

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

MICHAEL R. FIELDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001777

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Plea counsel provided ineffective assistance of counsel when he failed to properly investigate Petitioner’s case and failed to explain potential defenses to Petitioner, where Petitioner involuntarily pled guilty because he believed he had no other choice. 4

CONCLUSION 8

PETITION TO BE RELIEVED AS COUNSEL 9

ISSUE PRESENTED

Whether plea counsel provided ineffective assistance of counsel when he failed to properly investigate Petitioner's case and failed to explain potential defenses to Petitioner, where Petitioner involuntarily pled guilty because he believed he had no other choice?

STATEMENT

During the March 2015 term, the Florence County Grand Jury indicted Petitioner for attempted murder, burglary in the first degree, strong arm robbery, and conspiracy. App. 87 – 89.

Petitioner's guilty plea hearing proceeded on June 16, 2016, before the Honorable D. Craig Brown. App. 1. Daniel Jordan represented Petitioner. Id. Rick Hoefer represented the state. Id.

Petitioner pled guilty to assault and battery of a high and aggravated nature (ABHAN) and burglary in the second degree. App. 4, ll. 11 – 16. Judge Brown accepted Petitioner's guilty plea as freely, voluntarily, knowingly, and intelligently made. App. 11, l. 25 – 12, l. 9.

Throughout the course of plea counsel's representation of Petitioner, plea counsel only spoke to Petitioner about pleading guilty and did not investigate into Petitioner's potential defenses. App. 58, ll. 21 – 23; App. 61, 18 – 62, l. 5. That inadequate investigation left Petitioner feeling as if he had no choice but to plead guilty. Id.

Petitioner's sentencing hearing was held on June 24, 2016 before the Honorable Thomas A. Russo. App. 14. Daniel Jordan represented Petitioner. Id. Rick Hoefer represented the state. Id. Judge Russo sentenced Petitioner to fifteen years' imprisonment for ABHAN and ten years' imprisonment for burglary in the second degree. App. 34, l. 22 – 35, l. 8.

Petitioner filed an application for post-conviction (PCR) relief on March 14, 2017. App. 37 – 45. Petitioner filed an amendment to his PCR application on January 18, 2018. Id. The state filed its Return on November 9, 2017. App. 46 – 50.

Petitioner's PCR hearing was held on February 2, 2018 before the Honorable Michael G. Nettles. App. 52. Jonathon Waller represented Petitioner. Id. Lindsay McCallister represented the state. Id.

During the hearing, PCR counsel Waller informed the court that Petitioner was proceeding on the allegation that, “plea counsel failed to properly investigate the facts and circumstances surrounding the allegations against [Petitioner], rendering his guilty plea involuntary.” App. 56, ll. 4 – 17.

In an order filed on September 7, 2018, Judge Nettles denied Petitioner’s PCR allegations because he, “failed to prove Counsel’s performance was deficient in any way.” App. 77 – 86. Judge Nettles found plea counsel’s testimony at the PCR hearing credible and that the, “statements Petitioner made during the guilty plea colloquy were determinative.” Id.

This petition follows.

ARGUMENT

Plea counsel provided ineffective assistance of counsel when he failed to properly investigate Petitioner's case and failed to explain potential defenses to Petitioner, where Petitioner involuntarily pled guilty because he believed he had no other choice.

Relevant Facts

The state alleged the facts as follows: On September 26, 2014 Petitioner and two co-defendants broke into Carl Johnson Jr.'s home. App. 9, l. 15 – 10, l. 16. The complaining witness, Johnson Jr., was “severely” beaten and several items were taken from his home. *Id.*; App. 66, ll. 18 – 25. Petitioner gave an inculpatory statement to police. App. 10, ll. 16 – 18.

Pursuant to the conditions of the guilty plea, Petitioner agreed to testify against one of his co-defendants. App. 11, ll. 12 – 16. During the sentencing hearing, the solicitor informed the court that without Petitioner's assistance the state, “would not have been able to prosecute [co-defendant] Amanda Bryant.” App. 31, l. 18 – 20.

During Petitioner's PCR hearing he testified that plea counsel did not discuss any of the legal matters in his case and only spoke to Petitioner about pleading guilty. App. 58, ll. 21 – 23. Petitioner stated that plea counsel should have, “explained to [Petitioner] what was going on,” and that, “[plea counsel] never explained... [defenses] that we could have come up with at trial or anything.” App. 61, l. 18 – 62, l. 5.

