

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Orangeburg County
Honorable Robert E. Hood, Circuit Court Judge

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S.C. SUPREME COURT

TOURIARNOLD SPANN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000525

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's guilty plea was rendered involuntary because plea counsel failed to fully investigate the State's case?

STATEMENT

On March 23, 2015, petitioner entered a plea of guilty to multiple charges before the Honorable Maite Murphy in Orangeburg County. App. 1. Peggy Hinds and Breen Stevens represented petitioner and Ashley Cornwell represented the State. App. 1. App. 3, ll. 18 – 20. Petitioner pled guilty to malicious injury to personal property, first-degree burglary, a weapons charge, impersonating a law enforcement officer, carjacking, and armed robbery. App. 3, ll. 4 – 13. Judge Murphy accepted petitioner’s plea. App. 12, l. 25 – 13, l. 4. Judge Murphy sentenced petitioner to concurrent terms of imprisonment totaling thirty years. App. 26, ll. 3 – 22.

On November 30, 2015, petitioner filed a PCR application. App. 28. On May 24, 2017, the Honorable Robert E. Hood held a hearing. App. 41. Jonathan D. Waller represented petitioner and Ruston W. Neely represented petitioner. App. 41. Judge Hood granted PCR on one ground with the State’s consent—an illegal sentence for carjacking. App. 44-45. The maximum sentence was twenty years, not the thirty-year sentence imposed by Judge Murphy. App. 44-45. Judge Hood resentenced petitioner to twenty years’ imprisonment on that charge. App. 44-45. App. 87. The PCR court denied petitioner’s remaining allegations. App. 88. This petition follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The Court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Id. The Court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

Petitioner's guilty plea was rendered involuntary because plea counsel failed to fully investigate the State's case.

Plea counsel admitted that a crucial surveillance video was not in his file at the time of his testimony. App. 65, ll. 17 – 19. The crime in this case involved armed men posing as police officers using lights on a truck. App. 64, ll. 8 – 25. The robbers pulled over a man in a smaller car, took his wallet and gun, and beat and kicked him. App. 64, ll. 8 – 25.

A local convenience store had surveillance footage from just before the robbery. App. 65, ll. 5 – 10. The cameras showed the victim leaving. App. 65, ll. 5 – 10. The assailants' truck left shortly afterwards. App. 65, ll. 6 – 10. The video was shown at petitioner's brother's trial. App. 66, ll. 6 – 18.

Plea counsel did not have a specific memory of watching the DVD of the surveillance footage with petitioner. App. 76, l. 7 – 79, l. 9. Nor did his notes reflect watching the DVD with petitioner. App. 79, ll. 4 – 14. He admitted he “would love to have video” when advising his client about the State's case. App. 77, ll. 10 – 16.

Petitioner testified at the PCR hearing that he never saw the video until after he pled guilty. App. 58, ll. 10 – 19. Petitioner first saw the video during his participation in his brother's trial. App. 58, ll. 10 – 19. Petitioner testified, “Never seen a DVD till I got 30 years.” App. 58, ll. 10 – 19. Plea counsel never discussed potential defenses with petitioner and had he known about his potential defenses, petitioner would have insisted on a trial. App. 56, ll. 8 – 17. When asked if he would have still pled guilty, petitioner responded, “No, sir. I would have went to trial.” App. 56, ll. 16 – 17.

The PCR court erred in finding petitioner's guilty plea was knowing and voluntary. App. 93-94. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (internal quotations omitted). Plea counsel has a duty to conduct an independent investigation. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Petitioner could not make an informed choice about whether to plead guilty without having reviewed the surveillance video. The PCR court incorrectly focused on the overwhelming evidence of petitioner's guilt. App. 94. The prejudice component in a guilty plea is whether petitioner would have reasonably chosen to go to trial, not whether he would have been convicted. Smith v. State, 369 S.C. 135, 631 S.E.2d 135 (2006). A defendant's testimony that he would have gone to trial can suffice to prove prejudice in a guilty plea PCR. See id.

Petitioner testified that he was aware of the evidence the PCR court cited as overwhelming evidence of guilt before he pled guilty. App. 57, l. 23 – 58, l. 23. Despite this knowledge, petitioner still said he would have gone to trial. App. 56, ll. 16 – 17. In fact, petitioner's brother, who faced many of the same charges, was acquitted. App. 57, l. 17 – 58, l. 2. However, plea counsel never discussed the DVD until his brother's trial, which resulted in the acquittal. App. 60, ll. 6 – 16. This deficient performance rendered petitioner's guilty plea unknowing and involuntary and this Court should reverse.

CONCLUSION

For the foregoing reasons, petitioner's convictions should be reversed and this case remanded for a new trial.

A handwritten signature in black ink, appearing to read 'D.A.', with a long horizontal stroke extending to the right.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of November, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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PETITIONER,

V.

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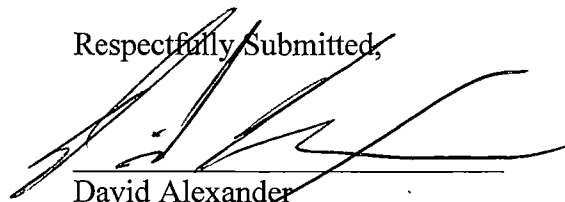
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Touriarnold Spann 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 Robert E. Hood, which was held on May 24, 2017, 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 Touriarnold Spann.

Respectfully Submitted,



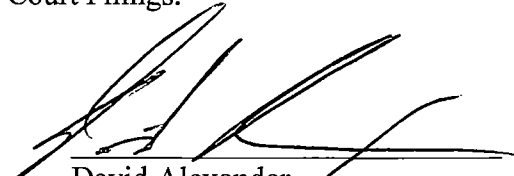
David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th 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.

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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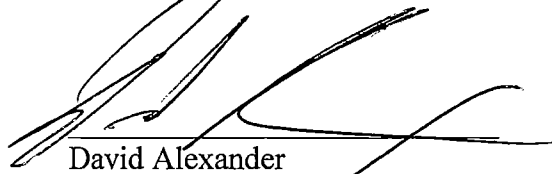
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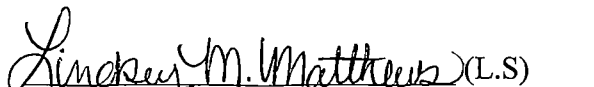
CERTIFICATE OF SERVICE

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 Sara Gunton, 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 Touriarnold Spann, #305939, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 25th day of November, 2019.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 25th day of November, 2019.



Lindsey M. Matthews (L.S)
Notary Public for South Carolina
My Commission Expires: October 22, 2024.