

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
Court Of Common Pleas

The Honorable Robin B. Stilwell, Trial Judge
The Honorable G. Thomas Cooper, Jr., PCR Judge

Appellate Case No. 2020-000343

Ranata Jones,

Respondent,

v.

State of South Carolina,

Petitioner.

**MOTION TO SUPPLEMENT APPENDIX AND
PERMIT INCLUSION OF THE 911 CALL**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Counsel for the State moves for this Court to allow the State to supplement the Appendix and permit inclusion of the 911 call in the supplemental appendix. In support of this motion, the State would present the following:

Procedural History

Ranata Jones (hereafter “Jones”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its February 2017 term, the Spartanburg County Grand Jury indicted Jones for driving

under the influence (2017-GS-42-00979). Jones was represented by E. Joshua Schultz, Esquire (hereafter “Counsel”). Assistant Solicitors Andrew P. Miller and Sydni D. Kallam from the Seventh Circuit Solicitor’s Office represented the State. On August 9, 2017, the case proceeded to trial before the Honorable Robin B. Stilwell and a jury. The jury found Jones guilty of the crimes charged. Judge Stilwell sentenced Jones to eighteen months’ imprisonment, provided that upon the service of ninety days, the balance would be suspended with probation for two years.

Jones timely filed a PCR application on August 6, 2018, alleging:

1. Ineffective assistance of trial counsel, in that:
 - a. “[Applicant] contends that she vehemently requested and expressed that Counsel request for medical records, [illegible due to poor scanning], and documentation from the automobile insurance company and photos of the automobile incident so that Counsel could solidify her alibi and make a strategic and solid argument proving her actual, factual, and legal innocence before the jury. Counsel assured defendant that he would compel, compile and gather all information and documentation that the defendant requested to be investigated for trial preparation.”
 - i. Defendant expressed to Counsel that she was not the driver of the vehicle the night of the accident and that she was the passenger. She expressed to counsel that the passenger side front windshield was damaged due to her head hitting the windshield, which is consistent to her medical records, the picture of the car, as well as the statement from the actual driver, Randall L. Scott and the third rear passenger, Kimberly Hughes Lyles.”
 - ii. “Counsel failed to make any reasonable search into any of the Defendant’s request for this exculpatory evidence. . . . The jury was never presented nor notified of any of this evidence.”
 - iii. Applicant asserts she is entitled to a presumption of prejudice under *United States v. Cronin*, 466 U.S. 648 (1984).
 - b. “Defendant avers that she gave counsel all information and physical contact to several witnesses that were part and parcel to the crime alleged and they were available, ready, and willing to be interviewed, subpoenaed, and able to stand trial. These favorable witnesses also contacted counsel on numerous accounts. Counsel expressed to these witnesses that he would interview them and have them ready available for trial but at no time did Counsel reach out to contact either witness prior to trial. However Defendant did get declarations, statements, affidavits to Counsel with witnesses available and present. Counsel never took

any measures to correspond with either of the witnesses in preparation for trial.”

- i. “Specifically, Kimberly H. Lyles, stated that she was the rear passenger in the vehicle and that Defendant was in front of her in the front passenger seat when they left the party and when the accident actually occurred.”
 - ii. Counsel did not subpoena or call Lyles as a witness, and Applicant appears to take exception to the State’s calling of Randal L. Scott.
- c. “Counsel failed to file Notice of Appeal as expressed by Defendant and others.”
- i. “It is the defendant’s contention that Counsel would file an appeal on her behalf challenging the sufficiency of the evidence; the Court’s denial of the direct verdict, and the question from the jury. Defendant expressed to Counsel at the sentencing trial after the Court pronounced its order of sentencing, that Counsel file an appeal, Counsel assured defendant and her family that he had several issues he would address and that he only had 10 days to put in a Notice of Appeal.”
 1. “Defendant’s family and others contacted Counsel 3 days following sentencing to check the status of appeal and Counsel stated he would return the call and update them later. Defendant also had family to call Counsel on 3-way to check the status but only to be told by Counsel’s secretary that Counsel was not in. When one week, 7-days passed Counsel refused to talk with defendant [or] her family and ignored [their] numerous messages to him.”
- d. “Counsel failed to understand the law and facts of the case and failed to conduct pre-trial reasonable investigative facts.”
- e. “Counsel failed to allow defendant the fundamental right to testify as expressed before trial and during trial.”
- i. “At the conclusion of trial Counsel elected to address the Court stating he would not be calling his client to testify nor call any witnesses. At this instance defendant alerted Counsel that she wanted to and desired to testify. Counsel pulled one over on the defendant by expressing to her that if she desired to testify it would allow the Court and State to address her prior arrest and convictions of drug and alcohol offenses. He stated the jury would find defendant guilty and convict her in a heartbeat. Counsel stated to defendant that he did not and was not prepared for that.”
2. “For good cause and in good faith, the [Applicant] contends actual, factual, and legal innocence.”

