

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Samuel L. Woody — PETITIONER
(Your Name)

vs.

State of New Jersey — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Superior Court of New Jersey Appellate Division
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel L. Woody
(Your Name)

721 Kensington Avenue
(Address)

Plainfield, New Jersey, 07060
(City, State, Zip Code)

(908) 531-4778
(Phone Number)

QUESTION(S) PRESENTED

While the PCR court did not address the conflict of interest issue in its decision, is counsel deemed ineffective for failing to investigate and call a witness, one with whom counsel has a potential conflict of interest, who could speak directly to the alleged victim's history and pattern of vindictive behavior and false allegations toward defendant and others?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Union County Prosecutors Office, Elizabeth NJ, Acting Prosecutor Lyndsay V. Ruotol

Hassen Abdellah Esq. 747 Westminster Avenue, Elizabeth, NJ 07205

RELATED CASES

State of New Jersey v. Samuel Woody Docket No. A-4281-13T1 Direct Appeal.

State of New Jersey v. Samuel Woody Docket No. A-0229-18T1 On Appeal
Denying Post-Conviction Relief of the Superior Court of New Jersey, Middlesex
County.

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RPC 1.7

RPC 1.7 (a) 2

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11/14/19.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATUTES AND RULES

N.J.S.A. 2C:14-3b

N.J.S.A. 2C:30-2

N.J.S.A 2C:51-2a(1)

Rule 3:22-10

RPC 1.7

RPC 1.7 (a) 2

STATEMENT OF THE CASE

K.C. lived in Plainfield, NJ in July of 2011. (2T 59-24 to 25). She lived with her son and was solely responsible for his care. (2T 60-1 to 10). K.C. had been dating a Plainfield police officer named Fernando Sanchez for over a year. (2T 60-17 to 25). A few months into their relationship, K.C. discovered Sanchez was married. (2T 62-6 to 16). She broke off the relationship for a little while but went back to Sanchez. (2T 63-4 to 8). About seven or eight months into their relationship, K.C. began to suspect that Sanchez was involved with a third woman. (2T 63-9 to 17).

On July 23, 2011, K.C. was driving to a club with a friend when she saw Sanchez's police car outside what she believed to be the home of the third woman. (2T 63 to 64-25). At this time, their relationship was "rocky" because K.C. had lost her job in May, and she had been contacting Sanchez for help who was not responding. (2T 62-5; 2T 65-11 to 18).

K.C. went into the police car and took Sanchez's cell phone. (2T 66-19). She took it because she was upset but planned on returning it. (2T 66-23 to 67-1). She went through Sanchez's text messages and confirmed he was involved with another woman. (2T 67-11 to 15). She called the other woman's number and asked for Sanchez, but he would not get on the phone. (2T 67-20 to 68-14). Connelly left for the club with her friend, taking Sanchez's phone with her. (2T 69-7 to 11).

While at the club, K.C. received a phone call on her personal cell phone from the defendant. (2T 69-12 to 22). She "knew" of defendant, who was a police officer

with Sanchez. (2T 70-1 to 11). Defendant asked K.C. to return the stolen phone and told her that she would not be arrested. (2T 72-7 to 20).

After the club closed, K.C. went to a restaurant and met defendant. (2T 73-17 to 25). She tried to hand defendant the phone, but he asked her to meet him at the police station. (2T 74-1 to 4). At the police station, defendant told K.C. that she had to come inside. (2T 74-14). She went into a room with defendant and another police officer, Lieutenant Urbanski. (2T 74-17 to 20). K.C. told defendant and Urbanski that she was going to return the phone and that she had taken it because she was upset with Sanchez. (2T 75-6 to 18). K.C. was fingerprinted, photographed, and served with a criminal summons and complaint. She then left the station. (2T 76-4 to 77-5).

Soon after, defendant met K.C. outside the station and asked to speak with her "about what was going on." (2T 77-8 to 23). After dropping her friend off, K.C. met defendant and followed him, driving behind his police car. (2T 78-11 to 80-8). They parked their cars in a gravel driveway behind a house. (2T 81-12 to 82-1). It was about 4:20 a.m. (2T 82-2 to 5).

K.C. said defendant told her she could get five years in prison for going into a police car. (2T 83-1 to 3). K.C. asked defendant to get rid of the paperwork, but defendant told her he could lose his job for that. (2T 84-23 to 85-4). According to K.C., she went to leave when defendant requested to see he vaginal area. (2T 85-5 to 18). K.C. told defendant he could trust her to not tell on him for helping her out.

