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APR 26 2019

S.C. SUPREME COURT

State of South Carolina
IN the SUPREME COURT
CERTIORARI TO CHARLESTON COUNTY

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APR 30 2019

SC Court of Appeals

William H. SEALS PCA Judge
DEADRA L. JEFFERSON, TRIAL Judge

Appellate CASE No: 2017-002198

ANTONIO D. PATTERSON PETITIONER

V.

STATE OF SOUTH CAROLINA RESPONDENT

PETITION TO BE IN STATE / BE HEARING

THE PROSE PETITIONER, PETITIONS THE COURT TO BE IN STATE THE PETITION FOR WRIT OF CERTIORARI OF ANTONIO D. PATTERSON, FROM THE ORDER DENYING WRIT OF CERTIORARI. THE PETITION FOR WRIT OF CERTIORARI WAS DISMISSED BY THE COURT ON APRIL 9TH 2019.

PETITIONER DID NOT RECEIVED ORDER OF DISMISSAL UNTIL APRIL 12, 2019
EXHIBITS A, B

The South Carolina Court of Appeals

Antonio Patterson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002198

ORDER

This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. Based on the vote of the panel, the petition for a writ of certiorari is denied.

FOR THE COURT

BY

Joy A. Ladd
CLERK

Columbia, South Carolina

cc:

Megan Harrigan Jameson, Esquire

Wanda H. Carter, Esquire

Antonio D. Patterson, 342594

The Honorable William H. Seals, Jr.

FILED

April 9, 2019

NEOPOST

FIRST

04/10/2019

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South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

CONFIDENTIAL LEGAL MAIL

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Antonio D. Patterson #342594
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472

MacDougall Correctional
Mailroom

APR 12 2019

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IN SUPPORT OF this Petition, ANTONIO PATTERSON would Respectfully Show the Court that.

1. PETITIONER ANTONIO PATTERSON REQUESTED SEVERAL TIMES that His ATTORNEY WANDA H. CARTER Filed A PETITION FOR REHEARING AND WAS DENIED by ATTORNEY to do so.

ACCORDING to SCRCR Rule 221 A

2. ON the 9th day OF April 2018 WANDA H. CARTER Filed A PETITION FOR WRIT CERTIORARI ON BEHALF OF PETITIONER ANTONIO PATTERSON

3. Respondent Filed its RESPONSE to Petition ON July 23, 2018

4. ON April 9, 2019 BASED ON the Vote Petition FOR WRIT CERTIORARI is DENIED,

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APR 26 2019

S.C. SUPREME COURT

ON the 9th day of April 2018
WANDA H. CARTER DEPT. CHIEF
APPELLATE DEFENDER FILED A PETITION
FOR WRIT OF CERTIORARI ON BEHALF
OF PETITIONER ANTONIO D. PATTERSON
ON TWO (2) GROUNDS:

- ① Trial Counsel ERRED in dissuading
PETITIONER from testifying at his
1ST DEGREE CSC TRIAL WHEN PETITIONER'S
DEFENSE WAS THAT HE WAS NOT GUILTY
AS CHARGED, WHICH MEANT THAT PETITIONER
WAS DENIED AN OPPORTUNITY TO PRESENT
A COMPLETE DEFENSE IN HIS CASE,
PARTICULARLY SINCE THERE WERE NO
EYE WITNESSES AND THERE WAS NO
INCRIMINATING FORENSIC EVIDENCE SUBMITTED
BY THE STATE. SEE: CHARLESTON CRIME
SCENE UNIT EVIDENCE REPORT AND
FORENSIC LABORATORY REPORT NEVER
PRESENTED AT TRIAL. EX. C, D

A. PETITIONER POSITION AT TRIAL AND THE
PCR HEARING WAS THAT NO SEX WITH THE
PROSECUTRIX OCCURRED AND THERE WAS PROOF,

OF THE SAME BECAUSE NO FORENSIC EVIDENCE ESTABLISH THAT HE HAD SEX WITH HER.

