

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable Kristi F. Curtis, Circuit Court Judge

QUANTAE PRIEST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000579

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR Court erred in denying relief, where Petitioner's counsel failed to secure the testimony of an alibi witness who testified at the evidentiary hearing that Petitioner was not with him at the time of a home invasion and kidnapping, where the complaining witness was unable to identify Petitioner, and where Petitioner pleaded guilty after two days of trial because of counsel's failure to send subpoenas to multiple other alibi witnesses?

STATEMENT

Petitioner was indicted by a Georgetown County grand jury on October 16, 2013 for kidnapping, armed robbery, assault and battery in the first degree, burglary in the first degree, unlawful possession of a pistol, possession of a weapon during the commission of a violent crime, criminal conspiracy, and grand larceny with a value of ten thousand dollars or more. App. 274 – App. 289. He proceeded to trial before the Honorable Benjamin H. Culbertson and a jury on July 27, 2015. App. 1 – App. 157. Ronald Hazzard represented Petitioner, and Alicia Richardson appeared on behalf of the state. After two days of trial, Petitioner pleaded guilty on July 29, 2015. App. 158. He pleaded guilty to armed robbery, kidnapping, and burglary in the second degree. App. 160 ll. 3 – 15. The state recommended a maximum of twenty years, and Petitioner was required to allocute. Id.

Petitioner pleaded guilty accordingly. App. 165 l. 23 – App. 166 l. 25. The allegations made by the state were that Petitioner and two co-defendants robbed a man in his home then drove him around in his own car to get money out of an ATM machine. App. 167 l. 6 – App. 168 l. 11. The driver of the car, Marcus Lambert, was one of Petitioner’s co-defendants; Petitioner was a passenger. Id. Lambert, described by counsel as the “most culpable individual,” received an eighteen year sentence. App. 173 ll. 9 – 23. Daquaris Holmes, another one of Petitioner’s co-defendants, received a fifteen year sentence.

Judge Culbertson accepted Petitioner’s guilty plea, found that it was knowingly and voluntarily made, and indicated that a factual basis existed for the charges. App. 181 ll. 11 – 22. Petitioner was sentenced to fifteen years on the burglary charge and eighteen years each on the armed robbery and kidnapping charges, with all sentences to be run concurrently. Id.

Petitioner filed an application for post-conviction relief on January 7, 2016. App. 184 – 190. He filed an amendment on August 8, 2018. App. 192 – App. 193. Through both filings, he alleged various claims of ineffective assistance of counsel. Through counsel, additional amendments were made on November 13, 2018. App. 194.

The state made its Return and filed a partial motion to dismiss on January 23, 2017. App. 195 – App. 200. An evidentiary hearing was held before the Honorable Kristi C. Curtis on November 29, 2018. App. 201. James Falk represented Petitioner; Johnny James, Jr. appeared on behalf of the state. Petitioner, trial-turned-plea counsel Ronald Hazzard, and an alibi witness, Marcus Lambert, all testified at the hearing.

At the conclusion of the hearing, the PCR court took the matter under advisement. App. 258 ll. 18 – 19. An Order of Dismissal was filed on April 2, 2019. App. 262 – 273. The PCR court found no deficiency or prejudice as it related to Petitioner's contention that trial-turned-plea counsel was deficient in failing to secure the testimony of Lambert at Petitioner's trial. App. 271.

This petition follows.

ARGUMENT

The PCR Court erred in denying relief, where Petitioner’s counsel failed to secure the testimony of an alibi witness who testified at the evidentiary hearing that Petitioner was not with him at the time of a home invasion and kidnapping, where the complaining witness was unable to identify Petitioner, and where Petitioner pleaded guilty after two days of trial because of counsel’s failure to send subpoenas to multiple other alibi witnesses.

Relevant facts

As noted at the outset of the evidentiary hearing, this was a midtrial plea. App. 203 l. 4 – App. 204 l. 1. Counsel Hazzard was appointed to represent Petitioner. App. 204 ll. 15 – 22. After two days of trial, Petitioner elected to plead guilty. App. 207 ll. 1 – 6. Petitioner pleaded “straight up” with no applicable plea negotiations. App. 210 l. 19 – App. 211 l. 10.

Prior to the plea, counsel’s strategy had been to prove that Petitioner was not in the car with Lambert and Holmes; rather, it was an unknown third individual who allegedly broke into the home and kidnapped Dan Gasque. App. 207 l. 19 – App. 208 l. 11. The defense theory of the case was that Petitioner was picked up by Lambert after Gasque escaped at a gas station. *Id.* Gasque did not pick Petitioner out of a photo lineup after the incident. App. 225 l. 21 – App. 226 l. 11. Further, the surveillance video from the gas station did not show Petitioner, either. App. 230 ll. 8 – 12. Petitioner was similarly informed that his fingerprints were not located inside Gasque’s home. App. 230 ll. 13 – 15. According to Gasque, none of the men who entered his home wore gloves. App. 83 ll. 3 – 4. He indicated they were inside his house for thirty or forty-five minutes. App. 83 ll. 16 – 20. He was able to identify Lambert as the man who attempted to

drag him out of the convenience store at the gas station. App. 74 l. 10 – App. 75 l. 20; App. 85 ll. 6 – 8.