The State made its Return on June 12, 2019, requesting an evidentiary hearing. An evidentiary hearing occurred on October 11, 2019, before the Honorable G. Thomas Cooper, Jr.

Assistant Attorney General Jacob Isenberg of the South Carolina Attorney General's Office represented the State. Susannah Ross, Esquire represented Jones.

On January 27, 2020, the PCR court granted relief, finding Counsel was ineffective for failing to reasonably investigate into the 911 call which, the Court found, would have led to Counsel actually obtaining the 911 call recording. Additionally, the Court found Counsel was ineffective for failing to call Kimberly Hughes (hereafter "Hughes") to testify at trial, stating that Hughes testified she was never called or interviewed by Counsel, though Counsel testified that he thought her testimony would be unconvincing because she was asleep. Concerning both issues, the court found that no strategy was utilized because he failed to obtain the evidence and Applicant was prejudiced as a result, finding that the jury likely would have acquitted Jones because the evidence that was not presented was favorable to her.

The State submitted a Motion to Reconsider, Alter, or Amend, Pursuant to Rule 59(e), SCRPC, filed on January 27, 2020. The Reply to the State's Motion to Reconsider was filed on February 17, 2020. The Order Denying Respondent's 59(e) Motion or Reconsider, Alter, or Amend was issued on February 24, 2020. The Notice of Appeal was filed on February 28, 2020 and the Petition for Writ of Certiorari and Appendix were filed on July 1, 2020.

Motion to Supplement

The Appendix does not contain the completed clerk's records from the trial court case. Without these documents, the appellate record in this PCR matter is incomplete. Therefore, Petitioner submits the complete clerk's records should be included in the Appendix to the Petition for Writ of Certiorari, because some of the inadvertently omitted clerk's records deal directly with the 911 call issue. These records were also attached to the return as an exhibit and they were before the PCR court in rendering its decision.

Inasmuch as the complete clerk's records are relevant and pertinent material under Rule 243(f), SCACR, that should be included in the Appendix, counsel moves this Court to allow Petitioner to include the same in a Supplemental Appendix, provisionally filed along with this Motion.

Motion to Permit the Inclusion of a Copy of the 911 Call

The Appendix also does not contain a copy of the 911 call. Though the 911 call was not entered as an exhibit at the PCR hearing, it was played at the PCR Hearing and deals directly with the first issue raised on appeal. (PCR Tr. 19, line 10). Thus, the State submits that the Appendix cannot be properly completed without its inclusion and must be included in the supplemental appendix. Therefore, to enable the proper completion of the Appendix, the State asks this Court to permit the parties to include the copy of the PCR Transcript as State's Exhibit # A and a copy of the 911 tape as State's Exhibit # B obtained from the Seventh Circuit Solicitor's Office during the preparation of this PCR appeal and which appears to be a true, accurate, and complete reproduction of the 911 audio recording played during the PCR hearing. The State has spoken with appellate counsel for Jones, Susan Hackett, Esquire, and she consents to this request.

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WHEREFORE, as the Appendix is incomplete, counsel for the State requests this Court: (1) grant the motion to allow the State to supplement the Appendix with the completed clerk's records, (2) grant the motion to permit the inclusion what is believed to be a complete and accurate copy of the 911 call, and (3) accept the State's Supplemental Appendix for filing today.

Respectfully submitted,

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By: /s Chelsey F. Marto
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