

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County  
R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

S.C. Supreme Court

TRAVIS J. WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

WANDA H. CARTER  
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South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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## ISSUE PRESENTED

### I.

Trial counsel erred in allowing petitioner to plead guilty in the case where an alibi witness was available, and where witnesses heard the prosecutrix admit she fabricated the sexual assault allegations against petitioner, and where the prosecutrix's mother admitted to defense counsel that she framed petitioner and further explained how she accomplished this (by wiping petitioner's semen on the child) because there was no need for a plea due to this exculpatory evidence which would have exonerated petitioner on the charges.

### II.

The PCR judge erred in denying petitioner's allegations that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

## STATEMENT

Petitioner Travis J. Williams pled guilty to second degree criminal sexual conduct during the April, 2007 term of the Lexington County General Session Court before Judge William P. Keesley. Petitioner was sentenced to imprisonment for a period of twenty years, but petitioner did not appeal his guilty plea or conviction. App 1-18. Petitioner was represented at trial by Nathaniel Roberson.

On February 27, 2008, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App. 20-24. The respondent filed a return dated May 6, 2008, requesting that a hearing be held in the case. App. 25-29.

A PCR hearing was convened on February 3, 2010, at the Lexington County Courthouse before Judge R. Lawton McIntosh. App. 33-119. Petitioner was represented by Bradd W. Bruce.

On September 9, 2010, Judge McIntosh issued an order of dismissal in the case and denied petitioner's collateral allegations.

Petitioner appealed the order of dismissal. This petition follows.

## ARGUMENT I

Trial counsel erred in allowing petitioner to plead guilty in the case where an alibi defense witness was available, and where witnesses heard the prosecutrix admit she fabricated the sexual assault allegation against petitioner, and where the prosecutrix's mother admitted to defense counsel that she framed petitioner and explained how she accomplished this (by wiping petitioner's semen on the child) because there was no need for a plea due to this exculpatory evidence which would have exonerated petitioner on the charges.<sup>1</sup>

At the plea proceeding the prosecutrix claimed that petitioner came into her room and had sex with her. App. 6, l. 13 – p. 8, l. 22.

During the PCR hearing, Crystal Hoover, the prosecutrix's mother, testified that she explained to counsel that she lived with petitioner at the time of the allegation, and that she wiped semen on the prosecutrix to frame him (petitioner). Hoover stated that despite her admission about framing petitioner, trial counsel refused to entertain the idea of having her testify to that affect and required her to reduce her story to affidavit form. In addition, Hoover testified that she informed counsel of the existence of a neighbor in the trailer park who claimed that she saw petitioner standing outside and fully clothed at the time the sexual assault allegedly took place on July 11<sup>th</sup>, 2006. App. 55, l. 7 – p. 57, l. 17; App. 59, l. 15 – p. 60, l. 11; App. 61, ll. 1-7.

Also, note that neighbor Tina Mitchell testified at the PCR hearing and stated that she knew about the sexual assault allegation against petitioner and that the prosecutrix admitted to her that she

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<sup>1</sup> Petitioner was originally indicted on two counts of second degree criminal sexual conduct with a minor, but pled guilty to only one count at the plea proceeding.

lied about the sexual assault and that petitioner did not sexually assault her. App. 61, l. 18 – p. 63, l. 19.

State's witness Sarah Williams (petitioner's stepmother) also testified at the PCR hearing and stated that Hoover told her that the prosecutrix admitted to lying about the sexual assault accusations against petitioner. App. 66, ll. 5-22.

Lisa Williams, who lived in the same trailer as petitioner, the prosecutrix, and the prosecutrix's mother, testified during the PCR hearing and explained that on the night of the alleged sexual assault, she (Williams) saw petitioner come in from outside fully dressed in preparation to go fishing and that he left out immediately thereafter. App. 44, l. 13 – p. 45, l. 15. Also, Williams testified that she heard Hoover tell trial counsel that she (Hoover) framed petitioner by "wiping petitioner's semen on the child." According to Williams, Hoover was in a relationship with petitioner. Also, Williams added that she knew of the neighbor who woke up to a dog barking and saw petitioner standing outside clothed in pants and a shirt when the alleged assault was supposed to have occurred. App. 40, l. 15 – p. 50, l. 25; App. 56, l. 19 – p. 57, l. 20; App. 59, l. 15 – p. 60, l. 11.

Petitioner testified during the PCR hearing and explained that he told counsel about the existence of the ladies in the trailer park who could have been witnesses in the case and how their testimony would have exonerated him, but that he (counsel) stated that there was no defense in the case. Petitioner testified in effect that if counsel had perfected a defense around Hoover's admission that she framed him, and around the numerous additional female witnesses who harbored exculpatory information involving alibi evidence and evidence of his actual innocence, then he would not have had to have pled guilty in the case. App. 77, ll. 15-23; App. 78, ll. 3-10. Petitioner

stated that counsel recommended that he plead guilty and refused to entertain the possibility of having these females who were potential witnesses testify in the event of a trial. App. 76, ll. 1-5.

