

No. _____

In the
Supreme Court of the United States

TRAVIS LEVI PARROTT,

PETITIONER,

v.

THE STATE OF GEORGIA,

RESPONDENT.

**On Petition for a Writ of Certiorari to the
Court of Appeals, State of Georgia**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Georgia Supreme Court Erred in Denying Mr. Parrott's Application for Certificate of Probable Cause to Appeal the Denial of His Petition for Habeas Corpus?

Whether Mr. Parrott established a substantial deprivation of a constitutional right, the effective assistance of counsel, such that a certificate of appealability should have been granted?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Travis Levi Parrott.

The State of Georgia.

LIST OF PROCEEDINGS

SUPERIOR COURT OF CLAYTON COUNTY, GEORGIA

Trial Court Case No. 2013-CR-0355-5

THE STATE OF GEORGIA v. TERENCE TYRONE SMITH AND TRAVIS LEVI PARROTT

Jury Verdict Dated 3/8/2013 Trial Court Opinion is Not Reported.

SUPERIOR COURT OF DODGE COUNTY, GEORGIA

Trial Court Case No. 18HC-0464K

TRAVIS PARROTT v. MURRAY TATUM, WARDEN.

Judgment Dated 11/30/2020 Habeas Corpus Petition Denied. Trial Court Opinion is Not Reported.

SUPREME COURT OF GEORGIA

Case No. S21H0527

TRAVIS PARROTT v. MURRAY TATUM, WARDEN.

Judgment Dated 8/24/2021 Appellant's Application for Certificate of Probable Cause. DENIED.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully requests that a Writ of Certiorari be issued to review the Supreme Court of Georgia's denial of his application for probable cause to appeal the denial of his state court petition for habeas corpus.

OPINIONS BELOW

The March 8, 2013, jury verdict from the Superior Court Of Clayton County, Georgia, is not reported. The transcript for the Jury Trial is reproduced in the Appendix. ("Pet. App. 66").

The November 19, 2014, decision from Court of Appeals of Georgia is not reported.

The November 30, 2020, decision from the Superior Court Of Dodge County, Georgia is reproduced in the Appendix. ("Pet. App. 3"). This decision was not published.

The August 24, 2021, decision from the Georgia Supreme Court is reproduced in the Appendix. ("Pet. App. 1"). This decision was not published.

BASIS FOR JURISDICTION IN THIS COURT

The Supreme Court of Georgia entered judgment on August 24, 2021. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

U.S. Const. amend. VI.

The First Paragraph to the Georgia Constitution provides:

No person shall be deprived of life, liberty, or property except by due process of law.

Ga. Const. art. I, § 1, ¶ I.

No person shall be compelled to give testimony tending in any manner to be self-incriminating.

Ga. Const. art. I, § 1, ¶ XVI.

STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. § 2254(a) provides:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a).

Title 28 U.S.C. § 2254(d) provides:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(1)-(2).

STATEMENT OF THE CASE

A. Concise Statement of Facts Pertinent to the Questions Presented.

The Incident In Question

In July 2012, Maricus Parks attended a party at an apartment complex in Clayton County, Georgia. (“Pet. App. 97”). Around 11 PM, he got into his car to leave and go pick up his girlfriend, Ayana Jakes. (“Pet. App. 97”). He was driving a 2012 Toyota Camry that Jakes had lent him, though he was not an authorized driver, rented from a rental car dealer. (“Pet. App. 97”). As he was leaving, another car, a Buick, struck his vehicle from behind. (“Pet. App. 97”). When Parks got out to assess the damage, two men from the other car confronted and attacked him. (“Pet. App. 97-98”). Parks later that night told police that during the incident, he had been punched in the back of the head. (“Pet. App. 98”). At trial, Parks testified he believed that the object that hit him was a gun. (“Pet. App. 98”). However, Parks testified that he did not see what hit him and did not know a gun. (“Pet. App. 98”). The blow to Parks’ head resulted in blood covering his face and eyes. (“Pet. App. 103”). Parks testified that he “couldn’t see because [he was] bleeding.” Parks also testified when asked if he knew the drivers of the Buick that he “[did not] know” and that he did not interact with them previously. (“Pet. App. 113”).

