

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**ORIGINAL**

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Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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MIGUEL ANGEL GARCIA,

**RECEIVED**  
PETITIONER MAY 03 2019  
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001914

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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VICTOR R. SEEGER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether plea counsel provided ineffective assistance of counsel for failure to conduct an adequate investigation when he failed to follow up on the DNA evidence found at the crime scene, where plea counsel admitted he did not pursue an investigation into the DNA evidence and where Petitioner would not have pled guilty had plea counsel investigated the DNA evidence?

## STATEMENT

During the March 2014 term, the Horry County grand jury indicted Petitioner for assault and battery in the first degree, kidnapping, burglary in the first degree, and armed robbery. App. 3, ll. 3 – 7; App. 125 – 126.

On November 3, 2014 Petitioner pled guilty to burglary in the first degree before the Honorable John C. Hayes. App. 1. Thurmond Brooker represented Petitioner. Id. Thomas G. Terrell represented the state. Id.

The state recommended fifteen years' imprisonment. App. 10, ll. 5 – 10. Judge Hayes accepted Petitioner's guilty plea as freely and voluntarily made. App. 12, ll. 7 – 13. Judge Hayes sentenced Petitioner to fifteen years' imprisonment. App. 16, ll. 8 – 9.

On August 17, 2015, Petitioner filed an application for post-conviction relief (PCR). App. 18 – 49. Petitioner alleged that plea counsel provided ineffective assistance of counsel for failing to adequately investigate the DNA evidence at the scene. Id. The state filed its return on January 29, 2016. App. 50 – 55.

Petitioner's PCR hearing was held on November 15, 2016 before the Honorable Brooks P. Goldsmith. App. 57. Steven Fowler represented Petitioner. Id. Jessica Kinard represented the state. Id.

By an order signed on September 28, 2018, Judge Goldsmith denied Petitioner's PCR application. App. 115 – 124. Judge Goldsmith found that plea counsel was not deficient and Petitioner suffered no prejudice from plea counsel's failure to adequately investigate the DNA found at the scene. Id. Judge Goldsmith specifically found that no DNA testing or report of such testing was introduced at the PCR hearing and that plea counsel articulated valid reasoning for not pursuing further investigation into the DNA evidence. App. 118.

## ARGUMENT

Plea counsel provided ineffective assistance of counsel for failure to conduct an adequate investigation when he failed to follow up on the DNA evidence found at the crime scene, where plea counsel admitted he did not pursue an investigation into the DNA evidence and where Petitioner would not have pled guilty had plea counsel investigated the DNA evidence.

### **Relevant Facts**

The state alleged the facts as follows: On December 31, 2013, Petitioner and two co-defendants went to Christopher Parr's home. App. 11, ll. 17 – 20. Petitioner and co-defendants put on masks and went inside. App. 11, ll. 20 – 21. Parr was allegedly hit with a crowbar to subdue him. App. 11, ll. 21 – 22. According to police reports, blood was smeared along a wall inside the residence. App. 62, l. 12 – 63, l. 4. Petitioner and co-defendants took some money and various other items from the residence before leaving. App. 22 – 25.

The two-codefendants came forward and told the North Myrtle Beach police what allegedly transpired. App. 11, l. 25 – 12, l. 1. Additionally, Petitioner was on GPS monitoring from an unrelated prior charge at the time of the incident, and it placed him at the residence. App. 12, ll. 1 – 4; App. 86, l. 5 – 87, l. 10.

Petitioner gave a blood sample to police to compare to the blood found at the scene. App. 82, l. 17 – 83, l. 10. According to police the DNA was never analyzed. *Id.* However, plea counsel failed to determine if the DNA was ever analyzed, nor did plea counsel get an independent analysis for Petitioner's DNA. App. 102, l. 16 – 103, l. 3. Due to that deficient investigation, Petitioner pled guilty to burglary in the first degree. App. 64, ll. 2 – 6; App. 72, ll. 9 – 13.

Petitioner testified at his post-conviction relief hearing that he asked plea counsel about the DNA evidence found at the scene. App. 62, l. 12 – 63, l. 4. Petitioner stated that plea counsel

did not investigate further into the DNA evidence. App. 63, ll. 8 – 16; App. 64, ll. 12 – 14. Petitioner explained that plea counsel and he, “never got prepared for anything. We never disclosed anything. No communication at all.” App. 65, ll. 5 – 7. Petitioner testified that plea counsel urged him to plead guilty without doing any investigation. App. 67, ll. 22 – 25. Most importantly, Petitioner testified that he would never have pled guilty if plea counsel had properly investigated the DNA evidence in his case. App. 64, ll. 2 – 6; App. 65, ll. 12 – 15.

Plea counsel testified at the evidentiary hearing as well. Plea counsel admitted he never investigated the DNA evidence in Petitioner’s case and that he still did not know if the DNA was ever analyzed by the state. App. 102, l. 16 – 103, l. 18. Plea counsel opined that, “if that DNA evidence came back and it said it did not belong to [Petitioner]... it would not override the strength of the evidence.” App. 100, ll. 4 – 7.

Judge Goldsmith made an in court finding that Petitioner failed to meet his burden of proving plea counsel provided ineffective assistance of counsel. App. 113, ll. 4 – 7. In the order denying Petitioner’s PCR application Judge Goldsmith found that plea counsel did not provide ineffective assistance because no testing or report was introduced at the PCR hearing and plea counsel articulated a valid reasoning for not pursuing further investigation into the DNA evidence. App. 118.

