

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

**RECEIVED**

SEP 19 2013

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**APPEAL FROM ABBEVILLE COUNTY**

**S.C. Supreme Court**

**Thomas A. Russo, Circuit Court Judge**

\_\_\_\_\_  
**Case No. 2012-212875**  
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**Clarence Austin Harrison.....Petitioner,**

**vs.**

**State of South Carolina.....Respondent**

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

**JENNINGS B. ANDERSON**

**Nicholson, Meredith, and Anderson, LLC  
109 West Court Avenue (29646)  
P.O. Box 457  
Greenwood, South Carolina 29648**

**ATTORNEY FOR PETITIONER**

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TABLE OF AUTHORITIES

Cases

Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).....8

State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1943).....5

State v. Sierra, 337 S.C. 368, 523 S.E.2d 187 (Ct. Apps. 1999).....5, 6

STATEMENT OF ISSUES ON APPEAL

Whether Appellant's trial counsel was ineffective for failing to renew an objection to the prosecuting attorney's repeated interjection of the prosecuting attorney's credibility, thereby in essence becoming a witness for the State.

## STATEMENT OF THE CASE

Appellant is presently incarcerated by the South Carolina Department of Corrections. He was indicted in March 2006 for Assault and Battery with Intent to Kill, Attempted Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime. He was found guilty at a jury trial held on March 20-23, 2006, and subsequently sentenced by the Honorable Roger L. Couch to a period of twenty (12) years for both ABWIK and attempted armed robbery, and five (5) years for the weapon possession charge, all concurrent.

The Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Harrison, Op. No. 2009-UP-079 (Ct. App. Filed Feb. 11, 2009).

The Appellant filed an application for post-conviction relief on December 16, 2010, which application was subsequently amended twice (on April 25, 2011 and May 29, 2012) in which he argued that trial counsel was ineffective for multiple reasons.

The Appellant was allowed an evidentiary hearing on June 7, 2012, following which the Honorable Thomas A. Russo issued an Order of Dismissal with prejudice dismissing the application for PCR for “failing to establish any constitutional violations or deprivations that would require this court to grant his application.”<sup>1</sup> Appellant timely filed a notice of appeal from the denial of the PCR, and this appeal follows.

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<sup>1</sup> Order of Dismissal, p. 11.

## ARGUMENT

Appellant's argument that his trial counsel was ineffective because he failed to renew an objection to the prosecuting attorney's interjection of his (the prosecuting attorney's) credibility, which in essence made the prosecuting attorney a witness for the State.

At Appellant's PCR hearing, Appellant raised the issue of an improper line of questioning by Solicitor John Anthony (Solicitor). At trial, Solicitor questioned a witness, Sherman Norman, about a conversation the witness had with Solicitor and a police officer concerning a statement made to police by the witness. Appellant contended that Solicitor's line of questioning in effect made the Solicitor a witness for the State, and that the Solicitor's interjecting his credibility unfairly prejudiced Appellant. Although counsel for Appellant initially objected to the Solicitor's questioning, the trial court overruled the objection and allowed the Solicitor to continue his line of questioning, while instructing the State as to the manner in which the questions should be asked. The trial court noted that the South Carolina Supreme Court had held in State v. Lee that while a prosecutor's acting as a witness for the State is disfavored, there was no outright prohibition against it.<sup>2</sup> However, subsequent to the trial court's instructions to the Solicitor as to how his question should be phrased, the Solicitor continued to phrase his questions in such a way as to interject his credibility, and the trial court twice stopped the line of questioning to correct him. In fact, the Solicitor interjected his credibility twelve times after the trial court's initial instruction, most notably by using the word "us" in describing the participants of the conversation.

In State v. Sierra, the South Carolina Court of Appeals noted that "though it is proper to elicit testimony by leading questions on cross-examination, it is generally recognized as improper for the cross-examiner to testify by making statements of fact."<sup>3</sup> The case also makes note of Rule

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<sup>2</sup> 203 S.C. 536, 28 S.E.2d 402 (1943).

<sup>3</sup> 337 S.C. 368, 373, 523 S.E. 2d 187, 189 (Ct. Apps. 1999).

3.7 of the Rules of Professional Conduct, which states that a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.<sup>4</sup>

Appellant contends that his trial counsel should have renewed the objection to the prosecuting attorney's interjection of his credibility. The trial court's repeated instruction to the Solicitor to rephrase his questions to conform to the court's previous ruling were ignored. After the trial court's repeated instruction were ignored by the Solicitor, Appellant's trial counsel should have renewed his objection to the line of questioning. The repeated use of the word "us" prejudiced the jury against Appellant by interjecting the Solicitor's credibility. In State v. Sierra, the Court of Appeals ruled that

though the witness denied the inconsistent statements, the solicitor argued her version of the statements as facts to the jury in her closing argument, as if her version was supported by evidence. Blurring the lines between attorney and witness during cross-examination set the stage for this improper closing argument. The closing argument, standing alone, would have been grounds for reversal if it had been properly preserved by objection.<sup>5</sup>

The Solicitor's repeated interjection of his credibility after the trial court's instructions is analogous to the Sierra solicitor's repetition of her version of the statement of facts in the closing argument. As in Sierra, where it was found to be reversible error to fail to object to the solicitor's repeated interjection of her testimony (her version of the facts), in the instant case, Appellant's counsel should have renewed his objection upon repeated improper questioning by Solicitor in spite of the trial court's instructions.