(2T 85-19 to 20). Defendant insisted that she would have to do something to make him trust her, (2T 85-22 to 86-12) to which K.C. agreed. (2T 88-16 to 18).

Defendant asked K.C. if she were recording their conversation. (2T 86-13 to 21). This gave her the idea to actually record it. (2T 86-22 to 24). She started the record feature on her cell phone and placed it in the ashtray of her car. (2T 87-1 to 8). The recording was played in court and discussed in detail. (2T 90-17 to 119-9). K.C. said defendant directed her to touch her vaginal area and that he exposed his penis and masturbated. (2T 102-18 to 23; 2T 109-18 to 110-8).

K.C. did the sexual acts on the recording because she had a son and did not want to go to prison. (2T 119-8 to 12). She filed a civil suit against the Plainfield Police Department, requesting relief in the form of one million dollars. (2T 122-14 to 20; 3 T 150-17 to 153-4). She said she did not care whether she received any monetary reward from the lawsuit, but also admitted she had no intention to withdraw her civil complaint. (3T 152-21 to 153-4).

K.C. said the defendant served her with “upgraded charges” the following day. (2T 119-16 to 22). She asked the defendant about what they did to which he replied, “Oh, that never happened.” (2T 119-23 to 120-1).

Defendant had been employed by the City of Plainfield as a police officer for thirteen years and held the rank of sergeant. (4T 45-1 to 22). He knew of K.C. on July 24, 2011, and the two had a social relationship. (4T. 46-23 to 48 -15). Defendant had been out to eat with her and the two had been to each other’s homes.

(4T 48-16 to 22). Defendant had also given her money for gas, food, and bills on numerous occasions. (4T 48-23 to 49-10).

Sometime during the night of July 23, 2011, or early morning hours of July 24, 2011, defendant was contacted by Sanchez about a stolen cell phone. (4T 50-7 to 53-19). Sanchez met with defendant, and defendant's superior, Urbanski, and reported that he believed K.C. stole his cell phone out of his police vehicle. (4T 54-1 to 11). At that time, defendant did not know K.C. was having a relationship with Sanchez. (4T 50-2 to 6).

Defendant called K.C. and told her that there was an allegation that she had taken the cell phone. (4T 54-15 to 18). K.C. admitted that she had the phone. (4T 54-18 to 19). Defendant asked her to bring the phone back to the station and return it to Sanchez. (4T 54-19 to 21). Eventually, K.C. came to the police station and met with defendant and Urbanski. (4T 56-14 to 57-5). After they discussed the allegations, Urbanski directed defendant to place K.C. under arrest and charge her for taking the cell phone out of the car. (4T 57-19 to 22). Defendant drafted a summons and complaint against K.C. for theft. (4T 57-23 to 61-8). When K.C. was leaving the station, she asked if she could come by his place. (4T 62-13 to 20). K.C. appeared upset so defendant agreed. (4T 62-20 to 25).

When defendant's shift ended, he went home, got a shower, and poured himself a glass of wine. (4T 63-1 to 180. At some point, K.C. knocked on the door. (4T 63-22 to 64-2). She wanted to come inside, but defendant refused "because often times when she comes, and we spend time together she wants to spend the night."

(4T 65-4 to 6). Defendant then stepped outside and they talked. (4T 65-10 to 16).

K.C. was apologetic and appeared to be more upset about defendant discovering her relationship with Sanchez. This surprised and disappointed defendant. (4T 65-16 to 67-5).

During the discussion, defendant and K.C. “became a little intimate.” (4T 68-2 to 10). Consensual sexual acts between himself and K.C. ensued which were recorded by K.C. (4T 68-11 to 94-8). He denied directing K.C. to touch herself or that he touched his penis. (4T 79-22 to 80-4; 4T 87-11 to 22). Defendant explained that the recorded conversation had to do with him helping her out with bill money and debts she incurred with collection agencies. (4T 84-21 to 24; 6T 211-04 to 8). The next day defendant went to K.C. house to serve her with amended charges, which the prosecutor had upgraded to burglary. (4T 94-3 to 95-15).

After his conviction, defendant filed a direct appeal. In his appeal defendant argued that failure to charge a material element of second-degree official misconduct was plain error, failure to charge lewdness as a lesser-included offense of criminal sexual contact was plain error, and prosecutorial misconduct denied defendant of a fair trial. The Appellate Division denied each of defendant’s claims.

