

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Deadra L. Jefferson, Circuit Court Judge

RECEIVED

DEC 18 2015

S.C. SUPREME COURT

NORMAN STOUDEMIRE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001311

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to object to over thirty references describing petitioner as a “crack monster,” a “crack smoker” and a “crack head” throughout his trial because these negative characterizations prejudiced petitioner’s case to the extent that the jury’s guilty verdict was more likely based on judgments regarding his drug habits rather than the evidence presented at trial.

STATEMENT

Petitioner Norman E. Stoudemire was convicted of murder per a jury trial held during the March 2010 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Robert B. Hall represented petitioner at trial and Assistant Solicitors Abel Orlano Gray and Timi Poulos appeared on behalf of the state. Judge Cole sentenced petitioner to life imprisonment. App. 1 – 464. Petitioner appealed, but his conviction and sentence were affirmed. See State v. Stoudenmire, Unpublished Opinion No. 2012-UP-628 (S.C. Court App. filed November 28, 2012). App. 518 – 519. Chief Appellate Defender Robert M. Dudek represented petitioner on direct appeal.

On May 15, 2013, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 521 – 584. The respondent filed a return dated March 18, 2014, requesting that a PCR hearing be held in the case. App. 585 - 592.

A PCR hearing was convened on January 15, 2015, at the Spartanburg County Courthouse before Judge Deadra L. Jefferson. App. 594 – 700. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General Suzanne H. White appeared on behalf of the state.

On June 4, 2015, Judge Jefferson signed an Order of Dismissal in the case. App. 702 – 748. Petitioner appealed Judge Jefferson's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to over thirty references describing petitioner as a crack monster,” a “crack smoker,” and a “crack head” throughout his trial because these negative characterizations prejudiced petitioner’s case to the extent that the jury’s guilty verdict was more likely based on judgments regarding his drug habits rather than the evidence presented at trial.

The solicitor argued at trial that petitioner was high on crack when he entered Gwen Emory’s home allegedly needing to get money to buy more crack before he stabbed her to death. App. 649, lines 10 – 25, App. 650, lines 8 – 12. App. 674, lines 6 – 9. Gwen Emory was found dead from a stab wound to the chest at her home on February 24, 2008. App. 122, l. 9 – App. 125, l. 14. However, the state’s evidence presented at trial was scanty at best. There were no eye witnesses to the stabbing of Emory, and the only forensic evidence offered was a match of petitioner’s DNA to scrapings extracted from Emory’s fingernails. App. 396, lines 10 – 21. The remainder of the state’s case centered around testimony regarding petitioner’s addiction that was arguable in full bloom at the time of the stabbing.

Petitioner gave two statements to police, both of which indicated that he “passed out” after smoking a lot of crack and that “he [didn’t] remember hurt[ing] Gwen” and that he “did not intentionally do it.” App. 288, l. 13 – App. 289, l. 19. Also, petitioner told the police that he turned into a monster when he smoked crack. App. 285, l. 20 – App. 286, l. 21.

During the PCR hearing, petitioner testified that trial counsel erred in failing to object to depictions of him as a “crack monster.” Tr. 618, l. 23 – p. 619, l. 12; App. 613, l. 17 – App. 617, l. 4.

Trial counsel testified during the PCR hearing and explained that he knew that the crack issue would come out at trial, but did not object because his strategy was to use effective cross

examination to show via trial testimony responses that petitioner was not a crazed crack addict depicted by the state. App. 672, l. 12 – p. 674, l. 25.

With respect to this issue, the PCR judge ruled that the crack references in the case were part of the res gestae of the crime of murder and used to prove motive, i.e. that petitioner was high on crack and wanted money from Emory to buy more crack; and that therefore, there was no basis for an objection to the crack characterizations, particularly since counsel effectively cross-examined the witnesses regarding this in order to “combat [such] harmful testimony.” App. 735 – 736.

Note that even the PCR judge referred to the countless repetitions of the characterization of petitioner being a crack addict as “harmful testimony.” Clearly, the case centered around the portrayal of what a big crack monster petitioner was during the days before and on the date the murder occurred. However, the state’s case was devoid of the details of the murder and consisted of two parts only: the fact that the deceased was stabbed, and the theory that petitioner was such a big crack addict that he must have committed the stabbing to get money for more crack, even though his statement revealed that he did not remember the stabbing, but admitted responsibility for the stabbing out of fear that he would receive a death sentence. Note Police Officer Bryant’s testimony regarding the issue of the death penalty:

Q. Did [petitioner] request any deals?

A: He did. He stated that if, I could get to where it was not a death penalty situation that he could provide that information. But he was scared of the death penalty. And I advised him that I couldn’t make that promise, that that was a decision that would have to come from the 7th Circuit Solicitor, and the Court, but I could not make that promise. App. 287, lines 17 – 23.

