

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

HECTOR J. CASES VAZQUEZ,

RECEIVED

DEC 09 2019

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001912

JOHNSON PETITION FOR WRIT OF CERTIORARI

Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel provided ineffective assistance of counsel when he failed to conduct an adequate investigation into Petitioner's case such that Petitioner thought he had no other choice but to plead guilty to trafficking heroin?

STATEMENT

During the May 2014 term, the Horry County Grand Jury indicted Petitioner for trafficking heroin over 28 grams. App. 101 – 102.

Petitioner pled guilty on February 23, 2015, in front of the Honorable Michael G. Nettles. App. 1. W. Thomas Floyd represented Petitioner. Id. David P. Caraker represented the state. Id. Petitioner pled guilty to the lesser included offense of trafficking heroin 4 to 14 grams. App. 3, ll. 3 – 12.

Petitioner and the state agreed to a negotiated sentence of fifteen to eighteen years' imprisonment. App. 3, ll. 14 – 16. Judge Nettles accepted Petitioner's guilty plea as freely, voluntarily, and intelligently made. App. 10, ll. 18 – 23. Petitioner was sentenced to fifteen years' imprisonment. App. 16, ll. 13 – 16.

Prior to the plea hearing, plea counsel never discussed going to trial with Petitioner. App. 52, l. 21 – 53, l. 2. Moreover, plea counsel never followed up on the leads Petitioner provided nor did he make an evidentiary challenge to the weight of the alleged heroin. App. 59, l. 16 – 60, l. 5; App. 71, ll. 9 – 73, l. 9. Due to that insufficient investigation, Petitioner made an uninformed and involuntary guilty plea. App. 53, l. 25 – 54, l. 5; App. 54, ll. 12 – 17. Petitioner would not have pled guilty if plea counsel had conducted an adequate investigation in his case. App. 60, ll. 9 – 12.

Petitioner filed an application for post-conviction relief (PCR) on October 29, 2015. App. 18 – 38. Petitioner alleged that plea counsel was ineffective because he induced Petitioner to plead guilty by failing to conduct an adequate investigation. Id. The state filed its Return on February 4, 2016. App. 39 – 42.

Petitioner's PCR hearing was held on November 15, 2016 before the Honorable Brooks P. Goldsmith. App. 44. Steven Fowler represented Petitioner. Id. Jessica Kinard represented the state. Id. In an order filed on September 29, 2018, Judge Goldsmith denied Petitioner's PCR allegation that plea counsel failed to properly investigate his case and found that plea counsel provided no deficiency. App. 91 – 100.

ARGUMENT

Plea counsel provided ineffective assistance of counsel when he failed to conduct an adequate investigation into Petitioner's case such that Petitioner thought he had no other choice but to plead guilty to trafficking heroin.

Relevant Facts

Petitioner allegedly met with a confidential informant on two different occasions where Petitioner sold heroin to that informant. App. 72, ll. 1 – 11. Investigators obtained a search warrant for Petitioner's apartment. App. 7, ll. 5 – 14. On November 16, 2013, the search warrant was executed, and heroin was found. App. 72, ll. 18 – 25.

At Petitioner's PCR hearing, he testified that he pled guilty because plea counsel's failure to properly investigate his case made him feel as if he had no other choice than to plead guilty. App. 55, ll. 10 – 18. Petitioner explained that he did not know that he could have withdrawn his plea or requested that he be appointed a new attorney at the plea hearing. App. 63, l. 1 – 65, l. 1.

Petitioner stated that he never saw his full discovery materials and was unaware of the evidence against him. App. 53, ll. 16 – 24. Petitioner explained that he did not discuss with plea counsel the minimum or maximum possible sentences that he faced. App. 56, l. 20 – 57, l. 13. Petitioner claimed that plea counsel also did not explain to him the elements of the charges against him that the state would need to prove at trial. Id. Most importantly, Petitioner stated he would not have pled guilty if plea counsel had conducted an adequate investigation in his case. App. 60, ll. 9 – 12.

