

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 2 2015

S.C. Supreme Court

Certiorari to Horry County

Benjamin H. Culbertson, Circuit Court Judge

ARNOLD L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001807

JOHNSON PETITION FOR WRIT OF CERTIORARI

JOHN H. STROM
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ISSUES PRESENTED

I.

Whether Petitioner's Sixth Amendment rights were violated where counsel failed to object to the jury charge, which impermissibly enlarged Petitioner's indictment for attempted first degree burglary by instructing the jury that they could find Petitioner guilty based on the purported attempted burglary occurring at night when the indictment only alleged that Petitioner had two prior convictions for housebreaking or burglary?

II.

Whether Petitioner's Sixth Amendment rights were violated when defense counsel failed to request a jury instruction on the good character and reputation of the accused after having presented substantial evidence of Petitioner's honesty and professional rectitude at trial?

STATEMENT

On the night of October 30, 2012, Petitioner, an independent construction contractor, stopped by an upcoming job site in Horry County to inspect its progress and its newly drafted blueprints. Tr. 182, ll. 2-18. As Petitioner opened the lock-box, the family dog jumped out of his truck and ran off. *Id.* Petitioner attempted unsuccessfully to catch the dog. *Id.* at ll. 19-25. Eventually, Petitioner called his daughter to help search for the dog when she left work. *Id.*

To help her locate the neighborhood, Petitioner drove his truck to a parking lot outside the neighborhood so that it was visible from U.S. 17, where she would be driving. App. 183, ll. 3-19. Petitioner also called and left messages with his wife. App. 188, ll. 6-15. Petitioner's phone died shortly thereafter and he continued searching the neighborhood. *Id.* Out of frustration, Petitioner approached a house that had an interior light on to ask for help. *Id.* at ll. 20-22.

Petitioner walked-up to a pair of French doors that appeared to serve as the front doors of the house. App. 184, ll. 7-25. As soon as Petitioner knocked on the doors, they began to sway back and forth. *Id.* Petitioner was concerned about the doors being loose; he knocked again, waited for a few moments without observing any signs of people inside. He then left the porch to continue his search. *Id.*

Shane Holley woke up when his home security system's first stage warning alarm went off at the audible level of an alarm clock. App. 102, ll. 2-18. Holley immediately grabbed his handgun and went downstairs to investigate while his wife called the police. *Id.* Holley worked as regional salesman and, during his frequent out of town business trips, worried for his family's safety. App. 94, ll. 6-20. Holley proceeded towards the kitchen door leading to his front yard, which is where the alarm indicated there was a breach. App. 103, ll. 15-22.

As he reached the kitchen door, which had a large front window, Holley claimed to hear “pressure being placed” on the pair of French doors at the front of the house. App. 104, ll. 1-6. From the kitchen door, Holley observed an individual, whom he later believed was Petitioner, stepping back from the doors and slowly walking off the front porch. *Id.* Holley admitted at trial that his front doors were broken sometime before the incident. App. 110, ll. 21-25. Not only could the doors not lock, but they could not stay closed and were only held shut with a leather belt. *Id.* Holley further conceded that the belt only loosely held the doors together despite his efforts to tighten it by punching a new hole in the belt. App. 111, ll. 6-10.

Holley observed Petitioner, illuminated by a single street light, as he walked towards the street. App. 105, ll. 12-24. Once Petitioner reached the street, Holley turned on his exterior lighting. App. 109, ll. 12 – App. 110, ll. 5. Petitioner then slowly walked through an adjacent empty lot to the street behind Holley’s house. App. 106, ll. 1-17. Holley’s wife remained on the phone with 911 during the incident and relayed Holley’s description of Petitioner. App. 111, ll. 16-25. Police quickly arrived in the area. The police located Petitioner on the street behind Holley’s house, which placed him farther from his truck and closer to the jobsite where his dog had escaped.