Petitioner stated he believed he would have had a good possibility of winning at trial had plea counsel discussed with Petitioner the evidence against him and potential defenses he could raise. App. 62, l. 20 – 63, l. 3. Due to plea counsel's failure to properly investigate Petitioner's case and explain to him how to combat the evidence against him, Petitioner felt he had no other choice but to plead guilty to avoid receiving the maximum sentence. App. 60, ll. 18 – 22.

Plea counsel testified at Petitioner's PCR hearing as well. App. 65, l. 13. He alleged that he and Petitioner met "seven or eight" times. App. 66, ll. 11 – 17. Plea counsel said that Petitioner never told plea counsel that he wanted to go to trial. App. 68, ll. 12 – 19. Plea counsel claimed Petitioner never denied involvement in the crime. App. 71, ll. 7 – 9.

Plea counsel stated that he discussed the potential sentences with Petitioner. App. 69, l. 23 – 70, l. 1. Plea counsel stated he and Petitioner discussed the evidence against him and what the state would have to show to prove Petitioner was guilty. App. 68, ll. 22 – 25. Plea counsel said he did not see any valid legal reason to challenge Petitioner's inculpatory statement to police nor did he see any possible defenses to the charges against Petitioner. App. 69, ll. 10 – 15.

Discussion

When plea counsel did not investigate Petitioner's case and did not explain to Petitioner any potential defenses to the charges against him, plea counsel provided ineffective assistance of counsel that rendered Petitioner's guilty plea involuntary. App. 60, l. 18 – 61, l. 17.

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) because 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 Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) this Court held that Lounds’ attorney provided ineffective assistance when he failed to adequately prepare for trial. Lounds, at 463, 670 S.E.2d at 463. Lounds was convicted of kidnapping and sentenced to life without parole. Id. at 457, 670 S.E.2d at 647. During his trial, Lounds’ testified in his own defense that he did not kidnap the victim and force the victim to give him money. Instead, Lounds met with the victim because of an outstanding debt and the victim volunteered to go to a relative’s home to ask for the money to pay Lounds back. Id. at 458, 670 S.E.2d at 648.

At Lounds’ PCR hearing he claimed he was provided ineffective assistance of counsel because Lounds’ trial attorney failed to call witnesses that would have corroborated Lounds’ testimony. Id. This Court agreed with Lounds and held that his trial counsel had a duty to, “at a minimum... interview potential witnesses.” Id.; quoting Ard v. Catoe, 372 S.C. 318, 321, 642 S.E.2d 590, 597 (2007).

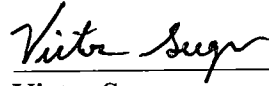
In the present case, plea counsel failed to conduct an adequate investigation. App. 67, ll. 18 – 23. Plea counsel only discussed pleading guilty with Petitioner. App. 58, ll. 21 – 23. Plea counsel never investigated any defenses that Petitioner could have used for the charges against him nor did he explain what those defenses were to Petitioner. App. 60, ll. 18 – 22; App. 61, l. 18

– 62, l. 5. Had plea counsel conducted an adequate investigation Petitioner would not have pled guilty but instead would have proceeded to trial. App. 61, ll. 13 – 17.

Plea counsel's failure to conduct an adequate investigation into Petitioner's case and his failure to explain to Petitioner the legal aspects of his case constituted deficient performance that induced Petitioner to plead guilty. Therefore, Petitioner's guilty plea was involuntarily made and should be vacated.

CONCLUSION

By reason of the foregoing arguments, the writ of Certiorari should be granted to allow for full briefing on this issue.



Victor Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th of May, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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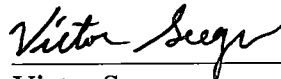
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael R. Fields states:

1. He is 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 Michael G. Nettles, which was held on February 2, 2018, 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 Michael R. Fields.

Respectfully Submitted,

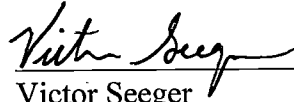


Victor Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th 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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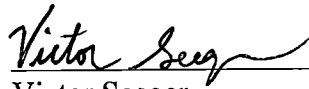
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CERTIFICATE OF SERVICE

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 Lindsey McCallister, 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 Michael R. Fields, #368754, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 15th of May, 2019.



Victor Seeger

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
This 15th of May, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.