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Nov 22 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Kristi F. Curtis, Circuit Court Judge

JALANN WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000967

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in finding defense counsel was not ineffective for failing to object to the state's closing argument alleging petitioner altered his appearance for trial, and attacked his character as a bad parent who was involved in a drug deal and murder during the limited time he should have been attending to his children since these improper, inflammatory arguments denied petitioner his due process right to a fair trial?

STATEMENT OF FACTS

Petitioner was indicted at the June 3, 2013, term of the Charleston County grand jury for the offenses of murder, armed robbery, and possession of a firearm during the commission of a violent crime. App. 556-558. His case was called to trial on January 5, 2015, before the Honorable R. Lawton McIntosh and a jury. Christopher Murphy represented petitioner. Greg Voight and David Osborne were the assistant solicitors. App. 1.

Petitioner was found guilty of murder and the firearm offense but could not reach a verdict on the armed robbery charge after the trial judge refused to instruct the jury on self-defense, and defense counsel removed his request for a voluntary manslaughter instruction with the consent of the state. App. 295, l. 3 – 298, l. 21; App. 457, ll. 2-16. Judge McIntosh sentenced petitioner to thirty years imprisonment for murder, and he imposed a concurrent five year sentence for possession of a firearm during a violent crime. App. 467, ll. 8-18.

On direct appeal, the Supreme Court, following a grant of certiorari for petitioner, after the Court of Appeals affirmed petitioner's convictions, wrote the facts of this case:

Robert Mitchell made arrangements with Akim Ladson to meet for the purpose of purchasing from Ladson a particularly high-quality variety of marijuana known as "loud."¹ Mitchell then went to the mobile home where he knew Jalann Williams to be living to recruit Williams as a participant in the drug deal. The reasons Mitchell recruited Williams--and Williams agreed to go--are disputed. Mitchell testified Williams told him he was going to the drug deal to rob Ladson because Williams needed money to pay his bail bondsman on other charges. Williams denied any intent to rob Ladson. He testified he loaned Mitchell the money to buy "loud," but the price seemed low, so he went to the drug deal to be sure Mitchell was buying the proper marijuana. His apparent purpose was to ensure his loan would be repaid. Referring to the price, he testified, "I didn't really trust that but I was like, 'That's him buying

¹ "Loud" is defined in the Urban Dictionary as, "A slang term for marijuana of high quality," and, "bomb-ass weed." See *Loud*, Urban Dictionary, <https://www.urbandictionary.com/define.php?term=loud> (last visited June 14, 2019)

and as long as I get my money back by the end of the week I was all right." Williams further explained his purpose, "I said, 'well, I'm going to go along with you because I don't believe nobody got no price [sic] for that weed.'" He later testified, "Out of the whole my main concern was just to get my money back at the end of the week because I needed the money back."

These disputed facts, however, are not important to our analysis. What is important to our analysis is the undisputed fact that when Williams agreed to participate in the drug deal, he made a conscious choice to take his loaded pistol with him.

Williams and Mitchell waited for Ladson in the same mobile home park where Williams was living. Ladson arrived in a car driven by his girlfriend, Alayah Hamlin. Ladson was in the front passenger seat. Williams and Mitchell entered the backseats of Hamlin's car and began the drug deal. Ladson handed Mitchell the marijuana, and Mitchell began to inspect and weigh it on a portable scale Williams brought with him. Viewing the evidence in the light most favorable to Williams, Ladson attacked Williams, Williams feared for his safety, and Williams had no opportunity to get away. Williams then shot and killed Ladson. The State charged Williams with murder, armed robbery, and possession of a firearm during the commission of a violent crime. At trial, Williams requested the trial court charge the jury the law of self-defense as to the murder charge. The trial court refused. The jury convicted Williams of murder and possession of a firearm during the commission of a violent crime. The jury was unable to reach a verdict on the charge that Williams robbed Ladson. The trial court sentenced Williams to thirty years in prison.

Williams appealed, arguing the trial court erred in refusing to charge the law of self-defense. The court of appeals affirmed. *State v. Williams*, Op. No. 2017-UP-015 (S.C. Ct. App. filed Jan. 11, 2017). We granted Williams' petition for a writ of certiorari to review the court of appeals' decision.

App. 560-561.