Plea counsel testified at Petitioner's PCR hearing as well. Plea counsel claimed that he did review Petitioner's discovery materials with him. App. 70, ll. 11 – 20. Plea counsel also testified he explained the elements of the charge to Petitioner. App. 71, ll. 9 – 11. However, plea

counsel admitted he did not follow any potential leads, did not discuss possible defenses with Petitioner, and did not attempt to challenge the drug evidence in any way. App. 59, l. 16 – 60, l. 5; App. 71, l. 9 – 73, l. 9.

At PCR, Petitioner gave an example of one of the leads plea counsel failed to follow up on when explained that he informed plea counsel of the Hispanic man that law enforcement saw on the video from the informant's drug buys was someone else. App. 57, l. 22 – 59, l. 9. Furthermore, plea counsel never attempted any evidentiary challenges to the weight of the alleged heroin. App. 59, l. 16 – 60, l. 5.

Discussion

Plea counsel provided ineffective assistance of counsel when he failed to conduct an adequate investigation into Petitioner's case because that inadequate investigation made Petitioner feel he had no other choice but to plead guilty. App. 56, ll. 10 – 16; App. 67, ll. 18 – 23.

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 at 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 an attorney provides ineffective assistance of counsel when he fails to 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’s case because, “but for counsel’s unprofessional errors, the results 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 Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), Ard was convicted of murder and sentenced to death. Id. at 322, 642 S.E.2d at 591. This Court reversed Ard’s conviction because his attorney provided ineffective assistance of counsel when he failed to conduct an adequate investigation. Id. at 336, 642 S.E.2d at 599. This Court affirmed the PCR court’s finding that Ard’s, “trial counsel’s failure to adequately evaluate and challenge the State’s gunshot residue was deficient performance that resulted in prejudice to respondent.” Id. at 330, 642 S.E.2d at 596.

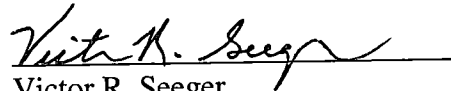
In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) this Court held that Lounds’ attorney provided ineffective assistance of counsel when he failed to adequately prepare for trial. Id. at 463, 670 S.E.2d at 463. Lounds was convicted of kidnapping and sentenced to life without parole. Id. at 457, 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, but rather that Lounds met up with the victim because of an outstanding debt and that the victim volunteered to go to a relative’s home to ask for 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 testified in support of Lounds' own 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.

In the present case, plea counsel admitted he did not pursue leads that Petitioner provided and did not explore challenging the drug evidence. App. 71, l. 9 – 73, l. 9; App. 59, l. 16 – 60, l. 5. Petitioner testified that plea counsel's representation consisted solely of plea counsel urging Petitioner to plead guilty. App. 52, l. 24 – 53, l. 2. Petitioner would not have pled guilty if plea counsel would have conducted an adequate investigation in his case. App. 60, ll. 9 – 12. Therefore, Petitioner's guilty plea was not voluntarily made as he felt he had no other choice but to plead guilty due to the inadequate investigation conducted by plea counsel.

CONCLUSION

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


Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of December, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

HECTOR J. CASES VAZQUEZ,

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V.

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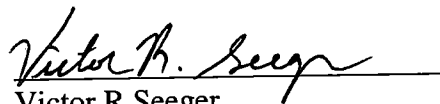
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Hector J. Cases Vazquez 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 Brooks P. Goldsmith, which was held on November 15, 2016, 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 Hector J. Cases Vazquez.

Respectfully Submitted,


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of December, 2019.

STATE OF SOUTH CAROLINA

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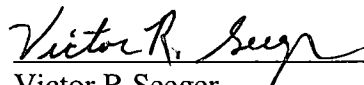
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RESPONDENT

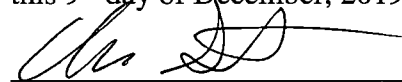
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari 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 have been served on Hector J. Cases Vazquez, #363120, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 9th day of December, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

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



(L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029