Petitioner attempted to explain that he was looking for his dog and even asked the police to call animal control because of the dog’s angry disposition. App. 190, ll. 1 – App. 192, ll. 24. Petitioner took the police to his truck and to the job site to explain why he was in the neighborhood. *Id.* Once at his truck, Petitioner showed law enforcement his tools and a check recently written to him for \$22,800 dollars in an effort to dispel their suspicion. App. 192, ll. 3-12. Petitioner did not initially recognize Holley’s house when the police brought him there. App. 190, ll. 1 – App. 192, ll. 24. Once Holley identified Petitioner he was arrested on suspicion of attempted burglary.

Indictment

On January 25, 2007, Petitioner was indicted for attempted first degree burglary by the Horry County Grand Jury. App. 343. Specifically the indictment alleged that Petitioner attempted to enter Holley's residence "without consent and with the intent to commit a crime therein, and the [Petitioner] had two or more prior convictions of burglary and/or housebreaking. . . " *Id.*

Substitution of Counsel

Petitioner retained Paul Rahn to represent him. App. 305, ll. 22 – App. 306, ll. 24. After taking a \$7,000.00 retainer, Rahn did not return Petitioner's phone calls and missed at least one court appearance. *Id.* Petitioner eventually realized that Rahn had moved out of town. *Id.* The trial court then appointed William Floyd to represent Petitioner. *Id.* During Rahn's representation, the State made a plea offer of five years of probation in exchange for Petitioner pleading guilty to second degree burglary. *Id.*

Unfortunately, because of the difficulty in contacting Rahn, Petitioner declined the plea offer. *Id.* As Petitioner recalled at the PCR hearing, "I never really could understand [the plea offer]. So I denied it and went through trial". App. 307, ll. 1-10. Petitioner also stated at the PCR hearing that he was very reluctant to take a plea offer since he was innocent. *Id.*

Pre-Trial Motions

On April 13-14, 2010, Petitioner proceeded to trial before the Honorable Steven H. John and a jury. App. 1. The State was represented by Bradley C. Richardson. Floyd moved to exclude Petitioner's two prior burglary charges on the grounds that the convictions were over twenty years old. App. 7, ll. 1-23. Floyd argued that the State could simply prove the elements of burglary by showing that the incident happened at night. *Id.*

Floyd also argued that the prejudicial impact of the priors far outweighed any probative value given that the determinative issue was Petitioner's intent and the State could easily prove the attempted burglary happened at night. *Id.* In the alternative, Floyd believed that the prior offenses should be treated as one conviction given the short period of time in which they occurred and as Petitioner had pled guilty to all three in a single hearing. App. 15, ll. 7-19.

The State countered that it was allowed to introduce the prior offenses as they constituted one of the possible elements of first degree burglary and were contained in the indictment. App. 8, ll. 24 – App. 9, ll. 4. The State noted that it was under no obligation to stipulate as to the prior offenses and that it would not agree to stipulate. *Id.* The trial court determined that the clocked copies of Petitioner's prior convictions would be admissible only to prove the related element of first degree burglary. App. 9, ll. 5 – App. 10, ll. 20. With respect to the number of prior convictions, the trial court also concluded that at least two of the offenses qualified as individual offenses and the court made the State select which two it wished to put into evidence. App. 16, ll. 7-22.

Trial

Holley and the investigating officer both testified for the State. Petitioner also testified. App. 177 – App. 200. Petitioner's wife testified that she had gone to bed by the time Petitioner called her to help search for the dog and did not check her messages until the next morning. App. 213, ll. 4-24. Petitioner's wife also stated that she spoke with the lead investigator the day after Petitioner's arrest and explained to him that she had found the dog wandering Holley's neighborhood. App. 214, ll. 4 – App. 215, ll. 23. Defense counsel entered Petitioner's tax returns showing Petitioner's comfortable income as an exhibit at trial to show that Petitioner could not have had a financial motivation for attempting a burglary. App. 178, ll. 11 – App. 179, ll. 9.