Defense counsel testified at the PCR hearing. Counsel explained that the DNA test results implicated petitioner on the charges and that the state could prove its case against him. App. 92, l. 18 – p. 96, l. 18. Counsel stated that he did speak with potential defense witnesses (Hoover and Williams) and was told about petitioner being framed, but thought this set up was unusual and asked for the information to be reduced to an affidavit, which he never received. App. 103, l. 8 – p. 104, l. 11; App. 107, ll. 4-8. Counsel stated that he explained to petitioner the danger in presenting this type of testimony. App. 108, ll. 1-2. Counsel admitted that he was informed about about an alibi witness (next door neighbor) and numerous other favorable defense witnesses, but in effect failed to pursue these leads. App. 114, l. 5-11; App. 112, l. 18 – p. 114, l. 11.

In the order of dismissal, the PCR judge ruled that counsel conducted adequate investigations into petitioner's case, and that counsel's belief that the potential defense witnesses were not credible did not constitute ineffective assistance of counsel in the case. App. 134.

Although trial counsel found the potential defense witnesses incredible, it was error for him to allow his views to take the place of what should have been within the province of the jury. The jury must determine the witnesses' credibility, decide questions of fact, and assess whether to convict or acquit. Here, there was an alibi witness available and witnesses who heard the prosecutrix admit she fabricated this tall tale against petitioner, and more importantly, a witness who admitted she framed petitioner and explained how she did so.

A defendant has a right to present witnesses in his defense. Faretta v. California, 422 U.S. 806 (1975); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). See Pauling v. State, 331 S.C.

606, 503 S.E.2d 468 (1998), where the Court held that trial counsel was ineffective in failing to call as a defense witness a triage nurse who would have corroborated the defendant's lack of penetration defense on a sexual assault charge. See also Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992), where counsel erred in failing to call the emergency medical personnel who would have testified that the victim stated immediately after the attack that she did not know her assailant where the victim was the sole witness to the rape. Also, compare, Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), where the Court held that defense counsel performed deficiently in failing to hire an independent expert witness to assess the gun residue evidence, especially where there was evidence that the victim had the gun in question and was ready to fire, but the gun went off after the defendant grabbed it, and where the initial finding was that no gunshot residue appeared on the victim, but a subsequent finding on the question of whether gunshot residue was on the victim resulted in an inconclusive finding.

In the instant case, counsel erred in allowing petitioner to plead guilty rather than stand trial where there were numerous witnesses who would have provided a cogent defense on his behalf at trial. This error was tantamount to deficient legal representation in violation of the Sixth Amendment, such that but for the error, a reasonable likelihood exists that petitioner would have opted not to plead guilty and exercised his right to a trial by jury in the case. See Hill v. Lockhart, 484 U.S. 52 (1985).

## ARGUMENT II

The PCR judge erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

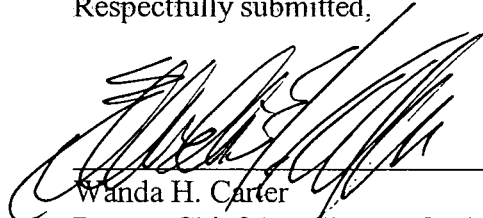
During the PCR hearing, petitioner stated that he asked trial counsel to appeal his case, but that he (counsel) never filed the appeal. App. 79, ll. 8-18. Apparently, petitioner desired a direct appeal in the case. See In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991), where the court held that if after advising an indigent client requesting an appeal in the case the client wishes to appeal, then trial counsel must serve and file a notice of appeal. After a client is convicted, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and counsel should ascertain whether the client wishes to appeal. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). See Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure on appeal on his behalf with state appellate counsel via his indigent status.

The PCR court erred in dismissing petitioner's claim that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

CONCLUSION

Based on the foregoing arguments, petitioner requests that this petition be granted and the court allow full brief on the issues.

Respectfully submitted,



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5<sup>th</sup> day of May, 2011.

STATEMENT OF DIRECT ISSUE ON APPEAL

1. The trial judge erred in issuing a sentence that seemed to be influenced by what appeared to be a lack of full remorse on petitioner's behalf.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County  
R. Lawton McIntosh, Circuit Court Judge

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TRAVIS J. WILLIAMS,

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STATE OF SOUTH CAROLINA,

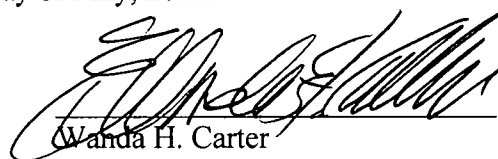
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Kaelon E. May, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5<sup>th</sup> day of May, 2011.

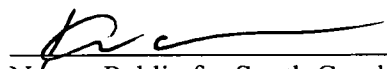


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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5<sup>th</sup> day  
of May, 2011.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013.