

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

JAIMIE S. OBREGON,

V.

STATE OF SOUTH CAROLINA,

S.C. SUPREME COURT
PETITIONER

ORIGINAL

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RESPONDENT

APPELLATE CASE NO 2019-000457

JOHNSON PETITION FOR WRIT OF CERTIORARI

Kathrine H. Hudgins
Appellate Defender

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to call the pastor of Petitioner's church to testify as a character witness?

STATEMENT

In February of 2015, the Oconee County Grand Jury indicted Petitioner, Jaime S. Obregon, for two counts of criminal sexual conduct with a minor first degree and one count of criminal sexual conduct with a minor second degree, indictments #2015-GS-37-165, 155, 167. On May 15, 2017, Mr. Obregon proceeded to jury trial before the Honorable Thomas L. Hughston. Bruce A. Byrholdt represented Mr. Obregon at trial. Catherine A. Wyse prosecuted the case. The jury returned verdicts of guilty and Judge Hughston sentenced Mr. Obregon to twenty-five (25) years concurrent for each criminal sexual conduct with a minor first degree charge and twenty (20) years concurrent for the criminal sexual conduct with a minor second degree charge. Mr. Obregon did not appeal the conviction or sentence.¹

On March 14, 2018, Mr. Obregon filed an application for post-conviction relief [PCR]. The State filed a return and partial motion to dismiss on August 15, 2018. On February 19, 2019, an evidentiary PCR hearing was held before the Honorable R. Scott Sprouse. Rodney W. Richey represented Mr. Obregon at the PCR hearing. Kelly Oppenheimer represented the State. In a written order signed March 8, 2019, Judge Sprouse denied relief and dismissed the application. A timely notice of intent to appeal was filed on March 21, 2019. This petition for writ of certiorari follows.

¹ The record does not reflect why Mr. Obregon did not appeal and he did not request a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), during the post-conviction relief proceedings.

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to call the pastor of Petitioner's church to testify as a character witness.

At the time of his trial Mr. Obregon was seventy-one (71) years old and had no prior criminal record. (App. p. 220, lines 5-23). He did not testify at trial and did not call witnesses or introduce evidence. In the application for post-conviction relief Mr. Obregon alleged that trial counsel was ineffective for "failure to call witnesses." (App. p. 237). During the PCR hearing Mr. Obregon testified that members of his church could have testified at trial as character witnesses on his behalf. (App. p. 259, lines 12-25). On cross-examination Mr. Obregon admitted that the only potential witness provided to trial counsel was his pastor, Willet Best. (App. p. 262, lines 12-15). The State asked, "And these people from your church, did you ever give Mr. Byrholdt their names?" (App. p. 262, lines 12-13). Mr. Obregon answered, "No, except my pastor which is – whatever the name of my pastor – Willet – Willet Best [sic]." (App. p. 262, lines 14-15).

Trial counsel testified at the PCR hearing that Mr. Obregon did not provide him with "any leads or witnesses to investigate." (App. p. 270, lines 19-21). Trial counsel was not specifically asked about the pastor. When asked about another witness, Steven Taylor, the minor's step father, however, trial counsel testified, "He [Mr. Obregon] was trying to argue that the stepfather owed him some money or something and this was about money. And I said that's not -- the problem is his own written statement and words on that telephone just put a noose around his neck." (App. p. 269, lines 15-19). In summation PCR counsel argued, "This was a tough case, but in this situation having some mitigation as to his character could have helped him." (App. p. 275, lines 13-14).

In the order of dismissal the PCR judge wrote, “He [Mr. Obregon] further testified he has been involved with his church for thirty-four years, and the members of his church could provide evidence he did not commit these crimes because of his reputation in the church and the community. He explained the members of his church should have been called as witnesses to speak on his good character. Applicant admitted, however, he did not give Counsel the names of anyone from his church, except for his pastor whose name he could not remember.” (App. p. 283).

The PCR judge ruled writing, “Applicant further contends Counsel was ineffective for failing [sic] call witnesses on his behalf. Specifically, Applicant alleges Counsel was ineffective for failing to call Taylor and members of his church as witnesses. As aforementioned, Applicant admitted he did not provide Counsel with the names of anyone from his church, nor could he definitively say he provide [sic] Counsel with Taylor’s name prior to trial. Without specific leads as to potential witnesses that would be beneficial to Applicant, this Court finds Applicant has failed to prove Counsel was deficient.” (App. p. 288). The PCR judge erred. Mr. Obregon testified that he provided trial counsel with the name of his pastor, Willet Best, to call as a character witness. Trial counsel was deficient in failing to call the pastor of Petitioner’s church to testify as a character witness.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an

objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

In Buckson v. State, 423 S.C. 313, 320–21, 815 S.E.2d 436, 440 (2018), the South Carolina Supreme Court wrote:

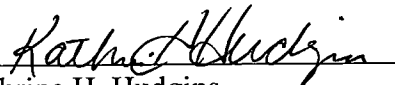
In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks. See, e.g., Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011) (deferring to trial counsel's strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71 (1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same). A PCR court's analysis of counsel's strategic decisions must be “highly deferential” to counsel's judgment, and “a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.” Strickland, 466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694. “[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.” Id.

In the present case trial counsel’s comments about the strength of the State’s evidence (“ . . . the problem is his own written statement and words on that telephone just put a noose around his neck.”) (App. p. 269, lines 15-19)) do not constitute a valid strategic reason for failing to call the pastor as a character witness. To the contrary, as argued by PCR counsel in summation, in light of the strength of the State’s evidence, presenting character witnesses was Mr. Obregon’s

“only chance.” (app. p. 275, line 15 – p. 276, lines 1-2). Trial counsel was in failing to call the pastor as a character witness at trial. This Court should find prejudice although the pastor was not called to testify at the PCR hearing.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of September, 2019.

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IN THE SUPREME COURT

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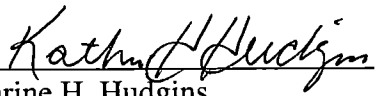
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jaimie S. Obregon 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 R. Scott Sprouse, which was held on February 19, 2019, 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 Jaimie S. Obregon.

Respectfully Submitted,

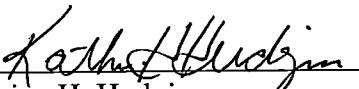


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of September, 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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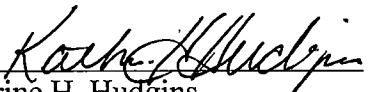
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RESPONDENT

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 Lilly Meadows, 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 Jaimie S. Obregon, #372617, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of September, 2019.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of September, 2019.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019