Our Supreme Court found that petitioner was at fault in bringing on the difficulty. Citing *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999), for the principle that a defendant is not entitled to an instruction on self-defense if the evidence supports the conclusion that he acted "in

violation of the law” in a manner “reasonably calculated to produce (a violent) occasion,” the Court affirmed petitioner’s convictions. App. 562.

The Court found that petitioner intentionally brought a loaded, unlawfully possessed pistol to an illegal drug transaction which was a “violation of law” that was “reasonably calculated to produce” violence. The Court therefore found petitioner was barred from asserting the defense of self-defense. App. 562.

Petitioner then filed an application for post-conviction relief on June 23, 2020. App. 469-480. The state filed a return to this post-conviction relief application on February 22, 2021. App. 481-490.

A post-conviction relief hearing was convened on June 23, 2022, before the Honorable Kristi F. Curtis. James K. Falk represented petitioner. Samantha Weidauer was the assistant attorney general. App. 491.

As to the issue that is the subject of this certiorari petition, the state’s closing argument, defense counsel Murphy testified during the PCR hearing that he thought it was a “stretch” to interpret the state’s closing argument as being an attack on petitioner for being a bad father. “But again, if he’s a bad father he’s not guilty of murder. He was going to rob someone, a drug dealer, so I don’t think that has—again, that would be the superfluous stuff that doesn’t really make sense with the case.” App. 509, l. 9 – 510, l. 6. Murphy said he did not think the closing argument was inflammatory: “I wouldn’t even object to it again if I heard it right now so I don’t think it is inflammatory at all.” App. 510, ll. 7-11.

On cross-examination, Murphy repeated that he did not consider the state’s closing argument prejudicial: “Frankly, I thought that’s the least of his problems if he was a bad father or had dreadlocks. Big deal. And I like that the state was saying stuff like that because it shows

they are reaching. They're not focusing on the facts. They're focusing on stuff that has nothing to do with the case." App. 521, l. 20 – 522, l. 20.

The assistant attorney general argued in closing at the PCR hearing that the state did not see any prejudice from the solicitor's mention of petitioner's dreadlocks and him cutting his dreadlocks before the trial. The state also urged that the closing argument on petitioner being involved in a drug deal when he should have been with his children was not improper. App. 534, ll. 7-14.

PCR counsel Falk responded that the solicitor's closing argument was attacking petitioner's character, and defense counsel was mistaken for thinking otherwise. PCR counsel argued that the state's closing argument in this regard was totally improper and an impermissible attack on petitioner's character. App. 534, ll. 3-16. The PCR judge then took the matter under advisement. App. 537, ll. 1-23.

An order of dismissal was filed on June 7, 2024. App. 539-554. The PCR court found that petitioner failed to prove his counsel was ineffective for not objecting to the solicitor's closing argument on petitioner cutting his dreadlocks before trial and the solicitor commenting on petitioner committing a crime when he was supposed to be with his children. App. 551-552. The PCR court found that even if the closing argument was improper, it did not unfairly prejudice petitioner and deny him a fair trial. App. 551.

The PCR court reasoned the solicitor's comments did not so infect the trial with unfairness as to make petitioner's conviction a denial of due process *citing* Darden v. Wainwright, 477 U.S. 168, 181 (1986). The PCR court also found defense counsel's testimony was credible as to why he did not object to the solicitor's closing argument. App. 552.

From this order, petitioner is seeking a writ of certiorari from this Court pursuant to Rule 243, SCACR.

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for failing to object to the state's closing argument alleging petitioner altered his appearance for trial, and attacked his character as a bad parent who was involved in a drug deal and murder during the limited time he should have been attending to his children since these improper, inflammatory arguments denied petitioner his due process right to a fair trial.

The solicitor's theme to the jury was that petitioner was trying to mislead them as to his true character by cutting off his dreadlocks, and "looking more conventional" where he was in fact a bad person who was involved in drugs, and a bad father. The solicitor told the jury that on the day petitioner was supposed to be spending with his children, he was involved in a drug deal that ended in the decedent being murdered.

However, in a criminal case, the state cannot attack the character of a defendant on trial unless the defendant himself first places his character at issue. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) *citing* State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984) and State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983). While petitioner testified at trial, he never submitted any evidence asserting he was a person of good character or a non-violent person.