Kenneth Coleman, the head contractor in charge of the job site Petitioner was visiting in Holley's neighborhood testified on the status of the work site and on Petitioner's professional probity. App. 202, ll. 3 – App. 203, ll. 21. Coleman explained that the start date for the construction project had been delayed several times as the owners debated whether to make the residence a duplex or single family home. *Id.* Petitioner's company recently won the bid to drywall the residence. *Id.* Coleman said that he notified Petitioner that the building phase was about to start and he had encouraged him to stop by the site to examine the final blueprints and to check on the progress in order to better schedule his work crews. App. 205, ll. 1 – App. 206, ll. 17.

When asked about his professional opinion of Petitioner, Coleman stated that he has used Petitioner's company for the last eight to ten years. App. 202, ll. 2-16. Coleman stressed that he trusted Petitioner and even had him work on his personal home without being there to supervise. *Id.* Coleman also testified that he lent Petitioner thousands worth of dollars of tools and had never had anything disappear from a job site that Petitioner was working on. *Id.*

Jury Charge

After closing arguments the trial court read its charge to the jury. App. 249, ll. 8 – App. 260, ll. 15. With respect to the elements of first degree burglary, the court instructed the jury:

[T]he State . . . has to prove to you beyond a reasonable doubt **either that the defendant had a prior record of two or more convictions for burglary or housebreaking** and again, the evidence of those prior offenses committed by the defendant is offered to prove and cannot -- cannot be offered to prove the defendant has bad character or to prove the defendant committed the burglary on this occasion. **It's only as to this particular element, or the State has to prove to you beyond a reasonable doubt that the defendant entered or remained in the dwelling in the nighttime.** Nighttime is the period between sunset and sunrise during which there's not enough daylight to recognize a person's face except by artificial light or moonlight.

App. 257, ll. 19 – App. 258, ll. 7 (*emphasis added*). Defense counsel did not object to the charge. App. 260, ll. 14-19. Despite presenting evidence of Petitioner’s good character through Coleman’s testimony, defense counsel did not request a charge on good character or reputation.

The jury found Petitioner guilty. App. 262, ll. 5-14. Judge John then sentenced Petitioner to fifteen years imprisonment. App. 272, ll. 10 – App. 273, ll. 14. The Court of Appeals affirmed Petitioner’s conviction on February 29, 2012. *State v. Ward*, Op. No. 2012-UP-123 (S.C. Ct. App. filed February 29, 2012).

PCR Evidentiary Hearing

On August 12, 2012, Petitioner filed an application for post-conviction relief alleging that counsel was ineffective for failing to “seek instruction on a lesser included charge”. App. 275- App. 289. On December 17, 2012, the State filed a return. App. 290 – App. 293. On June 19, 2014, a hearing was held before the Honorable Benjamin H. Culbertson. App. 294 – App. 333. Petitioner was represented by Tristan Shaffer and the State was represented by Assistant Attorney General Joshua Thomas.

Both Petitioner and counsel testified at the PCR hearing. Prior to calling Petitioner to the stand, PCR counsel amended, without opposition from the State, the PCR application to include an allegation of ineffective assistance of counsel for failing to object to the trial court’s charge on first degree burglary because it included the element of nighttime, when the indictment only referenced Petitioner’s prior offenses. App. 300, ll. 16 – App. 302, ll. 23.

Once on the stand, Petitioner recalled counsel had met with him a couple of times prior to trial. App. 307, ll. 11-20. Petitioner stated that the trial strategy was to prove that Petitioner had no intent to commit a burglary. *Id.* at ll. 18-25. To that end, the defense highlighted Petitioner’s professional success and financial security. App. 304, ll. 14 – App. 305, ll. 24.

