

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

AUG 30 2013

\_\_\_\_\_  
Certiorari to Charleston County

**S.C. Supreme Court**

Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

STANFORD BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000077  
\_\_\_\_\_

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

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

# INDEX

INDEX.....	1
ISSUE PRESENTED .....	2
STATEMENT .....	3
ARGUMENT .....	4
CONCLUSION .....	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

## ISSUE PRESENTED

Trial counsel's Lounds<sup>1</sup> error that occurred during closing arguments when counsel contradicted petitioner's claim of innocence constituted ineffective assistance of counsel because such improper comments prejudiced the defense and bolstered the state's case.

---

<sup>1</sup> Lounds v. State, 380 S. C. 454, 670 S. E. 2d 646 (2008)

## STATEMENT

Petitioner Stanford Brown was convicted of trafficking in crack cocaine per jury trial held during the July 2009 term of the Charleston County General Sessions Court before Judge Kristi L. Harrington. Petitioner was sentenced to imprisonment for a period of thirty years. App. 1-444. James W. Smiley and Laree Hensley represented petitioner at trial.

Petitioner appealed his trial court conviction and sentence. On appeal, the South Carolina Court of Appeals affirmed petitioner's conviction and sentence. See State v. Brown, Unpublished Opinion No. 2012-UP-063 (Ct. App February 8, 2013). Petitioner was represented on direct appeal by the undersigned counsel in the instant PCR appeal.

On June 4, 2012, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 446– 452. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 453–455.

A PCR hearing was convened on December 5, 2012, at the Charleston County Courthouse before Judge Roger M. Young. Petitioner was present at the hearing and represented by Mark Peper. App. 457–525.

On December 31, 2011, Judge Young filed an order of dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App 527–537.

Petitioner appealed. This petition follows.

## ARGUMENT

Trial counsel's Lounds<sup>2</sup> error that occurred during closing arguments when counsel contradicted petitioner's claim of innocence constituted ineffective assistance of counsel because such improper comments prejudiced the defense and bolstered the state's case.

Only three witnesses testified at petitioner's trial: Detective Mark Brown, who supervised the drug buy; Cory Hart, who was the confidential informant who purchased the drugs; and the SLED chemist who analyzed and weighed the drugs.

Detective Mark Brown testified that he was in charge of a controlled drug purchase that occurred on the evening of May 7, 2007, when confidential informant Cory Hart met a person who was driving a white 2003 Chevy Impala at a Hess Station on Remount Road. Detective Brown explained that Hart walked to the car, got inside the car, and then exited the car with crack cocaine in his possession. App. 85, l. 6 – p. 95, l.9; App. 103, l.12 – p 115, l. 24.

Cory Hart testified that he called petitioner and told him that he wanted to make a drug purchase, and that per their agreement they met at the Hess station in question. Hart added that he went up to the car and bought crack cocaine from petitioner. App. 222, l. 19- p. 232, l. 22.

During the PCR hearing, petitioner testified that trial counsel "abandoned (him)" during his closing argument because counsel in effect put him at the scene and admitted his guilt to the jury. App. 482, l.15 – p.483, l.21.

Trial counsel testified at the PCR hearing and explained that his closing argument was "strong" and that he highlighted the problems with the state case. App. 508, l. 4-14.

The PCR judge ruled that trial counsel's "argument was proper," and that "counsel effectively argued [petitioner's] defense to the jury," and as a result, petitioner failed to prove that

---

<sup>2</sup> Lounds v. State, 380 S. C. 454, 670 S. E. 2d 646 (2008)

counsel failed to render reasonably effective legal assistance under the prevailing professional norms. App. 534-537.

The portion of trial counsel's closing argument that was the subject of petitioner's complaint follows:

My client was served with an arrest [warrant]... [and] ... says, yeah, I've me Cory up there many times. That's why Corey knew to set it up, there, to have it all fall apart there because he's angry. I would be angry, too, if I had just been screwed by a friend. Not over selling drugs, but to get out of trouble, he's going to offer up who they want. I would be angry. Of course he's angry. App. 404, lines 3-10.

Petitioner's case is similar to Lounds v State, 348 S.C. 467, 560 S.E. 2d. 646 (2008), where trial counsel was found ineffective for giving a closing argument that contradicted Lounds' defense. Lounds was accused of entering a warehouse where Todd Garrett worked, approaching Garrett, pulling out a gun, and asking Garrett for money. Garrett testified that Lounds and another man patted him down for money, and then pushed him into his (Garrett's) truck so that they could travel to his (Garrett's) parents' house to get money. To the contrary, Lounds testified at trial that Garrett, who previously bought crack cocaine from him, owed him \$550.00 and that when he approached Garrett about this, he had no gun and did not threaten Garrett, and that Garrett voluntarily drove to his truck to his parents' home to get the money. In short, Lounds denied that he kidnapped Garrett.