On post-conviction relief defendant argued that, trial counsel was ineffective for failing to adequately investigate and prepare for trial. Specifically, trial counsel failed to look into Sanchez as a corroborating witness to defendant’s theory that K.C. was merely looking for financial support and had no qualms about exploiting others to achieve her means. (9T 4-4 to 6-16). Defendant’s whole theory was that

the recording was out of context and that K.C. used manufactured criminal liability against defendant as a basis of support for her one-million-dollar civil suit.

The court determined the recording could only be interpreted against defendant's interest. (9T 7-2 to 22). Additionally, the court determined there was no showing of prejudice, or that the outcome would have been different, had Sanchez been called to the stand, (9T 8-8 to 15). Defendant's petition for post-conviction relief was denied. (9T 13-17 to 19).

Defendant argues that he received ineffective assistance of counsel during the pre-trial stage of his criminal proceedings. Defendant contends that counsel failed to investigate Officer Sanchez as a potential witness, one that would have lent credibility to defendant's version of events, and to a different outcome at trial. Additionally, the relationship between trial counsel, and counsel who represented Sanchez during the investigation, brings the omission of Sanchez's testimony at trial into even further scrutiny. The possibility that defendant's counsel labored under a conflict of interest with Sanchez's attorney must be explored under a standard of an appearance of impropriety.

An evidentiary hearing becomes necessary if there is a dispute of fact respecting matters which are not on the record. State v. Preciose, 129 N.J. 451 (1992). The dispute of fact in the case at hand are two-fold. First, the issue is whether the attorney representing the defendant even investigated Sanchez as a defense witness to corroborate defendant's theory of the case; and secondly, if he did investigate, did he choose not to call Sanchez due to a conflict of interest. Defendant

submits an evidentiary hearing is required in order to establish a record of counsel's prejudicial inaction on this issue.

The defendant claims that the trial court erred when it failed to grant him an evidentiary hearing on his ineffective assistance of counsel claims. Rule 3:22-10 distinguishes when there is judicial discretion and when there is judicial mandate to conduct such a hearing. The Supreme Court found that "A defendant's claim of ineffective assistance of trial and appellate counsel is more likely to require an evidentiary hearing because the attorney's testimony may be required." Preciose, supra, 129 N.J. at 462.

Our courts have noted the need for evidentiary hearing in ineffective assistance of counsel claims, acknowledging defendant must develop a record at a hearing at which counsel can explain the reasons for his conduct and inaction, and at which the trial judge can rule upon the claims including the issue of prejudice. State v. Pierce, 223 N.J. 560, 577-79 (2016); State v. Jones, 219 N.J. 298, 310-11. (2014); State v. Pierre-Louis, 216 N.J. 577, 579 (2014); State v. Miller, 216 N.J. 40, 57-58. (2013). Defendant was denied the opportunity to create a record, and the trial court erroneously proceeded in the absence of any record. Trial courts should ordinarily grant evidentiary hearings to resolve ineffective assistance claims when the defendant has presented a prima facie claim in support of post-conviction relief. Preciose, supra, 129 N.J. at 462.

To establish a prima facie case in support of post-conviction relief, entitling the defendant to an evidentiary hearing on post-conviction relief claims, a defendant

must demonstrate that there is a reasonable likelihood that his claims will ultimately succeed on the merits. State v. Marshall, 148 N.J. 89 (1997), cert. denied, 522 U.S. 850 (1999). To succeed on the merits on an ineffective assistance claim, the defendant must set forth the likelihood of passing the test set forth in Strickland v. Washington, 466 U.S. 668 (1984).

If a prima facie showing of ineffective assistance of counsel has been made, the judge deciding an issue of post-conviction relief may not assume the evidence proffered does not create a reasonable probability that the result of the proceeding would have been different. State v. Russo, 333 N.J. Super 119 (App. Div. 2000). In such an instance, the judge is required to take testimony in order to make that determination.

In determining the propriety of an evidentiary hearing, the post-conviction relief court should ascertain “whether the defendant would be entitled to post-conviction relief if the facts were viewed in the light most favorable to defendant.” Marshall, supra, 148 N.J. at 158. The facts in the most favorable light to defendant are that counsel never investigated the possibility of using Sanchez as a witness to refute C██████ version of events, or alternatively, if he had, he failed to present him due to a conflict of interest.

In this case the record is unclear. What is unclear is why Sanchez was never considered as a witness for the defense. It is a good indication that the matter cannot be adjudicated on the papers when issues of fact involve events that occurred off the

record. State v. Pyatt, 316 N.J. Super. 46 (App. Div. 1998), certif. denied 158 N.J. 72 (1999).

