

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Lancaster County

Honorable Paul M. Burch, Circuit Court Judge

RECEIVED

JAN 14 2020

LONNIE E. PATTERSON,

PETITIONER, S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2019-000890

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
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 the PCR court erred in denying relief, where plea counsel was appointed as substitute counsel in Petitioner's case three months before the plea, where plea counsel never went over the discovery with Petitioner, and where plea counsel did not fully investigate Petitioner's case or request a continuance prior to Petitioner entering a plea?

STATEMENT

Petitioner was indicted by a Lancaster County grand jury on October 22, 2015 for child endangerment, felony driving under the influence causing great bodily injury, and felony driving under the influence causing death. App. 89 – App. 94. He pleaded guilty as indicted before the Honorable Daniel Hall on October 16, 2017. App. 1. Ryan Payne represented Petitioner; Randy Newman and Cassity Brewer appeared on behalf of the state.

The facts as alleged by the state were as follows: On August 13, 2015, Petitioner was driving in Lancaster County with his two small children in the back seat. App. 12 l. 18 – App. 13 l. 20. In the early afternoon hours, he crossed the center line and his car struck a tree. He was estimated to have been traveling around sixty miles per hour. One of his children was injured; the other passed away. Id. According to the solicitor, Petitioner’s blood alcohol content was .228 and he allegedly also tested positive for marijuana. Id.

Petitioner pleaded guilty to each charge. App. 6 l. 3 – App. 7 l. 24. The plea judge found the plea to have been entered freely, voluntarily, and intelligently. App. 11 ll. 16 – 19. There was no recommendation from the state regarding sentencing. App. 3 ll. 16 – 22. Judge Hall sentenced Petitioner to ten years on each charge, with the sentences crafted to run concurrently. App. 29 ll. 7 – 18.

Petitioner filed an application for post-conviction relief on March 8, 2018. App. 31 – 38. It contained allegations of ineffective assistance of counsel and due process violations. App. 33. The state made its Return and filed a Motion for More Definite Statement on or about May 23, 2018. App. 41 – 47. Soon thereafter, on November 13, 2018, Petitioner filed an amended application. App. 39 – 40. Petitioner’s application was amended to include four claims: failure

to properly investigate; failure to provide Petitioner with all discovery; failure to adequately advise Petitioner; failure to discuss possible defenses for trial. Id.

An evidentiary hearing was held before the Honorable Paul M. Burch on January 23, 2019. App. 48. Donae Minor represented Petitioner; Samuel Key appeared on behalf of the state. Petitioner and plea counsel testified at the hearing. At the conclusion of the hearing, the PCR judge took the matter under advisement. App. 71 ll. 21 – 24. An Order of Dismissal was filed on May 16, 2019. The PCR court denied relief on all grounds.

This petition follows.

ARGUMENT

The PCR court erred in denying relief, where plea counsel was appointed as substitute counsel in Petitioner's case three months before the plea, where plea counsel never went over the discovery with Petitioner, and where plea counsel did not fully investigate Petitioner's case or request a continuance prior to Petitioner entering a plea.

Relevant facts

Petitioner was originally represented by Mark Grier. App. 53 ll. 15 – 17. Plea counsel was appointed Petitioner's case approximately two or three months before the plea occurred. App. 53 ll. 10 – 14. This was plea counsel's first case involving a felony DUI with death or great bodily injury. App. 68 l. 20 – App. 69 l. 1. Petitioner and plea counsel referenced the change in representation at the plea hearing. Petitioner informed the plea judge that counsel received the case soon before the plea. App. 10 ll. 21 – 23. Counsel validated this remark and advised the plea court that he initially believed he would have until December to take the case to trial or work out a plea. App. 15 l. 19 – App. 16 l. 5; App. 54 ll. 16 – 22.

Plea counsel met with Petitioner three times. App. 54 ll. 16 – 25. Their sole topic of discussion was plea negotiations. App. 55 ll. 1 – 6. Grier had previously provided Petitioner with the discovery in his case, but plea counsel never discussed it with him. App. 55 ll. 7 – 10; App. 58 ll. 9 – 16.