B. ATTORNEY REESE STIDHAM AND TED SMITH REPRESENTED PETITIONER AT TRIAL AND THE DEFENSE THEORY OF THE CASE WAS INNOCENT OF RAPE, THERE WERE NO EVIDENCES OF ANY SEX AT ALL. SEE TRIAL TRANSCRIPT 363 LINE 2-5 NO CONSENSUAL SEX WITH TONY.

C. PETITIONER WAS STIFLED BY COUNSEL NOT TO TESTIFY AT TRIAL BECAUSE HE WOULD BE IMPEACHED WITH HIS PENDING SEX CHARGE. WHICH WAS BROUGHT UP AT TRIAL. SEE 412 LINE 9-12.

D. THE JUDGE ASKED DURING TRIAL AND SENTENCING WHAT DOES HE HAVE PENDING. 412 LINE 9

E. AT TRIAL ATTORNEY TRIAL STRATEGY WAS COMPLETE INNOCENT, AT PCR HEARING ATTORNEY TRIAL STRATEGY WAS CONSENSUAL SEX. EXHIBIT PG 30 PCR HEARING



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

SIED # 206 10692

REQUESTING OFFICER CecileAGENCY CPDAGENCY PHONE NUMBER 577 7434

INCIDENT LOCATION _____

SUSPECT Antonio PattersonCASE NUMBER 0607133OFFENSE 1 CSCDATE OFFENSE _____ COLLECTION 4-13-06LOCATION COLLECTED MUSCVICTIM Tiffany Graham

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	<u>Sealed Seppal Assault kit</u>	 OXNN	<u>NP</u>	<u>NP</u>	<u>4-13-06</u> <u>BX</u>

Visual: ☐ Present ☒ AbsentAlternate Light Source: ☐ Present ☒ Absent

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Y J. Wooley
Print NameJ. Wooley
SignatureDATE/TIME 4-13-06/1313D M. MillerM. MillerDATE/TIME 8-20-06/0800D SIED
Print NameSIED
SignatureDATE/TIME 8-20-06/1118D _____
Print Name_____
Signature

DATE/TIME _____

AR By MRS Date 4-17-06TR By MRS Date 4-17-06



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

5/10 # 206 10692

ARREST D

REQUESTING OFFICER Det L. Altine
AGENCY CPD T-1
AGENCY PHONE NUMBER 577-7434
INCIDENT LOCATION 24 Orr's Ct
INSPECT Antonia Patterson

CASE NUMBER 0607133
OFFENSE CSC
DATE OFFENSE _____ COLLECTION 4-19-06
LOCATION COLLECTED 1623 Wappoo Rd
Crime Scene Office
VICTIM TIFFANY PATTERSON

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	Suspect Evidence Collection Kit	 OXPL	N/P	N/P	4-19-06 PE
	RAPE	066890			
	WEAPONS	K066811			

Visual: ☐ Present ☐ Absent N/P Alternate Light Source: ☐ Present ☐ Absent NP

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Unterbrink Randal L. Unterbrink
Print Name Signature

DATE/TIME 4/19-06/1420hrs

Mullen J. Mullen
Print Name Signature

DATE/TIME 8-2-06/0800
8-2-06/1118

S/ED _____
Print Name Signature

DATE/TIME 8-6-06
JP

Print Name Signature

DATE/TIME _____

AR By [Signature] Date 5-25-06

TR By [Signature] Date NP

Exhibit 2

1 chat about it. If you don't, then it doesn't matter to me
2 one way or the other.

3 But I would hate for him to have to serve time
4 and then have to come back out and have them wait.

5 MR. STIDHAM: Yes, ma'am. I'm just objecting to
6 the mention of it in sentencing.

7 THE COURT: Well, you understand my theory now?

8 MR. STIDHAM: Yes, ma'am.

9 THE COURT: And what does he have pending?

10 MS. SHEALY: A CSC.

11 THE COURT: A first?

12 MS. SHEALY: Third.

13 THE COURT: Third. So that would not count as a
14 strike then. Correct?

15 MS. SHEALY: That's correct.

16 THE COURT: And have you all provided Mr. Stidham
17 with any discovery or anything on that charge?

18 Mr. Stidham, do you represent him on that charge?

19 MR. STIDHAM: Yes, ma'am. That trial was
20 actually on the docket prior to this. ~~The State decided~~
21 ~~to try this one first.~~