The trial judge did not look at the facts in the most favorable light to the defendant to determine whether an evidentiary hearing was justified. Had the judge examined the facts in the most favorable light to the defendant, it is argued that an evidentiary hearing would have been required. Defendant is entitled to an evidentiary hearing because he made specific allegations of facts in dispute, and favorable resolution of those facts would entitle the defendant to relief. Marshall, supra, 148 N.J. at 158.

It is well settled in New Jersey that the failure of defense counsel to conduct adequate pretrial preparation renders him ineffective, regardless of the quality of his performance at trial. State v. Fritz, 105 N.J. 42 (1987). Strategic decisions made after less than a complete investigation are subject to greater scrutiny on appeal. State v. Chew, 179 N.J. 186. (2004). Counsel must have full knowledge of the information to be used before an informed decision can be made. United States v. DeBango, 780 F.2d 81 (D.C Cir. 1986).

In this instance, counsel was unprepared. Trial counsel's inadequate preparation dispelled the presumption of confidence that might have otherwise arisen from a strategic choice. State v. Bey, 161 N.J. 233 (1999), cert. denied 530 U.S. 1245. (2000); State v. Davis, 116 N.J. 341. (1989).

The Supreme Court has held that the adversarial process "generally will not function properly unless defense counsel has done some investigation into the

prosecutor's case and into various defense strategies." Kimmeleman v. Morrison, 477. U.S. 356. (1986). Here, it cannot be said that counsel properly investigated the State's case. Counsel's failure to investigate a potential witness, one who could attest to K.C. motive to use defendant in furtherance of financial gain, was prejudicial to defendant's case.

By K.C. own admission, Sanchez knew her intimately. (2T 60-17 to 25). Who better to provide credible testimony with regard to her motives? He could have spoken directly about her demonstrated vindictive behavior in the theft of his cell phone. A felony she admitted to because her emotions got the best of her. (2T 75-6 to 18; 4T 54-18 to 19). Sanchez could have spoken to her financial difficulties, which were the crux of the defense. K.C. admitted she was angry when she lost her job, and when she called Sanchez for support, he was unavailable. (2T 62-5; 2T 65-11 to 18). The proffer of Sanchez testimony there would have been to show her decision making was influenced by her need for financial support. There was a pattern of behavior that when K.C. financial and/or emotional needs were not met she responded spitefully.

Defendant's theory of the case rested on K.C. viewing him as just another means of financial gain. Had Sanchez testified, her credibility would have been brought into serious question in the minds of the jurors. It is unclear why counsel chose to forego this critical resource at trial, or whether he even investigated it at all. Counsel has a "duty to make reasonable decisions that makes particular investigations unnecessary." Strickland, supra, 466 U.S. at 691.

Sanchez, as a potential witness, could have fortified the viable and credible version of events presented by defendant. This fundamental lack of preparedness rose to the level of “unreasonable professional conduct” and a prima facie showing of ineffective assistance. State v. Murray, 345. N.J. Super. 158 (App. Div. 2001). The defendant argues that such lack of preparedness constitutes an “egregious shortcoming in professional performance” and as such, a presumption of prejudice arises and a need to demonstrate actual prejudice is not required. Id.

Counsel’s performance was deficient. It fell below a reasonable objective standard of representation. It was essential for counsel to investigate and interview Sanchez at the very least. Defendant was left without a sustainable defense otherwise. Furthermore, defendant was prejudiced by the deficiency. There were no limits or barriers on counsel’s ability to investigate the case properly. If he had, the results of the proceedings would have been different.

A second component, warranting an evidentiary hearing on this issue, is a conflict of interest. The defendant claims that a conflict of interest arose in this case between his counsel, and counsel who represented Sanchez during the investigative process. Specifically, counsel for defendant, and counsel for Sanchez, shared office space and legal staff together. (9T 4-7 to 13). There was a symbiotic relationship between the two. It was apparent on its face that Sanchez would have done what he could to avoid testifying at trial to save himself the embarrassment of admitting to multiple relationships while married. Furthermore, there is a strong likelihood Sanchez was supporting K.C. financially, a fact he certainly would try to avoid

disclosing publicly to his wife. If true, this was yet another failed opportunity to corroborate defendant's theory of a financial motive in this case.

