

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY BRIGGS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000551

PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

RECEIVED

Dec 18 2023

S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for failing to object to statements made by the solicitor, during closing argument, that were inflammatory and improperly played to the jury’s emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt 3

CONCLUSION 6

ISSUE PRESENTED

Did the PCR court err in finding defense counsel was not ineffective for failing to object to statements made by the solicitor, during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt?

STATEMENT

A Spartanburg County grand jury indicted petitioner for committing a lewd act upon a minor and criminal sexual conduct with a minor, first degree. App. 518-21. Petitioner's case was called to trial on March 25, 2019, before the Honorable R. Keith Kelly, and a jury. Jeremy Thompson represented petitioner. Wendy Hallford and Hope Coleman were the assistant solicitors representing the state. App. 1

On March 27, 2019, the jury found petitioner guilty on both counts. App. 399, l. 23 – 400, l. 15. Judge Kelly sentenced petitioner to life imprisonment for criminal sexual conduct with a minor in the first degree, and fifteen years imprisonment for committing a lewd act upon a minor. App. 406, ll. 10-16.

Appellate counsel, Robert Dudek, filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal. *State v. Briggs*, 2021-UP-380 (S.C. Ct. App. filed Nov. 3, 2021).

Thereafter, petitioner filed an application for PCR. App. 408-14. On October 18, 2022, an evidentiary hearing was held before the Honorable Brian M. Gibbons. App. 431-89. Rodney Richey represented petitioner and Chelsey Marto represented the state. App. 431.

On March 21, 2023, Judge Gibbons signed an order denying PCR. App. 499-517. The PCR court found petitioner did not meet his burden of proof concerning his allegation that defense counsel was ineffective for failing to object to the state's Golden Rule argument during closing. The PCR court agreed with defense counsel that the referenced passage was not a "Golden Rule argument," and was not objectionable. The court further found no prejudice because this passage was "not so crucial as to undermine the result" of trial. App. 515.

This petition follows.

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for failing to object to statements made by the solicitor, during closing argument, that were inflammatory and improperly played to the jury's emotions where the solicitor invited the jury to imagine they were the alleged victim and imagine how she felt.

Relevant facts

The alleged victim was fifteen-years-old at the time of petitioner's trial. She was living with her grandmother, Donna Parker, in North Carolina. App. 56, l. 4 – 57, l. 24. The minor identified petitioner as her mother's boyfriend, who had lived with her, her mother, Wendy, and her siblings in 2008-2009 when the incidents allegedly occurred. The minor was four to five years old at this time. Her mother, Wendy, did not testify at trial. App. 57, l. 1 – 58, l. 21.

While living in Spartanburg county, the minor testified that she shared a bedroom with her sister and her brother had his own room. Petitioner and her mother slept on a "pull-out couch in the living room." This was the year the minor started K-4 at Chesnee Elementary School. App. 58, l. 19 – 59, l. 14.

The minor testified that her mother left for work early in the morning and her siblings caught an earlier bus to school. This left her alone in the house with petitioner before she got on a school bus midmorning. The minor claimed petitioner touched her sexually and had oral sex with her at times before she left for school in the morning. App. 60, l. 1 – 62, l. 23. The minor said petitioner would then "walk me to the bus." R. 62, l. 21 – 63, l. 3. She did not tell anyone about the molestation "because [she] was scared." R. 63, ll. 23 – 24. The minor at some later point told her grandmother, Donna Parker, that petitioner had been touching her. App. 66, l. 1 –

67, l. 4.

During closing argument, the solicitor made the following comments:

So let's talk about lying for just a minute. Now, there are people who are pathological liars and they lie about everything. We're gonna set them aside, we're not considering them. Typically will lie for two reasons, to get out of trouble or to get some kind of a benefit.

...

[I]t's difficult for people to talk in public. That's one of the number one fears. When y'all came in and you sat down and you found out that you were gonna have to stand up and you're gonna have to talk about your name and who your spouse is and where you work and where your spouse works, most of you got a knot in the pit of your stomach.

...

Imagine if what the clerk of court had said to you is stand up and tell me about your worst sexual experience. Think of what that would have been like.

App. 348, l. 16-350, l. 4. Defense counsel did not object to the solicitor's closing.

At petitioner's PCR hearing, defense counsel admitted he did not make an objection to the state's closing argument. Counsel did not object because he disagreed that the solicitor's comment was a Golden Rule argument. App. 476, ll. 2-17.

Discussion

The PCR court erred finding the solicitor's remarks to the jury during closing argument was not a Golden Rule argument and was therefore not objectionable. The PCR court erred finding there was no prejudice because this portion was "not so crucial as to undermine the results of the proceeding." App. 515.

The state's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the

jurors, and its effect is to arouse passion and prejudice.” *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009) (Quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)).

Improper comments do not automatically require reversal if they are not prejudicial to the defendant. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). On appeal, the court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there was overwhelming evidence of the defendant's guilt. *Id.* The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.* The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853 (1997).

In *Fortune v. State*, our Supreme Court found the solicitor's “improper remarks violated the defendant's rights under the Due Process Clause,” and reversed the denial PCR. *Fortune v. State*, 428 S.C. 545, 547, 837 S.E.2d 37, 38 (2019). Here, trial counsel was deficient for failing to object to the state's obvious appeal to the emotions of the jury in a case that came down to credibility.

It is undeniable this case was “emotionally charged” where it involved sexual misconduct with a minor. Therefore, the solicitor's invitation to the jury to put themselves in the shoes of the minor by imagining they had to talk about their worst sexual experience asked the jury to set aside impartiality and consider the evidence from the “subjective position of the child.” *Brown v. State*, 383 S.C. 506, 516–17, 680 S.E.2d 909, 915 (2009).

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 2023.