 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Aiken County

Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

CHAD EVERETTE WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000804

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel was ineffective in failing to object to a jury charge that malice may be inferred from the use of a deadly weapon?

STATEMENT

Petitioner was convicted of murder and burglary in the first degree after a jury trial held before the Honorable R. Ferrell Cothran, Jr., on October 20 – 22, 2008, in Aiken County. Petitioner was sentenced to life imprisonment for murder and to twenty-five (25) years for burglary. David Miller, Esquire, represented him. J. William Weeks, Esquire, was the assistant solicitor. (App. p. 1 – p. 374).

Petitioner appealed his convictions and the appeal was dismissed by the Court of Appeals on November 12, 2010, after a review pursuant to Anders v. California. State v. Williams, Op.No. 2010-UP-505. (App. p. 421 – p. 422). Petitioner filed an application for post-conviction relief on April 12, 2011, and an amended application on January 9, 2014. (App. p. 375 – p. 413; app. p. 414 – p. 420). Respondent filed a return dated September 12, 2011. (App. p. 421 – p. 425). An evidentiary hearing was held on January 21, 2014, before the Honorable Edgar W. Dickson. Petitioner was present and was represented by Brett H. Lancer, Esquire. Respondent was represented by Daniel Gourley, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 426 – p. 524). On April 9, 2014, Judge Dickson issued an order denying and dismissing the application for post-conviction relief.

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to object to a jury charge that malice may be inferred from the use of a deadly weapon.

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).

Petitioner raised the above issue in his application for post-conviction relief. (App. p. 395 – p. 399) and amended application for post-conviction relief. (App. p. 416). At the evidentiary hearing, this issue was raised along with the case of State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). The malice charge was given in this case in appendix page 353, lines 8 – 14. (App. p. 440, line 20 – p. 444, line 19). Trial counsel did not object to the charge.

Trial counsel was asked at the evidentiary hearing if the premise, that judges should stop charging inferred malice from the use of a deadly weapon, was being discussed in legal circles back in 2008. He said he did not know what was discussed back in 2008. (App. p. 512, lines 13 – 21).

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) held that a jury charge that malice may be inferred from the use of a deadly weapon was no longer good law in South Carolina when evidence is presented that would reduce, mitigate, excuse or justify a homicide. The decision also held that it would be effective for all cases which were pending on direct review or not yet final where the issue was preserved. Petitioner's case was tried on October 20 – 22, 2008. Belcher was heard on May 14, 2009, and was decided on October 12, 2009. Petitioner's case was pending on direct review as the brief of appellant was submitted on December 4, 2009. Therefore, if trial counsel had objected to the improper malice charge, the issue would have been preserved for appellate review. His failure to preserve the issue constituted ineffective assistance of counsel.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO AIKEN COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

CHAD EVERETTE WILLIAMS,

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V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2014-000804

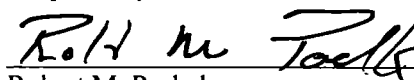
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Chad Everette Williams 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 January 21, 2014. 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 Chad Everette Williams.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of October, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Edgar W. Dickson, Circuit Court Judge

CHAD EVERETTE WILLIAMS,

PETITIONER,

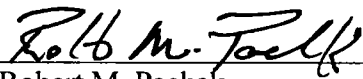
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

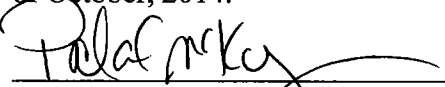
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire and Chad Everette Williams, #303225, at Perry Correctional Institution this 15th day of October, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of October, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.