

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr. , