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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Allendale County

Honorable Roger M. Young, Sr., Circuit Court Judge

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JAYCOBY TERREAK WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000007

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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## ISSUE PRESENTED

Whether the PCR court erred in finding counsel provided effective representation, where counsel failed to request a jury instruction on voluntary manslaughter, where Petitioner killed the man living with the mother of Petitioner's children, and where the prosecution had offered Petitioner a plea bargain to voluntary manslaughter, since there was evidence to support the charge?

## STATEMENT

***Procedural history***

On July 23, 2015, an Allendale County Grand Jury indicted Petitioner, Jaycoby Terreak Williams, for murder. App. 461 – 462. Petitioner was tried before the Honorable Perry M. Buckner and a jury, from April 3 – 5, 2017. Petitioner was represented by Ian Deysach. Korey Williams and Brian Hollen prosecuted the case. App. 1. Petitioner was convicted as indicted, and he was sentenced to serve thirty-five years' imprisonment. App. 379, ll. 8-12; App. 463.

On May 14, 2021, after his conviction was affirmed on direct appeal, Petitioner filed an application for post-conviction relief (PCR). App. 382 – 402. The State made its return on October 22, 2021. App. 403 – 416. On September 29, 2023, Petitioner filed an amended PCR application. App. 417 – 423. On November 27, 2023, a hearing was held before the Honorable Roger Young, Sr. Chelsey Marto represented Petitioner. Bryan Hall represented the State. App. 424. On December 19, 2023, the PCR court issued an order of dismissal. App. 451 – 460.

***Relevant facts***

On May 26, 2015, James Spellman (Decedent) was shot and killed outside of Pinewood Apartments in Allendale. App. 128, l. 2 – 132, l. 11; App. 214, ll. 8-19. Two men were with Decedent when he died, but both told authorities they had their backs to him at the moment he was shot. However, both men, Dequincy Best and Rahem Devoe, claimed Petitioner was the shooter—they testified they heard the shot and saw him standing over Decedent with the gun just after the shot was fired. App. 183, l. 16 – 187, l. 1; App. 150, l. 8 – 152, l. 17; App. 167, ll. 18-23; App. 224, ll. 5-15.

Petitioner was tried for murder. At the time of his death, Decedent was living with and was romantically involved with Tiffany Loadholt. Loadholt was the mother of Petitioner's two

children. Loadholt had been involved with both men—Petitioner and Decedent—during the same time period. App. 128, l. 10 – 129, l. 9; App. 326, ll. 7-15. Loadholt and Decedent had just returned from DSS (Department of Social Services), where they were for unknown reasons, prior to the fatal encounter between Petitioner and Decedent. App. 130, ll. 6-8. When Petitioner and Decedent encountered each other on the stairs at the apartment complex, Petitioner was armed. App. 148, l. 12 – 150, l. 12; App. 149, ll. 13-22. Decedent died from a fatal shot to the chest. App. 296, ll. 16-20.

Counsel proceeded at trial with an ill-considered defense—identity. App. 96, ll. 5-8; App. 331, ll. 7-20. Counsel proceeded on the theory that Petitioner was out of town at the time of the murder, even though Petitioner's own cousin testified he saw him in town shortly after Decedent was killed. App. 244, ll. 7-10; App. 263, l. 15 – 264, l. 23; App. 335, ll. 1-4; App. 206, l. 10 – 209, l. 16. It was also an ill-considered defense since the two eyewitnesses, Best and Devoe, both knew Petitioner, and both identified him as the shooter. App. 142, ll. 8-15; App. 150, ll. 8-16; App. 178, ll. 2-7; App. 185, ll. 1-4.

Murder was the only crime charged to the jury. The jury deliberated for only half an hour before convicting Petitioner of murder. App. 366, l. 8 – 367, l. 13. Petitioner sought post-conviction relief, and he argued counsel's performance was deficient because he did not request a jury instruction on voluntary manslaughter. App. 447, ll. 2-7. Counsel admitted that, in hindsight, he should have requested that the jury be instructed on the lesser-included offense of voluntary manslaughter. App. 434, l. 24 – 435, l. 25. Counsel also testified that the State had at some point made Petitioner a plea offer of voluntary manslaughter. App. 437, ll. 1-3.

Nevertheless, the court denied post-conviction relief, finding that Petitioner did not establish deficient performance. The order of dismissal stated, "Counsel [] testified that there

was no evidence presented at trial to support the jury charge of voluntary manslaughter. This court finds *credible* counsel's testimony and finds the evidence presented at trial did not support a jury charge for voluntary manslaughter. Thus, Applicant did not meet his burden of proving Counsel's performance was deficient." App. 455 (emphasis in original).