Petitioner’s testimony supported this defense. He was not inside the car at the gas station and had not been part of the alleged home invasion. App. 228 ll. 13 – 23. He was in Georgetown when Lambert picked him up. Id. Lambert picked up Petitioner and Holmes before stopping by his girlfriend’s house for a change of clothes. App.249 l. 2 – App. 250 l. 4. Petitioner sustained a back injury following the police chase and subsequent car accident. App. 229 ll. 9 – 22.

Petitioner indicated that if Lambert would have been called at trial, he would have testified that Petitioner “had nothing to do with it and that [he and Holmes] picked [Petitioner] up.” App. 232 ll. 15 – 19. Lambert testified accordingly at Petitioner’s PCR evidentiary hearing. He plainly stated Petitioner was not with him when Lambert went into Gasque’s house. App. 245 ll. 15 – 17. Lambert saw Petitioner walking and picked him up. App. 246 ll. 1 – 3. Lambert similarly picked up Holmes after having left the gas station. App. 246 ll. 7 – 13.

Lambert attempted to tell counsel that Petitioner was not involved with the alleged home invasion. App. 246 ll. 14 – 18. Lambert wrote a letter to counsel indicating such. App. 251 ll. 8 – 22. He further noted that had he been called to testify at Petitioner’s trial, his testimony would have been identical to his statements at the evidentiary hearing: that Petitioner was not involved in any criminal activity on the night in question. App. 247 ll. 2 – 12. Counsel received Lambert’s letter. App. 253 ll. 9 – 22.

At the conclusion of the evidentiary hearing, Petitioner remarked that he had additional witnesses who were unable to attend the hearing. App. 259 l. 6 – App. 260 l. 16. Accordingly, Petitioner suggested that he was unprepared for the hearing. The witnesses were unavailable due

to work commitments. PCR counsel had not sent a subpoena to five different witnesses who Petitioner described by name. Id. Each would have spoken about Petitioner's whereabouts on the night in question and thereby established his innocence. Id. PCR counsel admitted that he had not had a chance to review the requests for those witnesses to be sent a subpoena; instead, he opted to rely on Petitioner's testimony.

Discussion

In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove that trial counsel was deficient and that this deficiency prejudiced him. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The PCR applicant "must show trial counsel's performance fell below an objective standard of reasonableness." Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). Prejudice may be found where counsel's deficiency undermined confidence in the outcome of the trial. Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

If a PCR applicant claims trial counsel was ineffective for failing to interview or call alibi witnesses, then the "applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).


The Order of Dismissal contained a finding by the PCR court that counsel was not deficient, and Petitioner suffered no prejudice. App. 271. The PCR court assigned "little credibility" to the testimony of Petitioner and Lambert. Id. Accordingly, the PCR court put "no value in Lambert's assertions" and accepted counsel's testimony that he would have called Petitioner's alibi witnesses had Petitioner not elected to plead guilty. App. 272.

Trial-turned-plea counsel was ineffective for failing to secure favorable testimony from Lambert prior to Petitioner pleading guilty. Petitioner recalled speaking with counsel three times before his trial. App. 227 ll. 5 – 11. Had the two communicated more, counsel would have discovered the exceedingly helpful nature of Lambert's testimony. Coupled with additional potential alibi witnesses, counsel would have discerned the magnitude of favorable testimony which would have been available to offer in Petitioner's defense. Following the discovery of this favorable testimony, counsel could have effectively cross-examined each of the state's witnesses during the prosecution's case-in-chief. After establishing reasonable doubt in that way, counsel could have then called multiple witnesses to testify on Petitioner's behalf and clarified that Petitioner was not involved in the alleged home invasion and kidnapping.

Accordingly, Petitioner was deprived effective assistance of counsel. Had those witnesses been sent a subpoena and been prepared to testify in his defense at trial, Petitioner would not have pleaded guilty. Counsel should have gotten clarification from Lambert, following receipt of his letter which made it clear that Petitioner was not involved in any wrongdoing, about how he was going to testify at Petitioner's trial. Lambert was listed as a potential witness during *voir dire*. App. 9 ll. 10 – 21. He did not testify during the first two days of trial. Counsel was ineffective for failing to ascertain the extent of Lambert's testimony, and Petitioner was prejudiced accordingly.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari and allow further briefing on the issue raised herein.


Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County

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V.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quantae Priest 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 Kristi F. Curtis, which was held on November 29, 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 Quantae Priest.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of November, 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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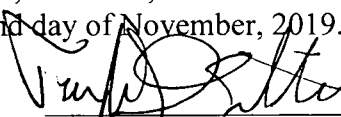
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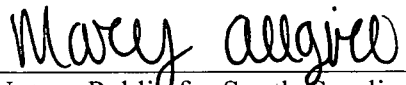
CERTIFICATE OF SERVICE

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 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 Quantae Priest, #364893, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 22nd day of November, 2019.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of November, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027