

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Aug 14 2024

S.C. SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

MELVIN DURANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000120

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) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Trial counsel erred in failing to object to and preserve for appeal
the issue of whether petitioner’s confession was voluntarily given
to police because said confession was clearly obtained improperly
after a police officer promised to help him in exchange for his
cooperation..... 3

CONCLUSION 6

PETITION TO BE RELIEVED AS COUNSEL 7

ISSUE PRESENTED

Trial counsel erred in failing to object to and preserve for appeal the issue of whether petitioner's confession was voluntarily given to police because said confession was clearly obtained improperly after a police officer promised to help him in exchange for his cooperation.

STATEMENT OF FACTS

Petitioner Melvin Durant was found guilty of assault and battery of a high and aggravated nature during the June 2016 term of the Florence County General Sessions Court before Judge D. Craig Brown. Petitioner was sentenced to imprisonment for a period of twenty years. App. 15-278. William Vickery Meetze, Esquire, represented petitioner at trial, and Assistant Solicitor David Richardson appeared on behalf of the state. Petitioner appealed his conviction and sentence.

Petitioner was represented on appeal by Susan B. Hackett, Esquire. App. 280-307. Ultimately, petitioner's conviction and sentence were affirmed. State v. Durant, Unpublished Opinion No. 2019-UP-083 (filed February 20, 2019). App. 329-332.

On December 11, 2019, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 333-340. The respondent filed a Return dated June 8, 2020. App. 341-346. An Amended PCR application was filed on November 29, 2022. App. 348-352.

A PCR hearing in the case was convened on December 14, 2022, at the Florence County Courthouse before Judge George M. McFadden. App. 353-373. Petitioner was present at the hearing and represented by Attorney Joshua A. Bailey, and Assistant Attorney General Danielle Dixon appeared on behalf of the state.

On December 15, 2023, Judge McFadden issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 377-383.

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

ARGUMENT

Trial counsel erred in failing to object to and preserve for appeal the issue of whether petitioner's confession was voluntarily given to police because said confession was clearly obtained improperly after a police officer promised to help him in exchange for his cooperation.

This case arose out of a conflict that occurred on November 12, 2014 between petitioner and Wiley Jones, both of whom were housed at the Florence County Shelter at that time. The dispute in question ended when Jones was stabbed. Jones testified that petitioner stabbed him. App. 7, l. 18 – p. 122. l. 2. Carl Wheeling, who was also a resident at the shelter, was aware of the discord between these two men and witnessed the stabbing on that date. App. 83, l. 10 – p. 96, l. 9. Petitioner was arrested at the scene by Officers Mark Harp and Howard Wynn, and subsequently answered their questions about what happened in the case. App. 141, l. 23 – p. 146, l. 22; App. 148, l. 19 – p. 152, l. 19.

The appellate court did not rule on petitioner's argument on appeal that his confession was involuntarily given to police as it was obtained in response to Officer Wynn's promise to help him because the issue was not preserved for appellate review. App. 299-304; App. 331. In other words, trial counsel failed to object to this issue at trial, which in turn rendered the same unreviewable on appeal. See State v. Durant, Unpublished Op. No. 2019-UP-083 (Ct. App. filed February 20, 2019). App. 329-332.

During the PCR hearing held in the case, petitioner testified as follows:

Q: Now throughout the course of the case...did Investigator Wynn make a statement to you about helping you out if you made a statement?

A: Yes sir, he did.

Q: And after Investigator Wynn made that statement to you, is that when you made a statement that incriminated yourself...and what was that statement?

A: Well, he asked me if I would cooperate with him, he'll help me the best he can, but first I have to respond to his questions.

Q: But then he (Investigator Wynn) continued to question you, isn't that correct?

A: Yes Sir. App 359, l. 24 – p. 360, l. 11.

Trial counsel testified during the PCR hearing and explained that petitioner did not inform him about Investigator Wynn's promise to help in exchange for his confession. App. 368, lines 8-20.

In the appellate brief, it was revealed that an inspection of State's Exhibit #2 (interrogation tapes) proved indeed that Investigator Wynn promised to help petitioner if he confessed. Apparently, the promise was that "that he (Investigator) could not help [petitioner] if [petitioner] did not tell him the truth. See App. 299.

The PCR judge ruled that trial counsel was not ineffective in failing to challenge the voluntariness of petitioner's confession given to Officer Wynn as an issue at trial. The PCR judge attached credibility to trial counsel's testimony that petitioner never told him about a leniency promise from police, and found no credibility to petitioner's testimony that the police promised to help if he confessed. App. 380-382.

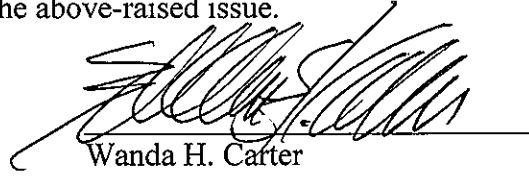
In the case at bar, a review of State's Exhibit #2 by trial counsel would have exposed this error regarding how petitioner's confession was illegally secured in the case. Trial counsel had a duty to investigate into the circumstances surrounding said confession rather than assign petitioner with the task of ferreting out legal issues before the trial.

A statement is admissible into evidence at trial only if it is voluntarily given. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). A statement is involuntarily given when the inducement for the statement is connected to a promise of leniency. State v. Peake, 291, S.C. 138, 352 S.E.2d 487 (1987). In Peake, the defendant was told that there would be no death penalty for him if he confessed. The Peake Court reversed and held that the defendant's statement that followed the improper inducement (death penalty avoidance) rendered it involuntarily given in the case. Similarly, in the case at bar, petitioner's confession was involuntarily given also because it was obtained in response to the officer's promise (improper inducement) to help him.

Clearly, the question of whether petitioner's confession was voluntarily given was a viable and meritorious appellate issue that would have been reviewed on appeal had trial counsel objected to the same at trial. In order for an issue to be preserved for appellate review, it must have been raised and ruled upon by the trial court in order to receive consideration on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Appellate review of the issue of whether petitioner's confession was voluntarily given would likely have yielded a favorable outcome on appeal. Trial counsel's error in this regard constituted deficient representation at trial in violation of the Sixth Amendment. See Strickland v. Washington, 466 U.S. 668 (1984). Trial counsel erred in failing to object to the question of the voluntariness of petitioner's confession given to police in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing of the above-raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of August, 2024.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Aug 14 2024

S.C. SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

MELVIN DURANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

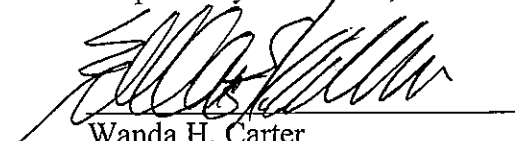
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Melvin Durant 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 George M. McFaddin, which was held on December 14, 2022, 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 Melvin Durant.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of August, 2024.

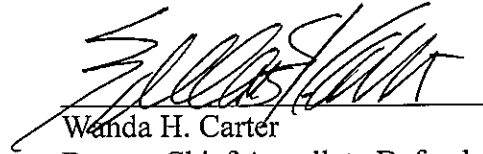
RECEIVED

Aug 14 2024

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."



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) 734-1330

ATTORNEY FOR PETITIONER

This 14th day of August, 2024.