## **Discussion**

When plea counsel chose not pursue an investigation into the DNA evidence in Petitioner’s case, plea counsel provided ineffective assistance of counsel. App. 56, ll. 10 – 16; App. 67, ll. 18 – 23. Petitioner would not have pled guilty had plea counsel investigated into the DNA found at the scene. App. 102, l. 16 – 103, l. 18.

In McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008) this Court held that trial counsel failed to conduct a reasonable investigation into McKnight's death by child abuse case. Id. at 47, 661 S.E.2d 361. Although McKnight was not a death penalty case, this Court cited Nance v. Ozmint, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883, n. 8 (2006) and Wiggins v. Smith, 539 U.S. 510 (2003) for the principle that to provide effective assistance of counsel an attorney must conduct a reasonable investigation into "all reasonably available mitigation evidence and reasonably available evidence tending to rebut any aggravating evidence introduced by the State," applies equally in the non-death penalty context. McKnight, at 46, 661 S.E.2d at 360.

To establish ineffective assistance of counsel, Petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). "First, a defendant must show that counsel's performance was deficient." Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Then Petitioner must show trial counsel's ineffective assistance prejudiced Petitioner case because, "but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 118, 386 S.E.2d at 625. Therefore, where ineffective assistance of counsel is alleged, 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, 466 U.S. at 692.

In State v. Bagwell, 410 S.C. 259, 763 S.E.2d 630 (Ct. App. 2014) the Court of Appeals held that Bagwell's trial counsel was ineffective for failing to request for DNA testing of blood found at the crime scene. Id. at 268, 763 S.E.2d at 635. In Bagwell, there was an alleged burglary committed where the glass patio door was shattered and there was blood on the broken glass. Id. at 261-262, 763 S.E.2d at 631-632. The homeowner testified he saw Bagwell shortly after the

alleged burglary and Bagwell was bleeding from his face. Id. Bagwell was convicted of first-degree burglary and sentenced to twenty years' imprisonment. Id. at 263, 763 S.E.2d at 632.

At Bagwell's PCR hearing, he argued that his attorney was ineffective for not testing the DNA from the blood at the scene to compare to Bagwell's DNA. Id. Bagwell testified that his attorney never informed him that the state had blood samples to compare to at the time of his trial. Id. Additionally, Bagwell presented blood samples at his PCR hearing that showed his blood did not match the blood found at the scene. Id. Trial counsel testified at Bagwell's PCR hearing that he did not pursue further investigation into the DNA evidence because the state "decided not to follow through with testing." Id.

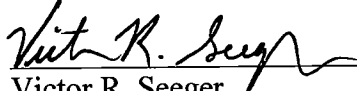
The Court of Appeals held Bagwell's attorney provided ineffective assistance of counsel because, "the State used the [bloody] glass as circumstantial evidence of Bagwell's guilt." Id. at 266, 763 S.E.2d at 634. Additionally, the Court of Appeals held that Bagwell was prejudiced by trial counsel's ineffective assistance because, "the only direct evidence linking Bagwell to the burglary was Armstrong's testimony that he saw Bagwell exiting the apartment through the glass door... [and] the State referenced the broken glass door several times at trial to corroborate Armstrong's testimony and infer Bagwell was inside the victims' apartment." Id. at 267, 763 S.E.2d at 634.

In the present case, plea counsel failed to conduct an adequate investigation when he chose not to follow up on the DNA evidence in Petitioner's case. App. 64, ll. 2 – 6. Plea counsel admitted as much and his reasoning for failing to conduct an adequate investigation in Petitioner's case was almost identical to that of trial counsel's in Bagwell. App. 102, l. 16 – 103, l. 18. Specifically, plea counsel said that he chose not to investigate the DNA found at the scene because the state chose not to get the DNA analyzed. Id.

Plea counsel's failure to investigate constituted deficient performance that induced Petitioner to plead guilty on the state's word about the strength of its evidence alone. App. 65, ll. 12 – 15. Therefore, Petitioner's guilty plea was not intelligently and voluntarily made and it should be vacated.

**CONCLUSION**

By reason of the foregoing arguments, Petitioner respectfully requests that this Court vacate his guilty plea and remand his case for a new trial, or in the alternative, grant certiorari to allow for full briefing on this issue.

  
Victor R. Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of May, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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MIGUEL ANGEL GARCIA,

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RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Miguel Angel Garcia states:

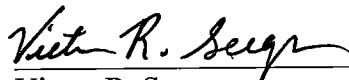
1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Brooks P. Goldsmith, which was held on November 15, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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 him as counsel for Miguel Angel Garcia.

Respectfully Submitted,



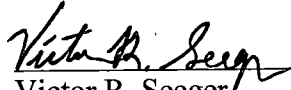
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Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 3rd day of May, 2019.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his 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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Victor R. Seeger  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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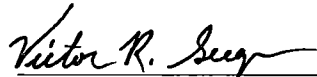
RESPONDENT

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CERTIFICATE OF SERVICE

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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 Johnny Ellis James, Jr., 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 Miguel Angel Garcia, # 339203, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 1st day of May, 2019.



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Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 3rd day of May, 2019.

Courtney Powers (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.