

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

WILLIAM RICHARD GREENE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001222

JOHNSON PETITION FOR WRIT OF CERTIORARI

Joanna K. Delany
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

RECEIVED

JAN 03 2019

S.C. SUPREME COURT

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred in finding counsel provided effective representation where counsel admitted he did not undertake an independent investigation because petitioner did not assert his innocence where there was evidence petitioner was mentally ill, and petitioner did not even remember confessing, since counsel had a duty to undertake a reasonable investigation, which included interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.....6

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL10

ISSUE PRESENTED

Whether the PCR court erred in finding counsel provided effective representation where counsel admitted he did not undertake an independent investigation because petitioner did not assert his innocence where there was evidence petitioner was mentally ill, and petitioner did not even remember confessing, since counsel had a duty to undertake a reasonable investigation, which included interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case?

STATEMENT

Petitioner was indicted by a Lancaster County Grand Jury on July 19, 2012, for the offenses of murder and possession of a weapon during the commission of a violent crime. App. 123 – 126. Michael Lifesy represented petitioner and Douglas Barfield represented the state. App. 1.

On April 15, 2012, the eighty-seven-year-old decedent, Verdie Mackey, was stabbed to death in her home. App. 11, ll. 16-21; App. 123 – 124. Petitioner was the decedent's great-grandson. App. 12, ll. 3-7. At the time, petitioner had four children, was employed doing "tree work," and had been residing with his in-laws on Neill Road. App. 9, ll. 8-24; App. 12, ll. 8-15.

Benji Sims (Sims) was the boyfriend of petitioner's mother-in-law. App. 12, ll. 8-10. Sims told police that he drove petitioner to the decedent's home on the morning she was killed. App. 12, ll. 19-23. According to Sims, he stayed in the car while petitioner went into the decedent's home. App. 12, l. 23 – 13, l. 1. Sims claimed he became impatient and went to the house to see what was taking petitioner so long, and petitioner said he needed a few more minutes. App. 13, ll. 2-6.

Sims subsequently gave petitioner a ride back to his mother-in-law's house. App. 13, ll. 7-12. After they got home, petitioner showed his mother-in-law a six-hundred-dollar check that he said the decedent gave him for his birthday. App. 13, ll. 19-23. The decedent was found dead from "grievous injuries" twelve hours later. App. 14, ll. 4-25.

According to the solicitor, the decedent's bedroom had been ransacked and there was a boot impression in a pool of blood. App. 15, ll. 6-10. Police recovered a pair of boots that appeared to have blood on them from the house on Neill Road, along with bloody clothes and some rings that belonged to the decedent. App. 16, l. 21 – 17, l. 22. According to SLED

examiners, the boots “could have made that [footwear] impression in the blood in the [decedent’s] hallway.” App. 17, ll. 6-9.

Police also found a check in petitioner’s wallet that was written out to petitioner from the decedent’s checking account for six hundred dollars. App. 17, l. 23 – 18, l. 5. Law enforcement detained and interrogated petitioner, and he confessed to killing the decedent and told officers where they could find two knives used in the killing. App. 18, ll. 6-25. Police officers found one of the knives where petitioner said it would be. App. 18, ll. 9-20.

On November 3, 2014, petitioner pleaded guilty as indicted before the Honorable DeAndrea Benjamin. App. 1. The court found that petitioner was competent but noted he was mentally ill. App. 4, l. 23 – 5, l. 14. Defense counsel told the court of petitioner’s history of severe drug addiction which included heavy use of crack cocaine and painkillers in the days leading up to the decedent’s death. App. 43, l. 17 – 44, l. 17. The court sentenced petitioner to life in prison for murder and five years for the weapons offense, to be served concurrently. App. 127 – 128.

On March 24, 2016, petitioner filed an application for post-conviction relief (PCR). App. 60 – 66. The state made a return on May 23, 2016. App. 67 – 70. A hearing was held on the matter before the Honorable Roger E. Henderson. App. 71. Nathan Sheldon represented petitioner and Deshawn Mitchell represented the state. App. 71.

Petitioner alleged that defense counsel was ineffective for failing to investigate. App. 77, l. 22 – 78, l. 9. Petitioner said defense counsel “didn’t go around and ask, get no party on my behalf to come speak on my behalf. He didn’t field some questions I asked for him, like provided more evidence for me and for [] the confession they said I made . . .” App. 78, ll. 5-8. Petitioner

expressed concern that the alleged confession was not handwritten and was not recorded, since he did not remember giving a confession. App. 78, ll. 12-18; App. 83, ll. 17-21.

Q. You don't remember giving a confession at all?

A. No, sir, I don't.

App. 83, ll. 22-23.

Petitioner explained that despite the failure to investigate, defense counsel “was trying to talk me into pleading guilty anyway . . . because he said the confession had hurt me.” App. 80, ll. 7-9. Petitioner said he kept urging counsel to investigate the alleged confession: “I kept asking him, well, prove that I, I said that because I don't remember saying that in that confession.” App. 80, ll. 9-11. Petitioner said counsel told him he would get no more than forty-five years if he pleaded guilty, and that he would have gone forward with trial if he knew he was facing a life sentence. App. 82, ll. 1-20.