22 THE COURT: And what is the maximum penalty on a
23 CSC third? Is that five years? I can't remember.

24 MR. STIDHAM: I believe it's 10.

25 THE COURT: Is it 10?

1 I spent a fair amount of time visiting with him in the side
2 room talking about his decision to testify. I cannot tell
3 you, I have no recollection of, did I say I don't think you
4 should testify, or, I think you should testify. I don't know
5 if I said one way or the other. I do know I would have left
6 it up to him. And I do know I would have told him the
7 importance of him testifying, because he had to explain to
8 the jury that it was consensual. And they needed to hear
9 that from him.

10 Did I think that he would have done well on the
11 stand? Probably not. We had him evaluated by Dr. Burke.
12 And Dr. Burke had given the opinion he didn't think he would
13 be a good witness.

14 So that's my recollection of that.

15 Q. So this story has changed a little bit today from
16 what he told you?

17 A. Everything he said, I heard for the first time
18 today. And every time he met with me, it was always the same
19 story, or relatively the same story, that he had known Ms.
20 Graham, they had partied together, and it was consensual sex.

21 Q. That would have been consistent with what the other
22 witnesses testified to, with the exception that it was
23 consensual?

24 A. That's correct.

25 Q. Is there a reason why you did not request a

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 what, I never told any police officers this but now that I
2 think about it, Tony went upstairs and came back down with
3 a gun.

4 Let's talk about the sexual assault nurse, Fay
5 LeBoeuf. A sexual assault nurse is a nurse with extra
6 training in the collection of evidence of sexual assaults.

7 She testified that time's of the essence because
8 the evidence can go away. Well, they did everything right
9 in this case. They took Tiffany from the scene of the
10 alleged crime. They took her directly to the Women's
11 Center so she could have an exam. It was a thorough exam.

12 You heard testimony that there was no hygiene
13 acts that could have destroyed evidence. They swabbed her
14 mouth, vaginal area, and anal area.

15 No evidence. No semen. No DNA. Under her
16 fingernails, nothing. They had her disrobe on a piece of
17 paper so that any potential evidence any hairs might
18 fall. None.

19 They looked at every square inch of her body with
20 a light looking for any bruising, any trauma, any redness,
21 any swelling, any scratches. Nothing.

22 And the allegations are that she had her arm
23 twisted behind her back to the point where it was so
24 painful that that's what I was thinking about when I
25 called the police. I completely forgot that somebody put

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 a gun to my head. That was so painful I forgot about the
2 gun.

3 Nobody ever saw any swelling, any redness any
4 bruising, any scratches. Nothing.

5 The officers that responded to the scene that
6 day, they didn't find any witnesses. Nobody heard a
7 thing. You heard testimony that at ■ Orrs Court, in that
8 neighborhood the houses are close together.

9 No neighbor walked out and said, you know what,
10 yeah, I heard somebody screaming. Is everybody okay.
11 Nobody else picked up the phone called the police, I hear
12 screaming across the street.

13 Detective Altine even talked to a neighbor.
14 Didn't hear anything. Now, I'm sure the solicitor is
15 probably going to get up here and talk a lot about the
16 fact that Tony ran. You know, we don't dispute this
17 fact. It's important that you understand that he's not on
18 trial for that.

19 He was scared. Somebody lied to the police about
20 him that he had raped them. He got scared and he did what
21 probably a lot of people would do; he got the heck out of
22 there.

23 But that's our first instinct when something's
24 scary. Right? I mean, when you're faced with a scary
25 situation, there's something deep down in our brains, it's

2. TRIAL COUNSEL ERRED IN FAILING TO REQUEST A CHARGE ON THE LESSER OFFENSE OF SECOND DEGREE CRIMINAL SEXUAL CONDUCT IN THE CASE.