After the disturbance, the assailants took Parks’ property, including 400 dollars, his cell phone, and the Camry. (“Pet. App. 97-98”). The assailants then departed with the Buick following the Camry. (“Pet. App. 98”). Parks then returned to the party to

seek assistance, where he encountered his friend Reese. Parks used Reese's cell phone to call Jakes. ("Pet. App. 53"). Once Jakes arrived, Parks used Jakes's phone to "track" his phone (which had been left in the car) to a nearby motel. ("Pet. App. 54; 106"). Intending to "take care of the situation" themselves, Reese drove Parks to the motel; Parks' girlfriend followed in her own car. However, after seeing the Buick at the motel, Parks changed his mind and called the police. Reese left before the police arrived. ("Pet. App. "98"). The Camry was not observed at the motel that night. ("Pet. App. 98") After Reese identified Smith and Parrott at the motel, they were arrested. ("Pet. App. 98"). The police took photos of the actual items found at the motel. These items included digital scales, a Social Security card that belonged to an unrelated person, a set of car keys that did not belong to the car rented by Jakes, and a cigarette box that had another unrelated person's Social Security Card, driver's license, and debit card.

Trial Counsel

Trial counsel, who was a public defender, testified at the motion for new trial hearing that the defense theory was that no armed robbery occurred; the incident was a dispute between two guys at a party, and "that's it." In essence, the incident did not occur as Parks claimed it did. In preparation, trial counsel reviewed the documents gathered in discovery, spoke with Mr. Parrott, and looked into Parks' background. However, trial counsel did not interview any witnesses, including Parks, Jakes, or Reese. Trial counsel also acknowledged that he did not object to Based on his discovery review, trial counsel

was aware that Parks claimed this incident occurred outside of a party at the Southern Springs apartment complex. Trial counsel never went to the complex to interview anyone who may have known anything about the incident. Trial counsel acknowledged that he did not object to the admission of the extraneous items of evidence, only moving to exclude the digital scales for potential prejudicial effect. He also testified that he did not object, even though he knew the State was going to move these items into evidence, because he believed “it did not appear to be evidence of other crimes.” Trial counsel testified that he did not file a pre-trial motion in *limine* to keep out this irrelevant evidence of other thefts by Mr. Parrott and Smith and thought Parrott “could deal with it.”

At the hearing, Maurice Trammell (Reese) testified that he hosted the party at Southern Springs apartments. There were 80–90 people there, including Maricus Parks. Parks left the party at some point and later returned with Jakes. Reese testified that at no point did Parks approach Reese and ask for help. Reese also testified that Parks never told him that he had been robbed and assaulted. Reese also denied driving Parks to a motel that night. Reese testified that he did not know about any incident and only learned in November 2013 that his name had been used at trial. No one representing Mr. Parrott ever contacted Reese.

Trial counsel did not file a pre-trial motion for severance of Mr. Parrott’s case from that of co-defendant Smith. The severance would have been on the issue of the State’s intention to offer the extraneous evidence against Smith even though Trial

Counsel testified that the jury would conclude Mr. Parrott might have been associated with the crime. Mr. Parrott personally asked the trial court for severance because “due to the case and the charges . . . I feel like . . . I’m not going to get treated fair.”

Trial counsel failed to impeach Parks, who had three felony convictions. These convictions included: violating the Georgia Controlled Substances Act by being in possession of cocaine, a felony conviction of being a convicted felon in possession of a firearm, and a felony conviction for using a firearm with an altered serial number. Parks also had a misdemeanor conviction for writing bad checks, which trial counsel agreed was “an act of dishonesty because it’s a false swearing.” Trial counsel did not offer any explanation for why he decided not to impeach Parks under any of these convictions.

Appellate Counsel

Appellate counsel testified that he took on the Petitioner’s post-conviction representation and handled the motion for a new trial and the direct appeal. Appellate counsel testified that he received the trial transcript and the discovery from the public defender’s office. Appellate counsel acknowledged that the discovery contained photographs of the room where the items introduced into evidence were found. Upon reviewing trial counsel’s failure to object to the extraneous evidence, appellate counsel testified that the failure to object was “problematic” and that he would have objected to its admittance. But, appellate counsel decided not to bring this issue up on appeal because it was not “specifically connect[ed]” to Mr.

Parrott and that the State did not say that he stole those items. Appellate counsel decided to focus his attention on other issues.

When asked about trial counsel's failure to impeach Parks with his felony convictions, appellate counsel testified, "I would think that would be something that an attorney should do in the regular course of preparation is finding those convictions and using them." But when asked if he did, he determined if the victim had any criminal history appellate counsel testified, "I don't recall doing that." Appellate counsel testified that he was unaware that Parks had three felony convictions. However, he also testified that he would have raised the issue on appeal if he had been.

As to trial counsel's failure to also impeach Parks with the misdemeanor conviction for writing bad checks, appellate counsel did not see any strategic reason for trial counsel's failure to do so. However, appellate counsel testified that he did not raise this issue on appeal because "I did not know about it" and, therefore, could not "even think of whether or not to raise it."