Counsel testified that Holley was the central witness in the State's case and that Holley's recollection of pressure being applied to the door was the most important evidence the State presented of Petitioner's possible intent. App. 323, ll. 5 – App. 324, ll. 24. Counsel was asked to review the jury charge given by the trial court, which instructed the jury that they could find Petitioner guilty based on the incident occurring at night or due to Petitioner's prior arrests. App. 324, ll. 16-25. Counsel then conceded that, prior to the PCR hearing, he never knew that the indictment only alleged attempted first degree burglary based on Petitioner's prior convictions:

As a matter of a fact, *I just realized it in reading back over the indictment that the nighttime language wasn't in it.* As a matter of a fact when I was arguing about the two prior convictions being used I even made a statement to the Court, "It happened at night, Judge. That -- they've got the element that they need if the jury believes it's a burglary."

App. 329, ll. 4-10 (*emphasis added*).

Order of Dismissal

The PCR court gave an oral ruling from the bench denying Petitioner's application. App. 331, ll. 1 – App. 332, ll. 11. The court held that there was sufficient evidence presented at trial that the jury could have reached a guilty verdict by finding Petitioner had two prior convictions. *Id.* Accordingly, the court determined that the jury instruction, while enlarging the indictment, was "harmless" and that counsel was not ineffective for failing to object to the enlargement. *Id.* Judge Culbertson then filed the Order of Dismissal on August 1, 2014.

This petition for writ of certiorari follows.

ARGUMENT

I.

Petitioner's Sixth Amendment rights were violated where counsel failed to object to the jury charge, which impermissibly enlarged Petitioner's indictment for attempted first degree burglary by instructing the jury that they could find Petitioner guilty based on the purported attempted burglary occurring at night when the indictment only alleged that Petitioner had two prior convictions for housebreaking or burglary.

Discussion

Counsel was ineffective for failing to object to the trial court's jury charge which impermissibly enlarged the indictment for attempted first degree burglary by instructing the jury that they could base Petitioner's guilt on the alleged attempted burglary occurring at night. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

The Sixth Amendment guarantees "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. The United States Supreme Court established the constitutional right to *effective* assistance of counsel in *Powell v. Alabama*, 287 U.S. 45 (1932). To establish ineffective assistance of counsel, the Petitioner must satisfy a two-prong test set forth in *Strickland*. "First, a defendant must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

The second prong of the *Strickland* test requires a showing that the deficient performance of counsel prejudiced the petitioner to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 117-118, 386 S.E.2d at 625. Specifically, "[a] reasonable probability is a probability sufficient to

undermine confidence in the outcome of trial.” *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 694); see also *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Deficient Performance

Trial counsel’s performance in failing to object to the jury instructions was deficient, as it fell below an objective standard of reasonableness and prevailing professional norms. See *Strickland*, 466 U.S. at 687-88. Trial counsel has the authority to make certain tactical decisions involving trial strategy counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); see also *Thomas v. State*, 308 S.C. 123, 124, 417 S.E.2d 531, 532 (1992) (failure of trial strategy as uncalled witness would have made a difference in trial because it would have cast doubt on victim’s identification). Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

Defense counsel admitted at the PCR hearing that the judge erroneously expanded the scope of the indictment with his jury instructions. App. 325, ll. 4-10. *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (“The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.”); *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) (“The indictment is a notice document.”).

This charge may have allowed the jury to convict the defendant of a crime not alleged in the indictment. *Bailey v. State*, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011)(counsel was deficient for

failing to object to the supplemental jury instructions which enlarged the scope of the indictment by instructing that the jury that they could convict defendant of a crime not alleged in the indictment). Moreover, counsel testified that the PCR hearing was the first time that he had noticed the indictment did not allege the incident occurred at night. App. 329, ll. 4-10. Thus, counsel did not have a strategic reason for failing to object to the expanded jury charge. *Roseboro*, 317 S.C. at 294, 454 S.E.2d at 313.