THE JUDGE ASKED AT TRIAL IS THE DEFENSE REQUESTING ANY LESSER INCLUDED OFFENSES
TRIAL TRANSCRIPT pg 354 LINE 16-18

THERE ARE FIVE LESSER INCLUDED AND SHE WANTED TO MAKE SURE HE IS NOT REQUESTING ANY.
TRANSCRIPT pg 355 LINE 4-5.

ATTORNEY STATED NO WITH OUT DISCUSSING IT WITH THE PETITIONER.

THE PETITIONER ANTONIO D. PATTERSON RESPECTFULLY REQUESTS THAT THIS COURT REINSTATE PETITIONER'S APPEAL FROM THE APRIL 9 2019 ORDER DENYING HIS PETITION FOR WRIT OF CERTIORARI. PETITIONER HAS TIMELY SERVED THIS PETITION FOR REHEARING / REINSTATE ACCORDING TO RULE 221 A SCACP.

1 MS. SHEALY: There is not, Your Honor.

2 THE COURT: Then we're up to closing arguments.
3 Is that correct?

4 MS. SHEALY: Yes, Your Honor.

5 MR. STIDHAM: Yes, ma'am.

6 THE COURT: Is the State going to open and
7 close?

8 MS. SHEALY: Just close, Your Honor.

9 THE COURT: How long do you all think your
10 closing arguments will be?

11 MR. STIDHAM: Mine's probably no longer than 10
12 minutes, Judge, maybe 15.

13 THE COURT: And, Ms. Shealy?

14 MS. SHEALY: I would think mine's in that general
15 area as well, Your Honor.

16 THE COURT: ~~Is the defense requesting any lesser~~
17 ~~included offenses?~~

18 MR. STIDHAM: No, Your Honor.

19 THE COURT: Okay. So just CSC, nothing else?

20 MR. STIDHAM: Yes, ma'am.

21 THE COURT: Is there any exception from the
22 State?

23 MS. SHEALY: No, Your Honor. And we do have the
24 weapons charge.

25 THE COURT: Well, no, I just needed to make sure

1 THE COURT: Are there any motions?

2 MR. STIDHAM: Yes, Your Honor. ~~We would renew~~
3 ~~our motion for a directed verdict~~ on the two counts, of
4 CSC first degree and the possession of a weapon during the
5 commission of a violent crime, on the grounds previously
6 stated.

7 THE COURT: Does the State wish to respond?

8 MR. STACK: Only with our earlier statements.

9 THE COURT: Considering the evidence in the light
10 most favorable to the State which is how I'm required to
11 view the evidence, the Court is concerned with the
12 existence or non-existence of evidence and not its
13 weight. If there is any direct evidence or any
14 substantial circumstantial evidence reasonably tending to
15 prove the Defendant's guilt or from which his guilt can be
16 logically deduced, a directed verdict is not appropriate.

17 And pursuant to 16-30-657, a victim's testimony
18 does not need to be corroborated regarding the allegations
19 of a sexual assault.

20 And as such there is more than direct evidence
21 that there is substantial circumstantial evidence
22 reasonably tending to prove the Defendant's guilt. And,
23 therefore, the motion is denied.

24 Now, is there going to be any rebuttal testimony
25 from the State?

1 because there are no lesser included for possession of a
2 firearm.

3 MS. SHEALY: Yes.

4 THE COURT: But there's five for CSC first and I
5 needed to make sure he's not requesting any of those
6 charges.

7 MS. SHEALY: Yes, Your Honor.

8 THE COURT: I'll give the jury a general
9 instruction regarding their responsibility and my
10 responsibility, how they are to judge witness credibility
11 and believability.

12 I give a general instruction regarding expert
13 witness testimony as well as a general charge on direct
14 and circumstantial evidence from the State versus Grapon.
15 I will give a general instruction regarding the indictment
16 not being evidence as well as the presumption of
17 innocence.

18 And then I will instruct the jury that the fact
19 that the Defendant did not testify cannot be considered in
20 any manner whatsoever nor discussed in any manner
21 whatsoever.