Just as evidence is inadmissible to show a defendant's criminal propensity or to demonstrate that the defendant is a bad person, closing arguments meant to convey the same message are also impermissible. See State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). The state's closing argument must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. See Vasquez v. State, 388 S.C. 447, 698 S.E.2 561 (2010). Further, a solicitor's closing argument must be carefully tailored so as not to appeal

to the personal biases of the jury. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1986).

In Vasquez, a case tried not long after the 9/11 attack upon the United States, the solicitor referred to domestic terrorism in a case in which the defendant was a Muslim, and where the defendant wore “a traditional Muslim headdress” during the trial. Our Supreme Court analogized Vasquez to State v. Jones, 355 N.C. 117, 558 S.E.2d 97 (2002), where the North Carolina Supreme Court reversed the defendant’s death sentence because the prosecutor referenced the Columbine school shooting and the bombing of the Oklahoma City Federal Building. Our Supreme Court in Vasquez found that the defendant’s death sentence also had to be vacated given the solicitor’s inflammatory argument about Muslims after 9/11.

Here, the solicitor’s argument that appellant cut off his dreadlocks to mislead the jury appealed to the passions and prejudices of the jury. It insinuated, in the context of his trial, that petitioner was a thug or gangbanger involved in drugs who had changed his appearance in an attempt to mislead the jury.

The solicitor also attacked petitioner’s character as a bad person who was engaged in a drug deal at the time he was responsible for taking care of his young children. Again, petitioner had not put his character at issue, and this attack was therefore improper. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989)

Closing arguments stating a defendant is essentially a bad person, and insinuating he should be convicted for that reason are improper. See State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000) (closing arguments referring to the defendant as an “outlaw” was improper, even though “Outlaw” was the defendant’s nickname.) See also Von Dohlen v. State, 360 S.C. 598,

602 S.E.2d 738 (2004) (the solicitor’s “Golden Rule” argument eliciting sympathy for the victim who was a good person required that the defendant’s death sentence be vacated.)

Defense counsel testified at PCR that he did not object to the closing argument at trial because if the state was arguing petitioner was a bad father, this meant he was not guilty of murder. App. 509, l. 9 – 510, l. 6. This justification was either a slip of the tongue by defense counsel or simply incomprehensible.

Defense counsel also testified that the attacks based on petitioner’s dreadlocks and him being a bad father showed the state was “reaching” which counsel apparently thought the jury apparently would recognize and hold against the state. App. 521, l. 20 – 522, l. 20. However, the solicitor’s thinly veiled arguments that petitioner was a fraud who had changed his appearance to fool the jury, and that he was a bad person, were improper, and defense counsel should have objected to them.

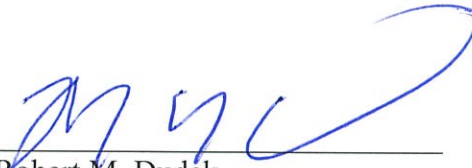
The question for the PCR court here was whether the solicitor’s comments so infected the trial with unfairness as to make petitioner’s resulting convictions a denial of due process. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). When examining the impropriety of the solicitor’s closing argument it must be done in the context of the entire record. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

The PCR court’s finding that defense counsel was “credible” in his explanation for not objecting to the closing argument was erroneous, as was the court’s finding that petitioner was not prejudiced by the closing argument. The solicitor’s closing argument in this case was fundamentally improper, and it denied petitioner his due process right to a fair trial. Defense counsel was deficient in failing to object to it, and petitioner was prejudiced. See Strickland v. Washington, 466 U.S. 668 (1984).

Petitioner should be granted a new trial. Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

By reason of the foregoing argument, the ruling of the PCR court denying PCR relief should be reversed, and petitioner's case should be remanded to the Charleston County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2024.

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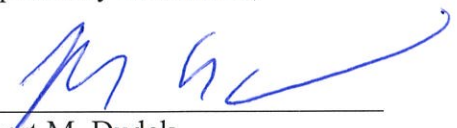
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jalann Williams states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Kristi F. Curtis, which was held on June 23, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jalann Williams.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2024.

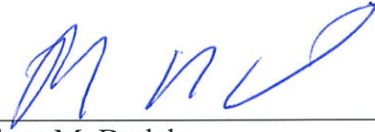
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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