

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Feb 22 2024**

S.C. SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge  
—————

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

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ATTORNEY FOR PETITIONER

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## **ISSUE PRESENTED**

Trial counsel erred in failing to raise the trespassing and habitation defense issues as part of the immunity from prosecution claim presented at the Castle Doctrine hearing because the exclusion of these two matters prevented legal review of the same on direct appeal.

## STATEMENT OF CASE

Petitioner Lawton Leroy Holloway was found guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime per jury trial held during the March 2019 term of the Spartanburg County General Sessions Court before Judge R. Keith Kelly, and was sentenced to imprisonment for an aggregate twenty-year prison term. App. 1-533. Attorneys James Price, IV, and James Price, III, represented petitioner at trial, and Deputy Solicitor Derrick Balsa appeared on behalf of the state.

Petitioner appealed his convictions and sentences. Appellate Defender Taylor D. Gilliam represented petitioner on direct appeal. After briefs were filed, the case was affirmed on appeal. State v. Holloway, 2021-UP-406 (S.C. Ct. App. Filed Nov. 17, 2021).App. 535-589.

On November 4, 2022, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 590-602. The respondent filed a Return dated January 11, 2023. App. 603-614. A PCR hearing in the case was convened on June 20, 2023, at the Spartanburg County Courthouse before Judge Frank R. Addy. App. 616-678. Petitioner was present at the hearing and represented by Attorney Rodney W. Richey, and Assistant Attorney General Joshua Edwards appeared on behalf of the state.

On August 18, 2023, Judge Addy issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 689-696.

Petitioner appealed Judge Addy's Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to raise the trespassing and habitation defense issues as part of the immunity from prosecution claim presented at the Castle Doctrine hearing because the exclusion of these two matters prevented legal review of the same on direct appeal.

Petitioner was tried by jury and found guilty on the offenses of murder and possession of a weapon during the commission of a violent crime charged against him. A pre-trial hearing was held on petitioner's claim of immunity from prosecution under the Protection of Persons and Property Act. See S.C. Code Ann. §16-11-440 (2015). Petitioner testified that on the night in question, Jeremy Bell was visiting at his home when an argument erupted between them. Petitioner explained that he made Bell exit his home thereafter, but later realized that Bell re-entered his home minutes later without his permission. Petitioner stated that after he found Bell back inside of his home, Bell threatened to rape his (petitioner's) partner and daughter, and then Bell approached and threatened to kill him. Petitioner stated that he stabbed Bell in self-defense. App. 68, l. 23 – p. 95, l. 23. Hence, the basis for petitioner's Castle Doctrine defense. After the Castle Doctrine pre-trial hearing was held in the case, the trial judge denied petitioner's request for immunity from prosecution. App, 147, l.3 - p. 152, l.15.

On direct appeal, appellate counsel argued that the trespassing and habitation defense issues were connected to the Castle Doctrine claim presented in the case. Appellate counsel argued that petitioner reacted in self-defense since Bell was in petitioner's home unlawfully as a trespasser. Appellate counsel's argument follows:

Also under the "another applicable provision of law" language of S.C. Code Ann. §16-11-450(A), Appellant was entitled to the defense of habitation. The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d

321, 323 (2007). “One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation.” State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). “For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.” Rye, 375 S.C. at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Id. Rather, the defense of habitation provides “where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser.” Id. “The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was ‘defending himself from imminent attack on his own premises.’ ” State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25). Although self-defense and habitation are analogous, the defenses are not identical. Rye, 375 S.C. at 124, 651 S.E.2d at 323.

When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion. State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936).

A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.

State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923). In State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), this Court held the defendant was entitled to a jury instruction on the defense of habitation. App. 552-553.

Note that the trial judge issued a jury instruction on the defense of habitation. App. 516,

lines 1-12.

The South Carolina Court of Appeals ruled on this on direct appeal as follows:

To the extent [petitioner] argue[s], the trial court erred in failing to grant immunity based on the defense of habitation...we find [the argument is] not preserved for review because...[it was] not raised to and ruled upon by the trial court. App. 588.

On appeal, appellate counsel correctly argued trespassing and the defense of habitation in connection with the immunity claim, but because trial counsel erred in failing to preserve the trespassing and habitation defense matters, the appellate court was prohibited from reviewing the merits of the same on direct appeal. Had trial counsel raised these issues at trial, then the matters would have been preserved for appellate review and the appellate court could have ruled on the same.

During the PCR hearing held in the case, petitioner testified that Bell was a trespasser and not lawfully inside his (petitioner's) home, but that his trial lawyers failed to raise the trespassing and habitation defense issues during the pre-trial immunity hearing. App. 627, l. 12, l.25 - p. 632, l.25; App. 636 , l.11 - p. 637, l.7.

Note that the defense of habitation was presented in trial counsel's written pre-trial immunity motion, but neither that defense (habitation) nor the trespassing issue ended up as matters presented during the pre-trial hearing. See trial counsel's immunity argument at App. 137, l. - p. 138, l.1 and App. 144, l.19 - p. 145, l.13.

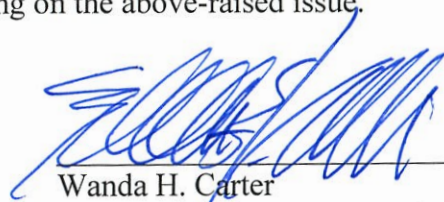
Trial counsel testified at the PCR hearing and stated that the trespassing issue was considered in the case. App. 666 lines 8-23. However, trial counsel failed to develop the trespassing and habitation defense issues at the pre-trial hearing.

Trial counsel erred in failing to present the trespassing and habitation defense issues as part of the immunity from prosecution claim advanced at the pre-trial Castle Doctrine hearing held in the case, which in turn precluded a review of these matters on direct appeal. As a rule, a

contemporaneous objection is required to properly present errors for appellate review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). Trial counsel's omission in this regard constituted ineffective legal assistance in violation of the Sixth Amendment and Strickland v. Washington, 466 U.S. 668 (1984), such that but for the error, a reasonable probability exists that the outcome of petitioner's trial and/or direct appeal would likely have been different.

### **CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this petition be granted in order to allow full briefing on the above-raised issue.



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of February, 2024.

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Lawton Leroy Holloway states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Frank R. Addy, which was held on June 20, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Lawton Leroy Holloway.

Respectfully Submitted,

  
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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of February, 2024.

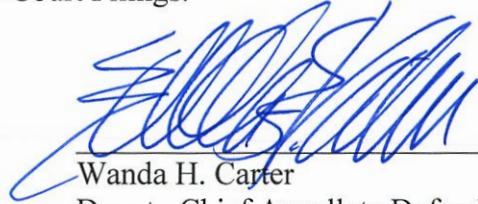
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 5th day of February, 2024.