

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

SARA HODSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001334

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred where it found counsel provided effective assistance where counsel failed to investigate mitigation witnesses whose contact information was provided to him “early on” in the representation, and instead only attempted to contact the witnesses several years later, at which time the witnesses could not be located, where counsel has a duty to undertake a reasonable investigation, since the decision not to investigate in a timely manner was unreasonable.6

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL.....10

ISSUE PRESENTED

Whether the PCR court erred where it found counsel provided effective assistance where counsel failed to investigate mitigation witnesses whose contact information was provided to him “early on” in the representation, and instead only attempted to contact the witnesses several years later, at which time the witnesses could not be located, where counsel has a duty to undertake a reasonable investigation, since the decision not to investigate in a timely manner was unreasonable?

STATEMENT

A Lexington County Grand Jury indicted Petitioner for the offenses of aiding and abetting homicide by child abuse and unlawful conduct towards a child during the September term of 2015. App. 261 – 264. On November 3, 2015, Petitioner entered pleas to those offenses pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), before the Honorable Doyet A. Early, III. App. 1; App. 4, ll. 8-9. Petitioner was represented by Deon O’Neil. App. 1. The State was represented by Suzanne Mayes and Sutania Radlein. App. 1.

On December 12, 2012, Petitioner and her husband brought their ten-week-old unresponsive child (Minor 1) to a doctor’s office in Pelion. The child died later that day in the hospital, after an unsuccessful operation. App. 16, ll. 12-17; App. 15, ll. 16-20; App. 55, ll. 11-15. The cause of death was sepsis from an untreated stomach perforation which the State claimed was due to blunt force trauma. App. 17, l. 8 – 18, l. 4. An autopsy showed the child also had a number of healing fractures and had been exposed to methamphetamine. App. 19, ll. 3-14.

The State did not allege that Petitioner struck the child. App. 191, ll. 15-20. Instead, the State alleged that medical neglect by Petitioner, who was the child’s primary caregiver, led to the child’s death, because the stomach perforation could have been treated if the child received medical intervention sooner. App. 21, ll. 2-11; App. 56, ll. 15-17. Chronic methamphetamine exposure was also determined to be a contributing factor in the child’s death. App. 57, ll. 18-23. Petitioner’s fingerprint was found on drug paraphernalia located near the child’s crib. App. 19, l. 23 – 20, l. 14.

Petitioner’s defense counsel would later explain that Petitioner told him her codefendant husband was abusive to her and the children. App. 211, ll. 23-24. Defense counsel said that

Petitioner pleaded pursuant to *Alford* because “she could never bring herself to admit that she did anything wrong as it relates to the child.” App. 210, ll. 10-13.

In exchange for her pleas, the State dismissed by nolle prosequi three other indictments: homicide by child abuse; possession of methamphetamine; and an additional count of unlawful conduct towards a child. App. 7, ll. 12-20; App. 37, ll. 4-7. Petitioner’s codefendant, her husband Jordan Hodson, had recently entered similar pleas on October 23, 2015. App. 15, l. 21 – 16, l. 5. The court accepted Petitioner’s pleas and sentencing was deferred. App. 22, ll. 4-17.

On March 14, 2015, Petitioner reappeared before the court on a motion to withdraw her pleas, based on a letter she received from her codefendant after her plea hearing, in which he wrote that Petitioner was not with him cooking methamphetamine the night before the child died. App. 24; App. 259 – 260; App. 31, ll. 6-20. However, the court denied the motion. App. 45, ll. 6-8.

On March 23, 2016, Petitioner appeared before the Honorable William P. Keesley for sentencing. App. 47. No witnesses were called. App. 48. Petitioner was sentenced to serve concurrent terms of twenty years of incarceration for aiding and abetting homicide by child abuse, and ten years of incarceration for unlawful conduct towards a child. App. 100, l. 9 – 101, l. 15. Petitioner’s codefendant was sentenced at the same hearing and he received the same sentences. App. 100, l. 9 – 101, l. 15.

After exhausting her remedies on direct appeal, Petitioner timely filed an application for post-conviction relief (PCR), and the State made its return. App. 121 – 128; App. 131 – 143. Petitioner then filed an amended PCR application, in which she alleged ineffective assistance of counsel based on counsel’s failure “to call mitigating witnesses that would have resulted in a lesser sentence for [Petitioner].” App. 129 – 130.