B. Procedural History

On February 13, 2013, a Clayton County grand jury indicted Petitioner and co-defendant Terence Smith on five charges. ("Pet. App. 4"). Petitioner was tried and convicted on all charges on March 8, 2013. ("Pet. App. 4").

A timely motion for a new trial was filed, and after a new counsel was appointed, it was amended to

include grounds for ineffective assistance of counsel. (“Pet. App. 5”). That motion was heard and denied. (“Pet. App. 5”). The direct appeal of that motion was denied in an unpublished opinion. (“Pet. App. 5”). A timely application for a writ of habeas corpus followed. (“Pet. App. 97”). This petition was denied on November 13, 2020. (“Pet. App. 97”). Mr. Parrott then applied to the Georgia Supreme Court for a certificate of probable cause to appeal the denial of his habeas corpus petition further. (“Pet. App. 1”). The Georgia Supreme Court denied this application on August 24, 2021.

This Petition for Writ of Certiorari followed.

REASONS TO GRANT THIS PETITION

I. Trial and Appellate Counsel Were Ineffective For Failing To Object Or Bring To Issue Predjucial Evidence, By Failing to Call Key Witnesses, and By Failing To Bring To Issue The Victim's Previous Convictions In Impeaching His Testimony Overcoming The Procedural Default.

Under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to establish a claim of ineffective assistance of counsel, Mr. Parrott must establish (1) that his counsel's performance was deficient, and (2) the deficiency so prejudiced his defense, and (3) that a reasonable probability exists that the trial's outcome would have been different but for the deficiency. See also *Brown v. State*, 309 Ga. 511, 515 (2020); *Tezeno v. State*, 343 Ga. App. 623, 629-630 (2017).

A claim of ineffective assistance of trial and appellate counsel is a mixed question of law and fact. See *Strickland*, 466 U.S. at 687. The proper standard of review requires an appellate court to accept the trial court's factual findings unless clearly erroneous, but it independently applies the legal principles to the facts. *State v. Moore*, 318 Ga. App. 118, 119 (2012). "A reasonable probability is a probability that sufficient to undermine confidence in the outcome." *Miller v. State*, 285 Ga. 285, 286 (2009). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686.

In Georgia, courts take a holistic approach and consider trial court errors, if any, along with the prejudicial effect of counsel’s deficient performance. *State v. Lane*, 308 Ga. 10, 17 (2020). When reviewing for cumulative error, the court must “bear in mind the relevant standards [of appellate review] for the errors at issue.” *Finney v. State*, 311 Ga. 1 (2021).

A. Trial Counsel Provided Ineffective Assistance of Counsel By Failing To Object to the State’s Admission of Extraneous Evidence By Failing To Impeach The Victim With Evidence of His Prior Convictions.

When considering whether counsel should have objected to testimony and comments through the lens of the federal Constitution. *State v. Spratlin*, 305 Ga. 585, 593 (2019), *reconsideration denied* (Mar. 27, 2019). But, “[t]rial tactics and strategy, no matter how mistaken in hindsight, are seldom adequate grounds for finding trial counsel ineffective unless they are so patently unreasonable that no competent attorney would have chosen them.” *Gregoire v. State*, 309 Ga. App. 309, 311 (2011).

Mr. Parrott’s trial counsel was ineffective because both the extraneous evidence and Parks’ testimony substantially affected the trial’s verdict. Trial counsel needed to object to the admission of the irrelevant evidence to protect Mr. Parrott from the State’s attempt to draw an improper inference. This severance would have been on the issue of the State’s

intention to offer the extraneous evidence and could have prevented its entry into the record. The evidence included several items that were unrelated to Parks' case but had extreme prejudicial value. The State used items like the unrelated car keys or the digital scale to establish Mr. Parrott's propensity to commit a crime, an improper use which should have been objected to. Mr. Parrott personally asked for the severance because he felt "due to the case and the charges" he "[was] not going to get treated fair." By failing to keep this extremely prejudicial evidence out, Mr. Parrott's case was left up to the improper inferences that he feared would, and eventually did, convict him.

Furthermore, by failing to impeach Parks, who had three felony convictions that included violating the Georgia Controlled Substances Act being a convicted felon in possession of a firearm, trial counsel failed to show the jury that Parks had an incentive to lie previous criminal involvement. Even more egregious was the failure to impeach Parks for the misdemeanor conviction for writing bad checks, "an act of dishonesty" Trial counsel did not offer any explanation for why he decided not to impeach Parks under any of these convictions. This failure to act was not reasonable under the circumstances and established that Mr. Parrott experienced ineffective assistance from his trial counsel.

