

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Alison Renee Lee, Circuit Court Judge

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SEP 14 2015

S.C. Supreme Court

JOHN T. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000413

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in allowing petitioner to plead guilty to CDV, first offense, rather than be tried by jury because petitioner's wife apparently recanted with respect to her story on the issue of household violence soon after the charge was filed, which meant that an acquittal on the charge would likely have been the outcome of the trial.

STATEMENT

Petitioner John T. Robinson pled no contest to criminal domestic violence, 1st offense, on July 3, 2012, at the York County Magistrate's Court before Judge Herman Howell and was sentenced to time served. Petitioner did not appeal his conviction and sentence. Toni Johnson, Esquire, appeared on petitioner's behalf at that proceeding.

On December 27, 2013, petitioner filed a PCR application in the York County Office of the Clerk of Court. App. 1-7. The respondent filed a return dated May 21, 2014, requesting that a hearing be held in the case. App. 8-11. A hearing was convened on November 17, 2014, at York County Courthouse before Judge Alison Renee Lee. Petitioner was present at the hearing and represented by W. Michael Hemlepp; and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. App. 13 - 36.

On January 29, 2015, Judge Lee signed an Order of Dismissal in the case. App. 38 - 42. Petitioner appealed Judge Lee's Order of Dismissal. This brief follows.

ARGUMENT

Trial counsel erred in allowing petitioner to plead guilty to CDV, first offense, rather than be tried by jury because petitioner's wife apparently recanted with respect to her story on the issue of household violence soon after the charge was filed, which meant that an acquittal on the charge would likely have been the outcome of the trial.

Apparently, this was a domestic violence case involving a husband and wife, i.e. petitioner and his wife.

During the PCR hearing, petitioner testified that his wife would not have come to court to testify in this CDV case, which in effect meant that it probably not have been possible for him to have been convicted as charged "had [he] gone to trial."¹ App. 20, l. 8 – p. 23, l. 2.

Trial counsel testified and explained that there was a plea affidavit in existence in this case where the "no contest plea" was agreed upon by petitioner. Counsel added that what petitioner's wife would have testified to was in effect speculative in the event of a trial. App. 27, l. 16 – p. 29, l. 2.

The PCR judge ruled that trial counsel's assistance was not ineffective in the case and that petitioner did not establish that he was prejudiced by counsel's representation because prosecutors have broad discretion in reference to which cases to prosecute regardless of petitioner's thoughts on the lack of merit in his case based on the potential content of his wife's testimony as a witness. App. 50 – 53.

The prosecution must prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979). No right is more fundamental than to put the state to its burden of proof. State v. Sloan, 278 S.C. 435, 298 S.E.2d 92 (1982). In the case at bar, the

¹ App. 23, l. 16 - 22

state had no proof beyond a reasonable doubt that petitioner was guilty of the CDV charge filed against him sans his wife's testimony on the question of whether a violent household incident actually occurred, particularly since petitioner's wife recanted her version of the story as to what happened between her and petitioner. S.C. Code Ann. § 16-25-20 (2008) mandates that:

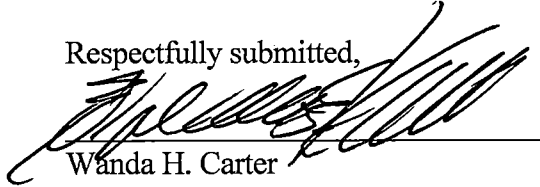
- (A) It is unlawful to:
 - (1) cause physical harm or injury to a person's own household member; or
 - (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril
- (B) Except as otherwise provided in this section, a person who violates the provisions of subsection (A) is guilty of the offense of criminal domestic violence and, upon conviction, must be punished as follows:
 - (1) for a first offense, the person is guilty of a misdemeanor and must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than thirty days. The court may suspend the imposition or execution of all or part of the fine conditioned upon the offender completing, to the satisfaction of the court, and in accordance with the provisions of Section 16-25-20(H), a program designed to treat batterers. Notwithstanding the provisions of Sections 22-3-545, and 22-3-550, an offense pursuant to the provisions of this subsection must be tried in summary court;

Trial counsel erred in allowing petitioner to pled guilty when the better course of action would have been to seek a trial by jury and likely obtain an acquittal since there was insufficient proof in existence to garner a conviction against him. Trial counsel's error in this instance constituted deficient representation in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 474 U.S. 52 (1985). Here, but for counsel's error, a reasonable probability exists that petitioner would not have pled guilty, but rather elected to exercise his right to a trial by jury in the case; and a reasonably probably existed that an acquittal on the CDV charge would have been the outcome of his jury trial.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue raised above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
ALISON RENEE LEE, CIRCUIT COURT JUDGE

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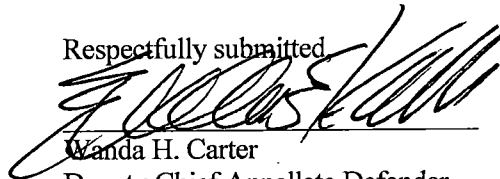
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Thomas Robinson states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 17, 2014. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She 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 her as counsel for John Thomas Robinson.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of September, 2015

STATE OF SOUTH CAROLINA

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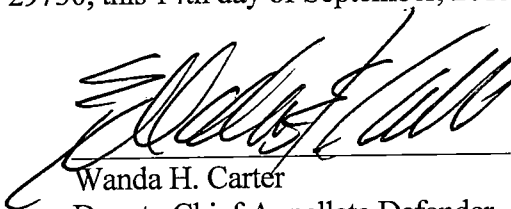
V.

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 J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and John Thomas Robinson, at 364 State Street, P.O. Box 10535, Rock Hill, SC 29730, this 14th day of September, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of September, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.