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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Roger L. Couch, Circuit Court Judge

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APR 24 2013

S.C. Supreme Court

GILES BELCHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213072

JOHNSON PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

INDEX

INDEX 1

ISSUE PRESENTED2

STATEMENT3

ARGUMENT4

CONCLUSION8

PETITION TO BE RELIEVED AS COUNSEL.....9

ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not adequately investigating Petitioner's case prior to trial that another person was the perpetrator of the sexual offenses against the four year old developmentally delayed girl?

STATEMENT

In April 2007, Giles Belcher, appellant, was indicted by the Spartanburg County Grand Jury for committing criminal sexual conduct with a minor in the first degree between the dates of May 1, 2001 through August 31, 2002. On May 7, 2007, appellant proceeded to trial before the Honorable Judge J. Derham Cole and a jury. Belcher was represented by Kathleen J. Hodges, and the state was represented by Susan Shaver Reese and Jennifer A.M. Jordan. The jury convicted appellant as charged and Judge Cole sentenced him to incarceration for thirty years with credit for time served. App. 332, ll. 23 – App. 333, ll. 8.

Belcher's attorney filed a notice of appeal. The appeal was perfected with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967) by the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Belcher's conviction and sentence on February 8, 2010. State v. Belcher, Op. No. 2010-UP-112.(filed February 8, 2010). App. 516.

On January 31, 2011, Belcher filed an application for post-conviction relief (PCR). The state filed a return on February 15, 2012. An evidentiary hearing was held on June 15, 2012 before the Honorable Roger Couch. Belcher was represented by Rodney W. Richey, and the state was represented by Ashleigh R. Wilson. App. 460. On September 18, 2012, Judge Couch issued an order denying Belcher's PCR application and dismissing it with prejudice. App. 527. Belcher's attorney filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not adequately investigating Petitioner's case prior to trial that another person was the perpetrator of the sexual offenses against the four year old developmentally delayed girl.

Giles Belcher was charged with sexually assaulting his developmentally delayed four year old daughter between May 1, 2001 and August 31, 2002. App. 529; App. 121, ll. 15 – App. 123, ll. 25. At trial, the child testified that her father put his “weeny” in her butt, between her legs, and in her mouth. App. 127, ll. 17 – 25; App. 130, ll. 7 – App. 132, ll. 25.

After the jury was selected, counsel for appellant argued her motion to allow cross-examination of the State's witnesses and testimony regarding Isaac Stewart and also regarding Darryl and Larry Riddle as possible perpetrators of the sexual assault on the child. Stewart was the child's uncle and was in the home during the incident period although the child never accused him. However, the child was developmentally delayed and not very verbal. The judge denied that motion. App. 40, ll. 17 – App. 45, ll. 7.

Defense counsel then argued to introduce evidence that the mother's boyfriend, Darryl Riddle, who moved into the home after the parents separated, was accused by the child of sexual assault. Riddle's brother, Jerry, also moved into the home along with his brother, and was accused as well. However, these incidents occurred in 2005, three years after the child accused her father, and when she was returned to live with her mother. App. 45, ll. 8 – App. 50, ll. 13.

The jury found Belcher guilty. At his sentencing, Belcher maintained his innocence. App. 332, ll. 16 – 25.

At his PCR hearing, Belcher testified that his trial counsel was ineffective because she did not properly represent him. She did not properly investigate his case as he gave her names of

witnesses to call at trial which she did not do. Facts would have come out that were favorable to him. App. 465, ll. 2 – App. 467, ll. 24. Belcher explained that other people were accused as his wife said that her brother, Isaac Stewart, did it. App. 468, ll. 1 – 19; App. 41, ll. 16 – 20. .

Trial counsel testified at the PCR hearing that she did talk with several witnesses and issued subpoenas for them for trial. They included Pastor Gary Long, Tammy Armstrong, and Scottie Belcher who was the brother of Petitioner. App. 494, ll. 1 – App. 495, ll. 19. Scottie Belcher told her that the child told him that Isaac Stewart performed the sexual assaults. However, the trial judge denied her request to allow Scottie Belcher to testify to this. App. 495, ll. 1 – 25.