B. Trial Counsel Provided Ineffective Assistance of Counsel By Failing To Locate One of The State's Key Witnesses.

As part of his constitutional obligation to provide effective representation, trial counsel is required to make reasonable investigations into the State's case. *See Terry v. Jenkins*, 280 Ga. 341 (2006). These investigations are required because “[t]he right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.” *United States v. Cronic*, 466 U.S. 648, 656 (1984). Normally, “which defense witnesses to call is a matter of trial strategy” *Hazelrigs v. State*, 255 Ga. App. 784, 787 (2002). However, this “strategy” must be an informed choice following a reasonable investigation. *See Terry*, 280 Ga. at 347 (finding ineffective assistance for failing to call witnesses because “counsel’s investigation into their own theory of the case was entirely inadequate”).

Here, trial counsel failed in his constitutional obligation to conduct an investigation. Counsel stated that he did not interview any witnesses before trial. Critically, he did not go to the Southern Springs apartment complex to speak with any potential witnesses. Had he taken this reasonable step, he would have found Reese, who hosted the party Parks attended and who Parks alleged provided him assistance in searching for his assailants *Gravitt v. State*, 301 Ga. App. 131 (2009) (defense counsel rendered ineffective assistance by failing to locate and call two readily available eyewitnesses). Counsel’s

defense theory at trial was that Parks was not credible, and this incident did not occur as he claimed. Thus, counsel should have sought to obtain and present any evidence available to discredit Parks. Reese's testimony would have undermined Parks' credibility and would have been consistent with the defense theory.

Moreover, Reese would have substantiated Parrott's defense that Parks was exaggerating about the incident. This evidence would have caused the jury to evaluate his testimony and credibility in a different light. *See Squires v. State*, 286 Ga. App. 141, 142 (2007) ("It is the function of the jury to determine the credibility of the witnesses"). It was not the function of the trial or appellate court to assess Reese's credibility or veracity, as that too should have been reserved for the jury—if Reese had been called. *Gravitt*, 301 Ga. App. at 135 (finding the trial court should not judge the credibility of the witnesses had they testified at trial, as that is "solely a matter to be resolved by the jury").

Furthermore, Parks' credibility would have further been impugned because he testified that he had never been to Reese's home. But, the jury never knew that Reese hosted the party which Parks attended. Counsel's failure to locate and call Reese undermined Parrott's right to test the State's case meaningfully, and his "trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686; *see also Gravitt*, 301 Ga. App. at 137 (finding "because of his counsel's failure to investigate the

case, interview the passengers in Gravitt's truck, and call them as witnesses to say Gravitt did not cut off another car when he re-entered the roadway, we cannot say that no reasonable probability existed that, absent his counsel's errors, the factfinder would not have had a reasonable doubt respecting Gravitt's guilt"). Therefore, the jury would have had reasonable doubt had it heard Reese's testimony, and trial counsel's failure to call him as a witness prejudiced Mr. Parrott's defense and his right to a fair trial.

C. Appellate Counsel Provided Ineffective Assistance By Failing Raise These Issues On Appeal.

"To establish ineffective assistance of appellate counsel, "the petitioner bears the burden of showing that appellate counsel was deficient in failing to raise an issue on appeal and that the deficiency prejudiced the defense." *Emmons v. Bryant*, No. S21A0532, 2021 WL 4822885, at *4 (Ga. Oct. 4, 2021).

Appellate counsel testified that the failure to object was "problematic" and that he would have objected to its admittance. Nevertheless, appellate counsel did not bring this issue upon appeal. By failing to bring this claim upon appeal, appellate counsel procedurally defaulted the claim prejudicing Mr. Parrott.

Moreover, when asked about trial counsel's failure to impeach Parks, appellate counsel testified, "I would think that would be something that an attorney should do in the regular course of preparation is finding those convictions and using

them.” But when asked if he did, he determined if the victim had any criminal history, he testified, “I don’t recall doing that.” But, he also testified that he would have raised the issue on appeal if he had been. When appealing Mr. Parrott’s case, appellate counsel was unaware that Parks had three felony convictions. Accordingly, by not properly reviewing the record, appellate counsel did not raise this issue on appeal because he “did not know about it” and therefore, could not “even think of whether or not to raise it.” This failure prejudiced Mr. Parrott, preventing him from having the effective assistance of counsel guaranteed by the Sixth Amendment. Accordingly, in the interest of justice, this Court should grant Mr. Parrott’s Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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