On June 27, 2019, a hearing was held on the matter before the Honorable Brooks P. Goldsmith. App. 144. Petitioner was represented by Ashley McMahan and the State was represented by Taylor Smith. App. 144.

Petitioner testified that she told counsel she wanted him to call two witnesses on her behalf at sentencing—Angel Blankenship and Erin Davis. App. 162, ll. 3-12; App. 154, ll. 6-9. Davis was Petitioner’s former roommate. App. 162, ll. 19-21.

Defense counsel agreed that “early on in the case” Petitioner provided him with contact information for “character witnesses.” App. 196, ll. 3-10. Petitioner told counsel these witnesses could testify that she was a “good mother.” App. 196, ll. 7-9. Counsel said, “[T]hat was very early on.” App. 196, l. 21. “If we fast forward to 2016 . . . she did once again ask me could I call these individuals to her sentencing at that point.” App. 196, l. 23 – 197, l. 1. However, counsel said that since three years that had passed, he could “no longer get in touch” with these witnesses. App. 197, ll. 1-6. “[N]obody in the contact information that she gave me early on could I still get in contact with later on in the case.” App. 215, ll. 6-8.

Petitioner’s husband, Jordan Hodson, also testified at the PCR hearing and told the court that Petitioner “was a good mom.” App. 172, l. 8. Jordan Hodson said that Petitioner “didn’t have anything to do with nothing that went on.” App. 172, ll. 9-10. “I was the one that made the meth. I was the one that brought it around my children. And I’m the one who caused this accident.”¹ App. 172, ll. 11-12. “She didn’t have nothing to do with it.” App. 172, ll. 12-13.

¹ Jordan Hodson confessed to dropping the child in the shower on the day of her death. He said the child hit her face on the lip of the bathtub. App. 18, ll. 11-16. At the PCR hearing, Jordan Hodson said Petitioner was not home when he dropped the child. App. 170, l. 22 – 171, l. 4. However, at the plea hearing, the solicitor claimed that the shower incident was “not consistent with the [child’s] injuries.” App. 18, ll. 16-17.

On August 1, 2019, the PCR court issued an order of dismissal. App. 236 – 258. The order addressed the allegation that counsel “was ineffective for failing to call mitigation witnesses at her sentencing who could have provided favorable testimony that would have resulted in a lesser sentence for [Petitioner].” App. 255. The order stated that Petitioner “did not have either Ms. Davis or Ms. Blankenship testify on her behalf at the PCR hearing, but merely speculated that they would have provided favorable testimony.” App. 256. “Therefore, she has failed to demonstrate how any testimony from them would have been favorable during her sentencing hearing, and how she was prejudiced by the lack of their testimony.” App. 256.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred where it found counsel provided effective assistance where counsel failed to investigate mitigation witnesses whose contact information was provided to him “early on” in the representation, and instead only attempted to contact the witnesses several years later, at which time the witnesses could not be located, where counsel has a duty to undertake a reasonable investigation, since the decision not to investigate in a timely manner was unreasonable.

Counsel’s performance was deficient here, since he did not investigate potential mitigation witnesses in a timely manner. It was undisputed that Petitioner asked counsel to contact Angel Blankenship and Erin Davis “early on” during counsel’s representation of Petitioner, which began in 2012. App. 176, ll. 18-22. Instead counsel waited until several years had passed, by which time he was unable to find the witnesses, and in consequence they did not testify at Petitioner’s 2016 sentencing hearing. Counsel offered no reason for his failure investigate these witnesses in a timely manner.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of counsel, a defendant must show that counsel’s performance was deficient, and that “the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (internal quotations omitted) (quoting *Strickland*, 466 U.S. at 687).

A criminal defense attorney has a duty to conduct a “reasonable investigation.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). “This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Ard v. Catoe, supra*).

A decision not to investigate must be assessed for reasonableness under the circumstances. *Wiggins v. Smith*, 539 U.S. 510, 533 (2003) (citing *Strickland*, 466 U.S. at 691). In *Wiggins*, the United States Supreme Court observed that defense counsel put up a “halfhearted mitigation case,” and found counsels’ failure to thoroughly investigate was ineffective assistance where it “resulted from inattention, not reasoned strategic judgment.” *Id.* at 526. *See also Bobby v. Van Hook*, 558 U.S. 4, 9 (2009) (per curiam) (no ineffective assistance of counsel where counsel contacted mitigation witnesses “early and often”).

