

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 18 2014

Certiorari to Lexington County

S.C. Supreme Court

Frank R. Addy, Circuit Court Judge

STANLEY GOLSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000446

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX	1
ISSUE PRESENTED	2
STATEMENT	3
ARGUMENT	4
CONCLUSION	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

ISSUE PRESENTED

Whether trial counsel was ineffective in failing to object to the trial judge providing audio equipment that allowed the jury to listen to the tape of the controlled buy with the confidential informant?

STATEMENT

Petitioner was convicted of distribution of crack cocaine and distribution of the same within proximity of a school after a jury trial held before the Honorable R. Knox McMahon in Lexington County on April 3, 2007. Petitioner was sentenced to life imprisonment without the possibility of parole. Josh Kendrick, Esquire, was trial counsel. Samuel R. Hubbard, III, Esquire, and M. Kent Collins, II, Esquire, were the solicitors. (App. p. 1 – p. 222).

Petitioner appealed his conviction and it was affirmed by the Court of Appeals on July 6, 2010. State v. Golson, 2010-UP-347.

Petitioner filed an application for post-conviction relief on September 2, 2010. (App. p. 223 – p. 238). Respondent filed a return dated December 30, 2010. (App. p. 239 – p. 244). An evidentiary hearing was held on April 17, 2013, before the Honorable Frank R. Addy, Jr. Petitioner was present and was represented by Charles Brooks, Esquire. Respondent was represented by J. Walt Whitmire, Esquire. Both petitioner and trial counsel testified at the hearing. (App. p. 245 – p. 319). On February 17, 2014, Judge Addy issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 320 – p. 330).

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to object to the trial judge providing audio equipment that allowed the jury to listen to the tape of the controlled buy with the confidential informant.

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 prejudice 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, hearsay, 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). Failing to properly investigate may lead to a claim of ineffective assistance of counsel. Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009). And counsel may be alleged ineffective for failing to fully cross-examine a witness. State v. Nance, 393 S.C. 289, 712 S.E. 2d 446(2011); Kirkpatrick v. State, 306 S.C. 359, 412 S.E. 2d 389(1991).

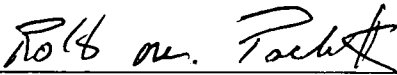
In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E. 2d 878 (2006).

In this case, petitioner alleged trial counsel was ineffective in failing to object to the tape of the controlled buy going into the jury room. In State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982), the Court held that the trial judge abused his discretion in allowing the jury to take into the jury room a transcript of a tape between a highway patrolman who had been shot and a patrolman who received the call, because it unduly emphasized that evidence. The audio tape in petitioner's case was cumulative to the State's case and sending it into the jury room unduly emphasized it. Trial counsel was ineffective in failing to object to it.

CONCLUSION

Petitioner's writ should be granted and his convictions should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE

STANLEY GOLSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000446

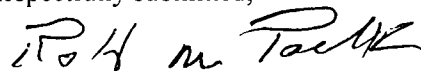
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Stanley Golson 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 April 17, 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 Stanley Golson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of April, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Frank R. Addy, Circuit Court Judge

STANLEY GOLSON,

PETITIONER,

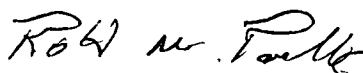
v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

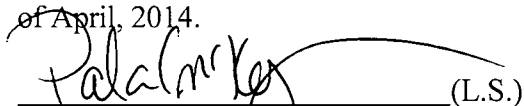
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Stanley Golson, #200479, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 18th day of April, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of April, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.