22 Then instruct, Victor versus McGrath, on
23 reasonable doubt. I'll then instruct the elements of
24 first degree criminal sexual conduct from 16-3-652 and
25 those which are applicable. And the only one that would

TAKEN THE STAND

TRIAL COUNSEL WAS INEFFECTIVE IN ADVISING PETITIONER NOT TO TAKE THE STAND.

IF TRIAL COUNSEL WOULD HAVE ALLOWED THE PETITIONER TO TAKE THE STAND HE WOULD HAVE PRESENTED EXCULPATORY EVIDENCE THAT WOULD PROVE COMPLETE INNOCENT, SUCH AS SWORN AFFIDAVIT AND FORENSIC REPORTS.

BECAUSE TRIAL COUNSEL FAILED TO DISCREDIT TESTIMONY OF WITNESSES BY RAISING PRIOR INCONSISTENCY STATEMENTS WHEN EVIDENCE OF SUCH INCONSISTENCY WAS READILY AVAILABLE.

COUNSEL'S DEFICIENT PERFORMANCE UNDERMINED THE CONFIDENCE IN THE OUTCOME.

LESSER INCLUDED OFFENSES

THE TRIAL ATTORNEY NEVER DISCUSSED
WHETHER TO ASK FOR LESSER INCLUDED
OFFENSE WITH PETITIONER, BECAUSE WOULD
HAVE WANTED THE ATTORNEY TO ASK
FOR A LESSER INCLUDED OFFENSE
AND THE PETITIONER WOULD BE DOING
LESS THAN 50% PERCENT OF THE
TIME HE IS DOING NOW.
PCR pg 18 LINE 8-17

1 Q. And did you talk to your attorney about what those
2 lesser-included charges would be?

3 A. No, sir.

4 Q. Now, looking back, had you understood what they
5 were, would you have wanted the judge to ask the jury for
6 those lesser-included charges?

7 A. Yes, sir, definitely.

8 Q. Why would you have wanted that?

9 A. If I was found guilty, I would have been doing less
10 than 50 percent of the time I'm doing now. And it also would
11 have given the jury a chance to find me not guilty on this
12 charge here, if guilty on the lesser-included offense.

13 Q. Now, I think -- did you have any discussions with
14 your attorney about the lesser-included charges?

15 A. At trial?

16 Q. At trial. At trial.

17 A. No, sir.

18 Q. You recall when your attorney said he did not want
19 the judge to include any lesser-included charges? Do you
20 remember that?

21 A. Yes, sir.

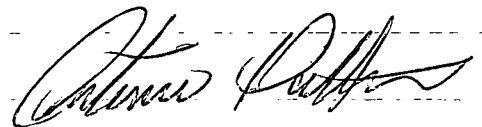
22 Q. And you ended up getting convicted of the CSC first,
23 is it correct?

24 A. Yes, sir.

25 Q. Immediately after you were convicted -- or let me

PROOF OF SERVICE

I, ANTONIO PATTERSON, CERTIFY THAT
~~I~~ MAIL A COPY OF PETITION FOR
REHEARING / REINSTATE TO CLERK
OF COURT DANIEL E SHEAROUSE
SUPREME COURT OF S.C. P.O. BOX
11330 COLUMBIA S.C. 29211



THIS 24TH DAY OF APRIL
2019

CC: WANDA CARTER
Deputy Chief Appellate Defender

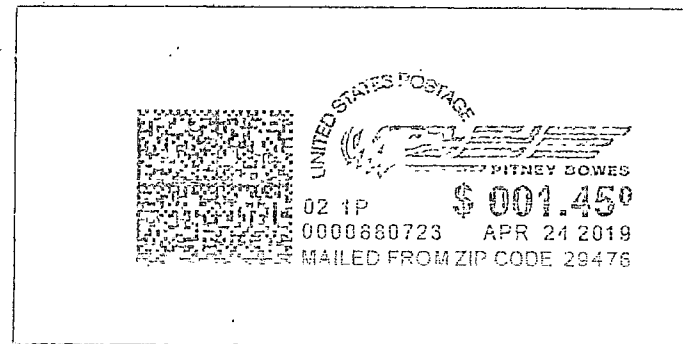
SOUTH CAROLINA COMMISSION ON INDIGENT
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