This petition for writ of certiorari follows.

## ARGUMENT

**The PCR court erred in finding counsel provided effective representation, where counsel failed to request a jury instruction on voluntary manslaughter, where Petitioner killed the man living with the mother of Petitioner's children, and where the prosecution had offered Petitioner a plea bargain to voluntary manslaughter, since there was evidence to support the charge.**

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced the petitioner. *Id.* at 687. "To show prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability the result of the trial would have been different." *Patrick v. State*, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). In determining whether an applicant has proven prejudice, the strength of the State's case is one significant factor to be considered, along with the specific impact of counsel's error and other relevant considerations. *Smalls v. State*, 422 S.C. 174, 190, 810 S.E.2d 836, 844 (2018).

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). When reviewing the trial court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant. *State v. Williams*, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct.

App. 2012) (citing *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000)). "If there is any evidence to support a jury charge, the trial judge should grant the request." *State v. Brown*, 362 S.C 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000).

The jury must be instructed on a lesser-included offense when there is any evidence from which it could be inferred that the lesser, rather than the greater, offense was committed. *State v. Watson*, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002); *see also State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996) (same). Stated differently, the evidence must allow "a rational inference" that the defendant committed the lesser offense. *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006). The appellate courts view the evidence in the light most favorable to the defendant when determining whether the jury must be charged on voluntary manslaughter. *State v. Gadsden*, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994). The trial court should decline to charge the jury on the lesser-included offense when the record contains no evidence to support voluntary manslaughter. *State v. Cooley*, 342 S.C. 63, 678, 536 S.E.2d 666, 668 (2000). "To warrant the court eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009).

Manslaughter is "the unlawful killing of another without malice, express or implied[.]" S.C. Code Ann § 16-3-50. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986). Both of these elements must be present at the time of the killing to

warrant a charge on voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010). "The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Wharton*, 381 S.C. at 214, 672 S.E.2d at 788. *See also State v. Gardner*, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) ("In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing."). "A legal provocation is some act which, either alone or in connection with words or circumstances is calculated to throw one into a passion." *State v. Gadsden*, 314 S.C. 229, 232, 442 S.E.2d 594, 596 (1994).

Before a guilty plea may be accepted, the court "must be certain . . . that the record indicates a factual basis for the plea." *State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). However, "*Armstrong* does not mean that the state may not offer a defendant, charged with a greater offense, an opportunity to plead guilty to a lesser offense, notwithstanding the factual basis does not precisely comport with the lesser offense . . . so long as there was a sufficient factual basis to support the crime for which the defendant was indicted, a plea to any lesser included offense is sufficient." *Anderson v. State*, 342 S.C. 54, 57–58, 535 S.E.2d 649, 651 (2000) (footnote omitted).

In this case, counsel's performance was deficient when he failed to request an instruction on voluntary manslaughter. Counsel admitted that, in hindsight, he should have requested the

charge. App. 434, l. 24 – 435, l. 25. It was undisputed that the State had offered Petitioner a plea bargain to plead guilty to the lesser offense. App. 437, ll. 1-3. Therefore, there was likely a factual basis for the offer—i.e., circumstances which would have supported conviction on the lesser offense. *E.g.*, *State v. Armstrong*, 263 S.C. at 598, 211 S.E.2d at 891. It was also undisputed that the decedent was living with the mother of Petitioner's children at the time of his death. It appeared she had been romantically involved with both men during the same time period given the ages of the children. App. 326, ll. 7-15. These surrounding circumstances and previous relations were evidence of heat of passion rather than malice. *E.g.*, *State v. Gardner*, 219 S.C. at 104, 64 S.E.2d at 134. The jury should have been charged on voluntary manslaughter. Counsel's ineffective representation prejudiced Petitioner, since there was a reasonable likelihood the jury would have convicted Petitioner of the lesser offense had counsel requested the charge. Petitioner has proven deficiency and prejudice. *Strickland v. Washington*, 466 U.S. at 687.

## CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of August, 2024.

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# PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Jaycoby Terreak Williams states:

1. She is 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 Roger M. Young, Sr., which was held on November 27, 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 Jaycoby Terreak Williams.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of August, 2024.

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**CERTIFICATE OF COUNSEL**

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."

Joanna K. Delany
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ATTORNEY FOR PETITIONER

This 5th day of August, 2024.