Petitioner testified that the change in attorneys prejudiced his case. App. 53 ll. 21 – 23. He contended that plea counsel was not afforded enough time to investigate his case and then to prepare for a trial. App. 53 l. 24 – App. 54 l. 15. As a result, plea counsel was not familiar with the facts and circumstances surrounding Petitioner's case. App. 55 ll. 15 – 24. According to

Petitioner, plea counsel only wanted to move the case forward and not discuss anything of substance. Id. The two never discussed the facts of Petitioner's case. App. 56 ll. 3 – 4.

When asked if Petitioner's sentence was going to be classified as violent or nonviolent, plea counsel did not know. App. 55 l. 18 – App. 56 l. 2; App. 60 ll. 11 – 21; App. 61 ll. 12 – 19. Plea counsel was unprepared to go to trial. App. 56 ll. 9 – 13. As a result, Petitioner felt forced to plead guilty. App. 56 ll. 14 – 20. Had plea counsel requested additional time to become acclimated with the case, Petitioner would have chosen to go to trial and therefore be represented by an attorney who was prepared. App. 57 ll. 2 – 10.

Plea counsel confirmed that he met with Petitioner two or three times. He recalled discussing two weaknesses in Petitioner's case: the blood draw showing a high BAC as well as the presence of THC in Petitioner's body at the time of the accident. App. 63 l. 1 – App. 64 l. 17. Plea counsel admitted he did not request a continuance in the case. App. 64 l. 21 – App. 66 l. 3. During the course of his representation of Petitioner, plea counsel discussed the matter with Grier and noted that the file "had kind of been sitting in the file cabinet for two years." App. 66 l. 23 – App. 67 l. 11. Plea counsel contended that law enforcement drove the solicitor to take action on the case. Id.

Plea counsel claimed Petitioner was not interested in a trial after the initial meeting between the two. App. 69 l. 15 – App. 70 l. 4. Had Petitioner chosen to go to trial, plea counsel suggested that he would have requested a continuance. App. 69 ll. 15 – 21. Had the continuance been denied, plea counsel believed he could have "wrangled up the experts to put up a viable defense at trial or a defense to at least parts of it." Id. In contrast to Petitioner's testimony, plea counsel indicated that they had spoken about the classification of his sentence as either violent or

nonviolent. App. 70 ll. 5 – 23. However, plea counsel implied that the state was unwilling to allow Petitioner to plead to a nonviolent charge. Id.

Discussion

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 685–86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To overcome the presumption that counsel has rendered adequate assistance, the defendant must show: (1) counsel's performance was deficient, falling below an objective standard of reasonableness; and (2) counsel's deficient performance prejudiced the defendant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694, 104 S.Ct. 2052.

A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable “only to the extent that reasonable professional judgment supports the limitations on the investigation.” See Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (quoting Wiggins v. Smith, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)). A criminal defense attorney has the duty to conduct a

reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the state. Nance v. Ozmint, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8 (2006) (quoting Wiggins, 539 U.S. at 524–25, 123 S.Ct. 2527).

Even as substitute counsel, plea counsel had an obligation to perform his own investigation and then speak with Petitioner regarding both his own findings and the discovery in his case. Plea counsel's interpretation, strategies, and decisions likely differed in some regards from prior counsel. Coupled with the age of the case and delay in adjudication, Petitioner expected his attorney to discuss with him the substance of his pending charges and the evidence in possession of the state. Following counsel's failure to communicate with Petitioner about the details of his case, Petitioner had no choice but to plead guilty. Had counsel gone over the Highway Patrol report and witness statements, Petitioner may have elected to go to trial. Additionally, Petitioner's consent to have his blood drawn could have been challenged. Because those conversations did not occur, trial strategies were not formulated. As a result, Petitioner did not feel like his attorney was prepared to take his case to trial.

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.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of January, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lonnie Eugene Mau Patterson states:

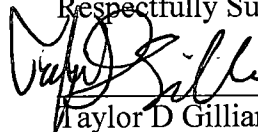
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Paul M. Burch, which was held on January 23, 2019, 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 Lonnie Eugene Mau Patterson.

Respectfully Submitted,



Taylor D Gilliam


Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of January, 2020.

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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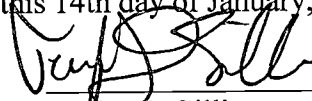
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CERTIFICATE OF SERVICE

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 Samuel Key, 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 Lonnie Eugene Mau Patterson, #374294, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 14th day of January, 2020.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 14th day of January, 2020.

Mary Allgood (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2027.