Prejudice

Petitioner was prejudiced by defense counsel's failure to object to the expansion of the indictment because the jury instructions created a material variance between the State's evidence and the allegations in the indictment. *See McKnight v. State*, 378 S.C. 33, 48-49, 661 S.E.2d 354, 361-62 (2008) (finding trial counsel rendered ineffective assistance when she failed to object to the supplemental jury charge on the measure of criminal intent required for a conviction under the Homicide by Child Abuse statute; reasoning that the supplemental charge: (1) did not clarify the particular mental state and served to "further confuse the jury;" (2) "attained a special significance in the minds of the jurors;" and (3) was "prejudicial in fact" as the jury returned a guilty verdict five minutes after the supplemental charge). "[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged.'" *Bailey*, 392 S.C. at 433, 709 S.E.2d at 677 (quoting *Thomason v. State*, 892 S.W.2d 8, 11 (Tex.Crim.App.1994)).

Counsel admitted he did not realize the indictment specified that the first degree attempted burglary charge was based only on Petitioner's prior record. App. 329, ll. 4-10. Thus, the trial court's decision to charge the jury on first degree burglary based on the incident occurring at night

was objectionable as it provided a basis for convicting the Petitioner beyond the facially complete offense stated in the indictment. *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987)(a non-charged offense should not be charged to the jury if it has the effect of confusing the issues the jury must determine).

Therefore, “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.” App. 331, ll. 1 – App. 332, ll. 11; *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); *See Strickland*, 466 U.S. 668.

II.

Petitioner's Sixth Amendment rights were violated when defense counsel failed to request a jury instruction on the good character and reputation of the accused despite having presented substantial evidence of Petitioner's honesty and professional rectitude at trial.

Deficient Performance

Defense counsel was ineffective for failing to request a jury instruction on Petitioner's good character and professional reputation after presenting testimony from Kenneth Coleman, who had hired Petitioner to work on construction projects for a decade and testified to Petitioner's honesty. App. 202, ll. 3 – App. 203, ll. 21; *See Strickland*, 466 U.S. at 692.

The law charged to the jury is determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Rule 404(a)(1), SCRE, allows evidence of a relevant character trait to be offered by the defendant or offered by the State to rebut the defendant's character trait evidence. *State v. Braxton*, 343 S.C. 629, 635, 541 S.E.2d 833, 836, n. 1 (2001). This court has held that the proven, good reputation of the accused may be taken into consideration by the jury in determining whether or not he or she committed the crime charged. *State v. Harrison*, 343 S.C. 165, 171-72, 539 S.E.2d 71, 74 (Ct.App.2000) (*citing State v. Hill*, 129 S.C. 166, 170, 123 S.E. 817, 818 (1924) (“Evidence of the defendant's good reputation . . . is strongly persuasive of his good character . . . and is offered for the very purpose stated by the circuit judge, to show the improbability that the defendant would have committed or did commit the crime charged.”)); *State v. Lyles*, 210 S.C. 87, 41 S.E.2d 625 (1947).

The South Carolina Supreme Court's model jury instructions provide the following on a defendant's good character:

The Defendant has presented evidence of his [her] good reputation and character to show that it would be inconsistent with the Defendant committing the crime. The weight you give to that testimony, like all other testimony in the case, is for you to decide in your good judgment. You may consider testimony of the Defendant's good character along with all other evidence in deciding whether or not the defendant has committed the crime.

South Carolina Court Administration, Suggested Jury Instructions – Criminal, South Carolina Supreme Court, p. 31 (June, 2013), available at: <http://www.sccourts.org/juryCharges/GS%20InstructionsJune2013.pdf>.

A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. *State v. Lee-Grigg*, 374 S.C. 388, 411, 649 S.E.2d 41, 53 (Ct. App. 2007)(testimony from witness that defendant had good reputation in the community was sufficient evidence to request a jury charge on the accused good character and it was an error to for the trial court to deny the request). Likewise, defense counsel's failure to request a proper jury instruction constitutes ineffective assistance of counsel if the decision is not the result of a reasonable trial strategy or is not objectively unreasonable. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel).