Pastor Gary Long testified at the PCR hearing that he did not know Belcher before this incident. However, Belcher has been very active in his church. Belcher told him all about this incident. The pastor never saw any evidence that Belcher had this tendency. App. 480, ll. 1 – App. 482, ll. 19.

Genie Belcher Bishop testified that she was Giles Belcher's sister. She was frequently around Belcher's family during this incident period. She heard that the child said Isaac did these sexual things to her. Ms. Bishop was willing to come to court. She never talked with Belcher's attorney although she was willing to talk with her. App. 483, ll. 5 – App. 487, ll. 25.

Scottie Belcher testified at the PCR hearing that he was the brother of Giles Belcher. Scottie was around his brother when these incidents allegedly occurred. This information that Isaac was the perpetrator was prevalent in his family. At a birthday party, the child came running up to him and told him that Isaac had done these things to her. Scottie did not talk to Belcher's attorney about this. App. 488, ll. 6 - App. 491, ll. 20.

The PCR judge ruled that trial counsel was not ineffective for failing to investigate Belcher's case prior to trial. The judge found that trial counsel gave credible testimony that she

investigated the allegation that Isaac Stewart committed the crime. The PCR judge ruled that Belcher presented no evidence as to what would have resulted from further investigation by trial counsel. App. 525.

The PCR judge found that Belcher's testimony was not credible while finding trial counsel's testimony to be credible. The judge found trial counsel to be thoroughly competent in her representation of Belcher. App. 520. The judge denied the PCR. App. 527.

Where ineffective assistance of counsel is alleged as a ground for relief, 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Supreme Court held that for purposes of a claim of ineffective assistance of counsel, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.

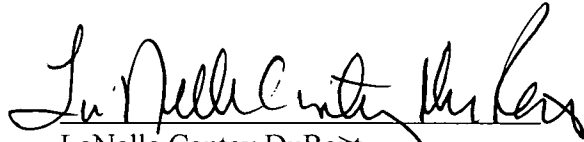
The failure to investigate possible defenses constitutes ineffective assistance of counsel. Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991). Trial counsel is ineffective if his failure to present evidence alters the outcome of the trial. Hicks v. State, 314 S.C. 280, 443 S.E.2d 907 (1994).

Trial counsel was ineffective for not doing a more thorough investigation. She did not talk with Belcher's sister who was willing to come to court. There was no indication she talked with the Riddle brothers regarding the child's allegations about them.

CONCLUSION

Based on the above, certiorari should be granted, and the convictions and sentences reversed, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a horizontal line underneath it.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
ROGER L. COUCH, CIRCUIT COURT JUDGE

GILES BELCHER,

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STATE OF SOUTH CAROLINA,

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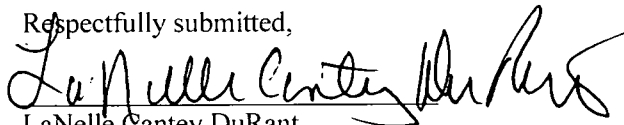
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Giles Belcher states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 15, 2012. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Giles Belcher.

Respectfully submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2013

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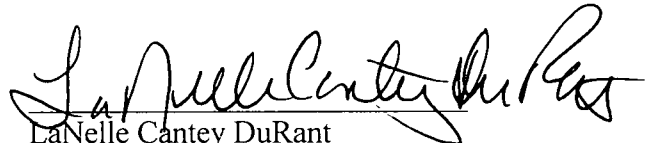
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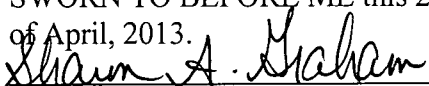
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CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Giles Belcher, #289817, at Broad River Correctional Institution this 24th day of April, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of April, 2013.
 (L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2022.