the relief granted by the lower court and upheld by the Order dated January 25, 2019. Respondent-Petitioner would further request that the time for serving and filing the Brief and Appendices be held in abeyance until a decision is rendered on this Motion.

Respectfully submitted,



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Respondent-Petitioner

February 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Tanya A. Gee, Circuit Court Judge

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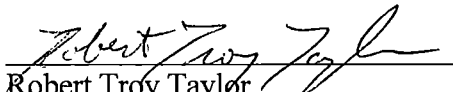
State of South Carolina,.....Petitioner-Respondent.

AFFIDAVIT

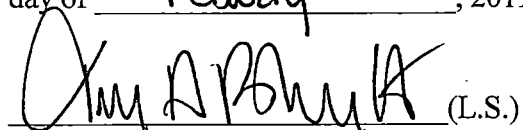
PERSONALLY appeared before me, Robert Troy Taylor, who being duly sworn, deposes and says:

1. I am the Respondent-Petitioner in the above captioned case.
2. I affirm that I have requested that my counsel, Tricia A. Blanchette, Esquire, move for withdrawal of my cross-appeal following the denial of the State's Petition for Writ of Certiorari and the granting of my Petition.
3. I affirm that I do not want to further pursue my cross-appeal since I do not want to further prolong my incarceration in the South Carolina Department of Corrections due to ongoing safety concerns and the distance and separation from my loved ones.
4. I further affirm that I am concerned about the cost of the preparation of the additional Appendices, as the original Appendices were filed by the State.
5. I affirm that I want to move forward with the relief granted in the Order issued by the late Honorable Tanya A. Gee.

6. I affirm that I have been advised regarding the benefits of going forward with my cross-appeal, and I am knowingly choosing to request withdrawal.
7. I affirm that I have not been coerced, threatened or promised anything in exchange for this decision.


Robert Troy Taylor

SWORN TO before me this 21
day of February, 2019.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/23/26

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CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for R-P, certify that I served a Motion to Withdraw Cross-Appeal by depositing the same in the United States Mail this 22nd day of February 2019 on the Attorney of Record for the Office of the Attorney General, addressed as follows:

Office of the Attorney General
Att: Megan Harrigan Jameson, Senior Assistant
Deputy Attorney General
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

February 22, 2019

LAW OFFICE OF
TRICIA A. BLANCHETTE

February 22, 2019
VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

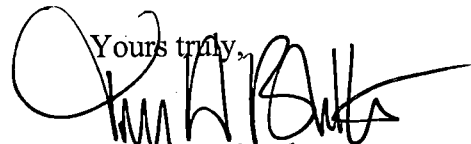
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RE: Robert Troy Taylor v. State, App. Case No.: 2016-000615

Dear Sir:

For filing, attached please find an original and six copies of a Motion to Withdraw Cross-Appeal, with supporting Affidavit, and Certificate of Service.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Megan Harrigan Jameson, Senior Assistant Deputy Attorney General
Robert Troy Taylor