The attorney-client relationship is grounded in the fundamental understanding that an attorney will give "complete and undivided loyalty to the client" so that the attorney should be able to advise the client in such a way as to protect the client's interests, utilizing his professional training, ability and judgement to the utmost." In re Dolan, 76 N.J. 1, 9 (1978); see, RPC 1.7.

Accordingly, in the criminal setting, it is incumbent on the courts to ensure that defendant's receive conflict-free representation. State v. Loyal, 164 N.J. 418, 433 (2000) (emphasizing trial courts responsibility for "assuring the fairness and reliability of the trial"). The federal courts similarly act to protect the integrity of their proceedings when a defendant's Sixth Amendment rights are placed at risk by an attorney's conflict of interest. See e.g., United States v. Dolan, 570 f.2d 1177, 1184. (3d Cir. 1978).

In criminal matters, in which the trust between attorney and client has enhanced importance, special vigilance is required because an attorney's divided loyalty can undermine a defendant's Sixth Amendment right to effective assistance of counsel. See e.g., United States v Moscony, 927 F. 2d . 742, 748 (3d. Cir. 1991) (noting that the defendant's right to effective assistance of counsel includes both adequate representation and right to attorney's conflict-free, undivided loyalty). The Sixth Amendment right to effective assistance of counsel, binding on the states by the Fourteenth Amendment, Johnson v. Zerbst, 304 U.S. 458 (1938), requires a defense

attorneys' representation to be "untrammelled and unimpaired." *State v. Bellucci*, 81 N.J. 531, 538. (1980). Therefore, although a defendant must have a fair opportunity to have counsel of his own choosing, that right must yield when an actual conflict is found. *Moscony*, *supra*, 927 f.2d at 749-50.

The facts of this case reveal that it was in the best interest of Sanchez, and the attorney who represented him during the investigation, to keep out of the trial. Defendant's counsel was placed in a position to choose whether to represent the best interest of his client or represent the best interest of the attorney he has to see every day, share office space and staff with. The failure to call Sanchez as a witness may pass muster as a strategic choice on its face, however, when combined with an aura of impropriety, further investigation is required.

The PCR court did address the conflict of interest issue in its decision. (9T). Defendant argues that his argument has merit in the counsel labored under a conflict of interest. Specifically, "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." (emphasis added) RPC 1.7 (a)2.

An "actual conflict of interest" claim arises after trial upon the discovery of a previously unnoticed conflict of interest on the part of trial counsel. *United States v. Morelli*, 169. F.3d. 789. (D.N.J. 1999). Defendant was not aware of the quasi-partner relationship between his counsel and counsel who represented a likely corroborating witness in his case. When a conflict of interest is alleged, a defendant must identify

something specific as to what constituted the conflict. United States v. Kole, 164 F.3d. 164 (D.N.J. 1998), cert. denied 119 S.Ct. 1484. The facts cited above establish such a conflict. Defendant was placed in a position to compete against the loyalty counsel shared between himself and another attorney. As such, defendant has demonstrated that trial counsel labored under a conflict of interest. He has met his burden in demonstrating a conflict and has no further obligation to demonstrate substantially any error or prejudice resulting therefrom. State v. Murray, 315 N.J. Super. 535. (App. Div. 1998), certif. granted 158 N.J. 75 (1999), aff'd as modified and remanded 162 N.J. 240 (2000), appeal after remand, 345 N.J. Super. 158. (App. Div. 2001). To that end, the defendant respectfully requests a remand for a new trial, or in the alternative, an evidentiary hearing so his contentions may be fully addressed.

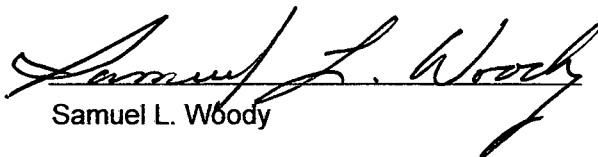
REASONS FOR GRANTING THE PETITION

- 1) Defendant was denied the effective assistance of trial counsel entitling him to post-conviction relief or an evidentiary hearing on the issue of the failure to call Sanchez as a corroborating witness to his defense that Connelly's claim was only a form of exploitation as a means to gain a financial windfall.**
- 2) Counsel was ineffective for failing to adequately prepare for trial in having forgone a defense witness whose testimony would have had the likely effect of changing the outcome of the trial.**
- 3) Counsel labored under a conflict of interest with his Law partner Muhammad Bashir who represented Sanchez and was disbarred for violating the same Rules of Professional conduct regarding another matter.**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Samuel L. Woody

Date: July 17th, 2020