Having presented substantial evidence of Petitioner's good character, the defense was entitled to an instruction on it. It is clear from the trial record and the testimony taken at the PCR hearing that defense counsel simply never thought to request such a jury instruction. App. 260, ll. 12-25. Accordingly, defense counsel's failure to request such an instruction constituted deficient performance falling below prevailing professional norms. *See Strickland*, 466 U.S. at 694.

Prejudice

Petitioner was prejudiced by counsel's deficient performance in failing to request jury instructions on good character and reputation because credibility was the dispositive issue in Petitioner's case and the State could only produce minimal circumstantial evidence to support their contention that Petitioner had the intent to commit a burglary. App. 260, ll. 12-25; *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Petitioner's explanation for his conduct during the incident derives its credibility from Petitioner's good character, professional reputation, and financial success. App. 192, ll. 3-12; App. 202, ll. 2-16. Attempted burglary requires the state to prove that Petitioner went to the Holley's house with the intent to commit a burglary. *State v. Reid*, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011) (*citing State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct.App.2001) (to prove attempt, the State must prove that the defendant committed an overt act, beyond mere preparation, in furtherance of the intent to commit the crime.))

The defense tried to show that given his success and good reputation, committing a burglary is at odd with Petitioner's behavior of the last twenty years. App. 192, ll. 3-12; App. 202, ll. 2-16. To that end defense counsel produced Petitioner's tax returns showing Petitioner's income and called Coleman to testify to Petitioner's honesty and professional success. App. 178, ll. 11 – App. 179, ll. 9. The issue of credibility and Petitioner's intent was also likely the reason the State was insistent on entering Petitioner's two decade old prior convictions into the record.

There is a reasonable probability, based on the central role that Petitioner's credibility, character and good reputation played at trial, that but for defense counsel's failure to request a jury instruction on the relevance of Petitioner's character and reputation, Petitioner would not have been convicted. *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, defense counsel's

performance prejudiced Petitioner's right to a fair trial since it "undermine[d] confidence in the outcome of [his] trial." *See Strickland*, 466 U.S. at 694; *see also Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

CONCLUSION

Based on the foregoing reasons, Petitioner Arnold Ward's petition for writ of certiorari should be granted to allow full briefing on the issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO HORRY COUNTY
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

ARNOLD L. WARD,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001807

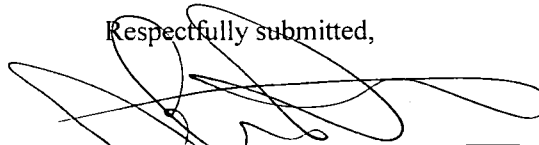
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Arnold L. Ward 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 June 19, 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 Arnold L. Ward.

Respectfully submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of April, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Benjamin H. Culbertson, Circuit Court Judge

ARNOLD L. WARD,

PETITIONER,

V.

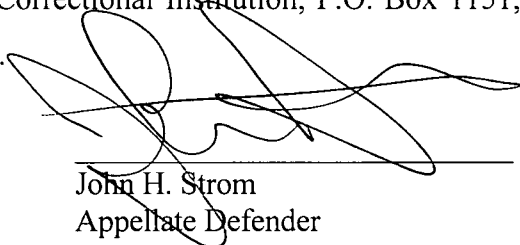
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001807

CERTIFICATE OF SERVICE

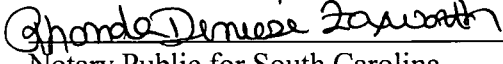
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Arnold L. Ward, #109169, at Allendale Correctional Institution, P.O. Box 1151, Hwy. 47, Fairfax, SC 29827, this 2nd day of April, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day
of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.