“[S]entencing is a critical stage of the criminal proceeding at which [a defendant] is entitled to the effective assistance of counsel.” *Gardner v. Florida*, 430 U.S. 349, 358 (1977). The Sixth Amendment provides a right to counsel during sentencing in both noncapital and capital cases. *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). “Even though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because any amount of additional jail time has Sixth Amendment significance.” *Id.* (internal quotations and alterations omitted) (quoting *Glover v. United States*, 531 U.S. 198, 203 (2001)).

At the PCR hearing, counsel did not have a strategic reason for failing to investigate and contact the mitigation witnesses provided by Petitioner. Instead, counsel admitted that by the

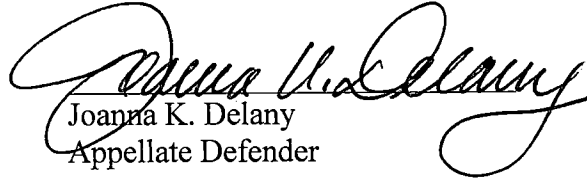
time he acted on the information, it was too late. “[N]obody in the contact information that she gave me early on could I still get in contact with later on in the case.” App. 215, ll. 6-8. This was deficient performance, since counsel should have attempted to contact these witnesses earlier, when their contact information was still fresh. Counsel’s decision not to investigate in 2012 or 2013, when the information was fresh, was unreasonable. Had counsel reached out to these witnesses earlier, he could have gotten identifying and contact information that would allow him to call the witnesses when they were needed.

Petitioner was entitled to the effective assistance of counsel at her sentencing hearing. *Gardner v. Florida*, 430 U.S. at 358. Here, however, Petitioner received the maximum sentence on the charges, and the same sentences as her codefendant, even though her codefendant was alleged to have abused Petitioner and the children. App. 211, ll. 23-24. Petitioner was prejudiced because had counsel presented proper evidence in mitigation, there is a reasonable probability that Petitioner would not have received the maximum amount of imprisonment allowable. Moreover, Petitioner submits that she should not be penalized for the fact that the testimony of these witnesses was not presented at her PCR hearing, since she has been in prison and unable to find them given her incarceration.

“Attorneys have an obligation to explore all readily available sources of evidence that might benefit their clients.” *Brown v. Sternes*, 304 F.3d 677, 693 (7th Cir. 2002). Counsel’s failure to timely investigate the mitigation witnesses here was ineffective assistance of counsel that prejudiced Petitioner.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.


Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of February, 2020.

STATE OF SOUTH CAROLINA

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SARA HODSON,

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V.

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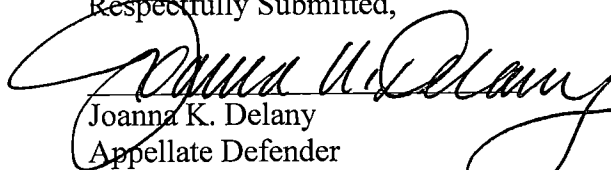
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sara E. Hodson 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 Brooks P. Goldsmith, which was held on June 27, 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 Sara E. Hodson.

Respectfully Submitted,

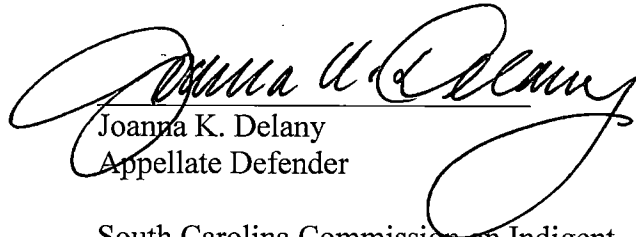


Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

This 11th day of February, 2020.

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."

A handwritten signature in black ink, appearing to read "Joanna K. Delany", written over a horizontal line.

Joanna K. Delany
Appellate Defender

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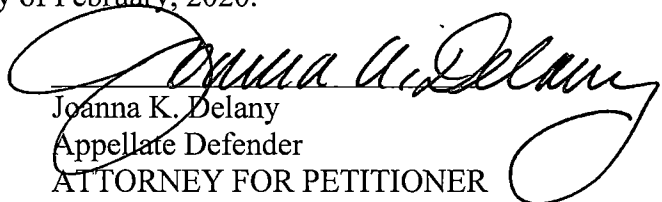
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RESPONDENT

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 Taylor Z. Smith, 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 Sara E. Hodson, #367533, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 11th day of February, 2020.


Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 11th day of February, 2020.

Mary deejire (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.