Compare the case of State v. Hawkins, 292 S.C. 418, 357 S.E. 2d 10(1987), where the Court held that references to the defendant as “Mad Dog” in excess of forty times at the defendant’s trial, beginning with the jury voir dire, throughout the trial, and during closing arguments, ended up

being so “excessive” and “repetitious” that the result was a denial of the defendant’s right to a fair trial in violation of due process of law. In the case at bar, the trial testimony was replete with references to petitioner as smoking crack and being a crack addict, crack head, and crack monster all throughout the trial.

Petitioner’s case was similar to Hawkins. For example, police officer Bryant repeated four times with emphasis that petitioner admitted that crack turned him into a monster when only one reference to this matter would have been sufficient. App. 285, lines 22 – 24, App. 317, lines 1 – 4, App. 286, lines 3 – 5, App. 286, lines 19 – 22. Also, during opening and closing arguments, the solicitor stated that petitioner smoked crack prior to the stabbing and that petitioner was a “crack addict (head).” App. 117, l. 24 – App. 118, l. 1. Petitioner’s employer, Phyllis Pack, who fired him (petitioner), testified that he (petitioner) “stayed up cracking” the weekend before he was fired, and that she saw him “high on crack” on one night before he was fired. App. 211, l. 3 – App. 214, l. 4. Hillard Lee Walker, who also worked for Phyllis Pack, testified that petitioner was his roommate and that they both “smoked crack” on the weekends in the past and that “they smoked crack” on the night prior to the stabbing of Gwen Emory. App. 219, l. 11 – App. 237, l. 9. Walker uttered the word “crack” ten times during his testimony, and during direct examination of Walker the solicitor asked eleven “crack” based questions. App. 218, l. 3 – App. 237, l. 10. John Glenn, who was petitioner’s next door neighbor, testified that petitioner became hyperactive when he “smoked crack.” App. 246, l. 20 – App. 252, l. 20. Angela Glenn, who was married to John Glenn, testified that she could tell when petitioner was “using drugs” because his attitude changed and he became mean. App. 260, l. 6 – App. 263, l. 7.

Also, in petitioner’s written statement, he twice mentioned “smoking crack” on the day and evening prior to the stabbing. App. 288, l. 13 – App. 289, l. 19.

Finally, during closing arguments the solicitor mentioned "crack" seven times, including a reference to "crack head" and petitioner's statement that he was "a monster when ...on crack." App. 416, l. 4 – App. 424, l. 8.

Without a doubt, the fact that petitioner smoked crack on February 23, 2008, was well established, but evidence of the details surrounding the stabbing never surfaced. We learned nothing about the actual stabbing, but we learned all about petitioner's crack habits. Therefore, the seemingly infinite crack characterization assigned to petitioner throughout the trial in excess of thirty instances prejudiced petitioner's defense and denied him the right to a fair trial, particularly in light of the fact that there was no overwhelming evidence of petitioner's guilt on the murder charge presented at trial.

Trial counsel's error in failing to object to these negative characterizations of petitioner at trial violated petitioner's right to competent legal assistance as guaranteed under the Sixth Amendment. See also Strickland v. Washington, 466 U.S. 668 (1984). Additionally, but for counsel's omission in this regard, a reasonable probability exists that the outcome of petitioner's case would have been different, especially where the state's evidence did not establish petitioner's guilt beyond a reasonable doubt.

CONCLUSION

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

Respectfully submitted,

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

NORMAN STOUDEMIRE,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001311

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Norman Stoudenmire states:

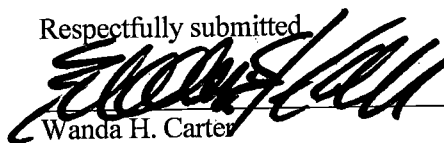
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on January 15, 2015. 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 Norman Stoudenmire.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of December, 2015

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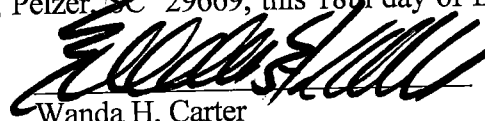
STATE OF SOUTH CAROLINA,

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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 Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Norman Stoudenmire, #182302, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 18th day of December, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of December, 2015.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.