

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

HAROLD JAMAR WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000871

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether trial counsel was ineffective in failing to object to the part of the solicitor's closing argument that vouched for the credibility of a State's witness?

STATEMENT

Petitioner was convicted of murder, assault and battery with intent to kill, attempted armed robbery, and possession of a firearm during commission of a crime of violence after a jury trial held before the Honorable Howard P. King on November 15 – 18, 2004, in Sumter County. Respective sentences of life imprisonment, twenty (20) years, twenty (20) years, and five (5) years were imposed. All sentences were ordered to be served consecutively. Richard Blackmon, Esquire, was trial counsel. W. Harry Connor, Jr., Esquire, was the assistant solicitor. (App. p. 1 – p. 613). Petitioner appealed his convictions and they were affirmed by the Court of Appeals on December 14, 2009. State v. Wilson, Op. No. 2009-UP-588. (App. p. 615 - 629).

Petitioner filed an application for post-conviction relief on May 10, 2010. (App. p. 630 – 641). Respondent filed a return dated February 17, 2011. (App. p. 642 – p. 647). An evidentiary hearing was held on September 19, 2012, before the Honorable W. Jeffrey Young. Petitioner was present and was represented by Charles T. Brooks, Esquire. Respondent was represented by Megan E. Harrigan, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 648 – p. 685).

On November 13, 2012, Judge Young issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 686 – p. 696).

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to object to the part of the solicitor's closing argument that vouched for the credibility of the State's witness.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006).

In this case, trial counsel was ineffective because he failed to object to the part of the solicitor's closing argument that vouched for the credibility of a State's witness. The witness was Alexis Earp who lived on Carver Street in Sumter. She was home from the University of South Carolina on May 19, 2003, and she witnessed the shooting of the victim, Reginald Foster, next door. (App. p. 211, line 2 – p. 217, line 20).

During closing argument to the jury the solicitor mentioned Ms. Earp by name and remarked, “The girl that stayed next door and her testimony and quite frankly she made a good impression on me. . . .” (App. p. 545, lines 4-6). Petitioner raised the issue of trial counsel’s failure to object to the solicitor’s argument in his application for post-conviction relief (App. p. 523) and at the evidentiary hearing. (App. p. 545, line 18 – p. 546, line 7). This was a classic case of a solicitor vouching for the credibility of a state’s witness and trying to bolster her testimony. In Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002), the Court wrote:

The solicitor’s statement is improper. A solicitor may argue the credibility of the State’s witnesses if the argument is based on the record and its inferences. *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990). A solicitor may not vouch for the credibility of a State’s witness based on personal knowledge or other information outside the record. *State v. Kelly*, 343 S.C. 350, 540 S.E.2d 851 (2001). Vouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution for the State to assure the jury of a witness’ credibility, because the jury is charged with assessing the credibility of witnesses based on evidence in the record. *Id.*

The solicitor’s summation led the jury to believe the government corroborated the witness’ testimony before trial and found it credible. The solicitor did not support this vouching with anything within the record, such as corroboration by other witnesses or physical evidence. The solicitor improperly vouched for the witness.

Counsel’s failure to object was incorrect and prejudicial.

Trial counsel’s failure to object in petitioner’s case was also incorrect and prejudicial

CONCLUSION

Petitioner's writ should be granted and he should be given a new trial.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of September, 2013.

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CERTIORARI TO SUMTER COUNTY
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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Harold Jamar Wilson states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on September 19, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Harold Jamar Wilson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of September, 2013

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CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Harold Jamar Wilson, #306094, at Lieber Correctional Institution, this 10th day of September, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of September, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.