However, during closing arguments for Lounds, counsel told jurors that Lounds wanted his money and that he brought along the second male as "muscle" and that it was "two against one" and that the two men "leaned in" on Garrett, and then counsel "repeatedly pounded his right fist into his left hand palm" to denote Lounds' and the second male's show of force to Garrett. On appeal, the Court held that counsel erred in presenting this type of closing argument because it was contrary to Lounds' defense, which was that there was no gun, and that there were no threats, and that Garrett

moved voluntarily. The Court went on to hold that this closing argument prejudiced Lounds' defense because he was "not advocate[ing] in [Lounds'] favor," and that the error damaged the defense because it negated Lounds' credibility and his testimony and more importantly, supported the state's theory of the case. Compare also, Ingle v. State, 348 S.C. 467, 560 S.E.2d 408 (2002), where counsel was found ineffective because he called a witness who gave testimony that was contradictory to his client's defense at trial.

Similarly, in petitioner's case, trial counsel erred in contradicting petitioner's claim that he did not sell drugs by arguing that petitioner was furious (and rightly so) to learn that his friend set him up with a controlled drug buy and betrayed him in this manner. In other words, counsel's words were translated as an admission of petitioner's guilt and furthermore, an admission that petitioner was present at the crime scene when the drug transaction took place. Thus, the effect of these comments served to nullify petitioner's innocence claim and bolster the state's facts of the case and the credibility of Hart's testimony. Counsel's error was particularly egregious because counsel admitted at the PCR hearing that petitioner informed him that he was not present at the sale and did not make the sale. App. 505, lines 19-20; App. 505, lines 5-6.

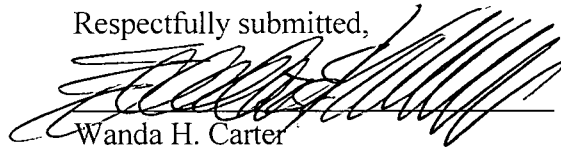
Moreover, ineffective assistance of counsel occurs also when counsel fails to subject the state's case to meaningful adversarial testing and that in such an instance, the prejudice is presumed. Frett v. State 298 S.C.521, 378 S. E. 2d 249 (1988), citing to United States v. Cronin, 466 U. S. 648 (1984). See also Nance v. Fredericks, 358 S. E. 2d 62 (2005) and Nance v. Ozmint 367 S. C. 547, 626 S. E.2d 878 (2006). Clearly, counsel erred in making statements at closing that contradicted petitioner's defense and favored the state's facts in this case. The error here also resulted in a lack of meaningful adversarial testing of the state's case against petitioner, which constituted representation that was below the standard of competence demanded of criminal

attorneys as well. Counsel's deficient representation in each instance violated the Sixth Amendment to the United States Constitution and Strickland v. Washington, 466 U.S. 668 (1984). But for counsel's ineffective assistance as outlined above, a reasonable probability exists that the outcome of petitioner's trial might have been different.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue in the case.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of August, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO CHARLESTON COUNTY  
ROGER M. YOUNG, CIRCUIT COURT JUDGE

---

STANFORD BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Stanford Brown 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 records and transcript of petitioner's post-conviction relief hearing which was held on December 5, 2012. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Stanford Brown.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of August, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

\_\_\_\_\_

STANFORD BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

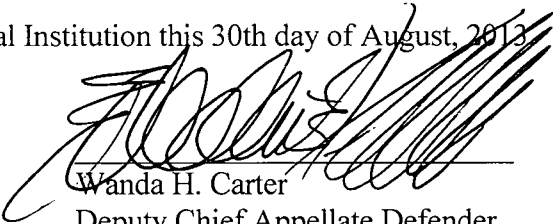
RESPONDENT

\_\_\_\_\_

CERTIFICATE OF SERVICE

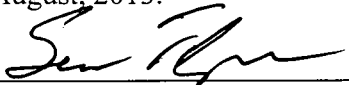
\_\_\_\_\_

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix and supplemental in this case have been served on Ashleigh R Wilson, Esquire and Stanford Brown, #293743, at Lieber Correctional Institution this 30th day of August, 2013.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of August, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.