Petitioner's defense counsel denied promising him forty-five years or less at a plea, but when he was asked to describe the investigation he performed he replied, “**I'll be honest. There wasn't a whole lot of in-depth investigation needed from a factual standpoint. I mean, from the beginning of this case [petitioner] never denied to me committing the crime.**” App. 90, l. 24 – 91, l. 3 (emphasis added).

Defense counsel also said that he believed the confession would have been admitted at trial because petitioner signed a *Miranda*¹ waiver and signed the confession. App. 93, l. 21 – 94, l. 2. Defense counsel agreed the confession was not recorded and had been typewritten by police officers. App. 93, ll. 13-18.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

The PCR court denied petitioner relief and issued an order of dismissal on June 18, 2018.² App. 108 – 122. Regarding the claim that counsel was ineffective for failing to investigate, the order of dismissal states that counsel’s investigation, which included reviewing the discovery and speaking “to several people,” was “beyond reasonable.” App. 117 – 118. The order also states petitioner failed to show prejudice because he did not “show what beneficial information could have been discovered” had counsel “done more investigation.” App. 118.

This petition for writ of certiorari follows.

² The court issued an order of dismissal as to all of petitioner’s ineffective assistance claims, except his claim regarding an illegal sentence. App. 108 – 122. Because petitioner was sentenced to life without parole on the murder, the state consented to his five-year sentence for possession of a weapon during the commission of a violent crime being vacated in accordance with S.C. Code Ann. § 16-23-490. App. 121. The court vacated the five-year sentence. App. 121.

ARGUMENT

The PCR court erred in finding counsel provided effective representation where counsel admitted he did not undertake an independent investigation because petitioner did not assert his innocence where there was evidence petitioner was mentally ill, and petitioner did not even remember confessing, since counsel had a duty to undertake a reasonable investigation, which included interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.

Counsel's failure to perform any investigation was deficient. The fact that petitioner did not assert his innocence does not excuse counsel's obligation, particularly given petitioner's undisputed history of mental illness, which was recognized by the plea court. App. 4, ll. 23-25;

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*).

Counsel admitted he did not perform an independent investigation and said this was because petitioner did not deny committing the crime. App. 90, l. 21 – 91, l. 3. However, petitioner did not remember confessing to the crime at all. App. 83, ll. 22-23. The PCR court erred when it found counsel's investigation was "beyond reasonable," since counsel admitted he did not undertake an independent investigation of the facts.

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). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

“In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel’s deficient performance prejudiced the applicant’s case.” *McKnight v. State*, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008) (citing *Strickland*, 466 U.S. at 687). “[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill*, 474 U.S. at 58.

To establish prejudice when challenging a guilty plea, a PCR applicant must prove “there is a reasonable probability that, but for, counsel’s errors, the defendant would not have pled guilty, but would have gone to trial.” *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). “The crux of the inquiry is whether counsel’s ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial.” *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

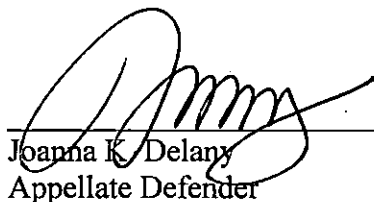
Petitioner said he would not have pleaded guilty if he knew he could receive life in prison. App. 82, ll. 1-20. Petitioner explained that counsel urged him to plead guilty because of the confession, and that he kept asking counsel to investigate the confession because he did not remember making it. App. 80, ll. 7-11. However, counsel admitted he did not perform an investigation into the facts of the case.

Petitioner was prejudiced because absent the confession that counsel failed to investigate, the evidence against petitioner was not overwhelming. Without the knowledge that he could challenge the confession, petitioner felt coerced to plead guilty.

Counsel's performance deprived petitioner of "a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Hill*, 474 U.S. at 56. Petitioner was therefore prejudiced by counsel's deficiency because he established a reasonable probability that, but for counsel's errors, he would not have pleaded guilty, but would have gone to trial. *Strickland*, 466 U.S. at 694; *Harden*, 360 S.C. at 405, 602 S.E.2d at 49.

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 3rd day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

WILLIAM RICHARD GREENE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

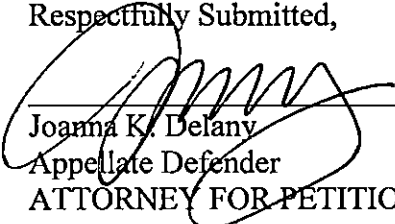
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Richard Greene 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 Roger E. Henderson, which was held on January 8, 2018, 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 William Richard Greene.

Respectfully Submitted,

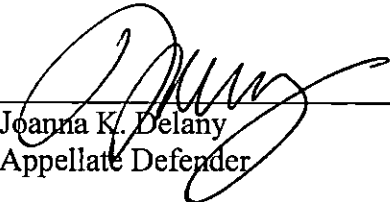


Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of January, 2019.

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."



Joanna K. Delany
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

This 3rd day of January, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

WILLIAM RICHARD GREENE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

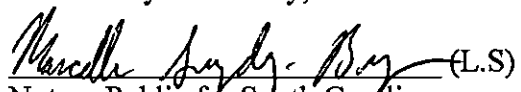
CERTIFICATE OF SERVICE

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 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 William Richard Greene, #338643, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 3rd day of January, 2019.



Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2019.



Notary Public for South Carolina
My Commission Expires: July 26, 2028