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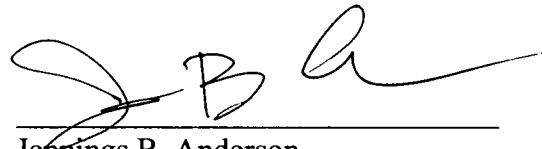
<sup>4</sup> *Id.*, at 376, 191.

<sup>5</sup> *Id.*, at 377, 191.

CONCLUSION

Appellant's application for post-conviction relief should not have been denied, and Appellant should have been granted a new trial, based on Appellant's counsel's failure to renew objection to improper questioning by Solicitor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JBA', written over a horizontal line.

Jennings B. Anderson  
Attorney for Appellant

This 17<sup>th</sup> day of September, 2013.

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**APPEAL FROM ABBEVILLE COUNTY**

**Thomas A. Russo, Circuit Court Judge**

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**Appellate Case No. 2012-212875**

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**Clarence Austin Harrison.....Petitioner,**

**vs.**

**State of South Carolina.....Respondent.**

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**PETITION TO BE RELIEVED AS COUNSEL**

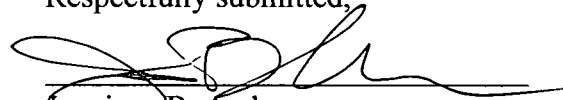
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Counsel for Clarence Austin Harrison states:

1. He is the attorney appointed to represent the petitioner/appellant.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 7, 2012. 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 hearing of Appellant's post-conviction relief process.

WHEREFORE, he asks the Court to relieve him as counsel for Clarence Austin Harrison.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennings B. Anderson', written over a horizontal line.

Jennings B. Anderson  
Attorney for Appellant

This 17<sup>th</sup> day of September, 2013.

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED** APPEAL FROM ABBEVILLE COUNTY

SEP 19 2013

Thomas A. Russo, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2012-212875

Clarence Austin Harrison.....Petitioner,

vs.

State of South Carolina.....Respondent

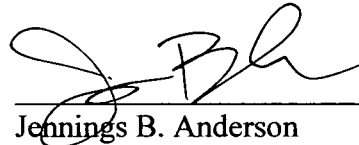
DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Post-Conviction Relief petitions in Case No.: 2010-CP-01-0374.
2. Transcript of Proceedings.
3. Order of August 6, 2012.

I certify that the designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,



Jennings B. Anderson  
Attorney for Petitioner

This 17<sup>th</sup> day of September, 2013.

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM ABBEVILLE COUNTY

SEP 19 2013

Thomas A. Russo, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2012-212875

Clarence Austin Harrison.....Petitioner,

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State of South Carolina.....Respondent.

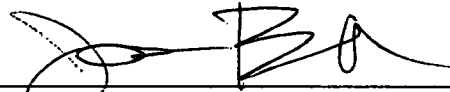
CERTIFICATE OF SERVICE

The undersigned does hereby certify that he is employed by the law firm of Nicholson Meredith & Anderson, the attorneys for the Appellant in the above entitled action, and that he has served a copy of the Johnson Petition for Writ of Certiorari, Designation, and a copy of the Appendix in the above case upon the following by depositing a copy of same in the United States mail, with sufficient postage affixed, on the 18<sup>th</sup> day of September, 2013:

**J. Rutledge Johnson**  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

**Daniel E. Shearouse**  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

**Clarence Austin Harrison**  
PCI Q4A107  
430 Oaklawn Road  
Pelzer, SC 29669k



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**Jennings B. Anderson**  
**Attorney for Petitioner**

SWORN TO BEFORE ME this 16 day  
of September, 2013.

Billie Miller (L.S.)  
Notary Public for South Carolina

My Commission Expires: 7-13-2021

# NICHOLSON MEREDITH & ANDERSON, LLC

ATTORNEYS AT LAW

W.H. Nicholson, III  
Lena Y. Meredith  

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September 18, 2013

**RECEIVED**

SEP 19 2013

S.C. SUPREME COURT

Daniel E. Shearouse, Clerk of Court  
SC Supreme Court  
1231 Gervais St  
Columbia, SC 29201

**RE: Clarence Austin Harrison v. State of South Carolina  
Case # 2012-212875**

Dear Clerk:

Enclosed please find an original unbound Appendix and bound copy, an original unbound Petition and six bound copies, a Designation of Matter to be Included in the Record on Appeal and an original and one copy of a Certificate of Service. Please file all documents and return a file-stamped copy of the Certificate of Service to us in the return envelope provided.

Thank you for your attention to this matter. If you have any questions, please give me a call.

Yours very truly,

**NICHOLSON, MEREDITH AND ANDERSON, LLC**



Billie J. Miller  
Legal Assistant

BJM/idi

cc: J. Rutledge Johnson, Esq.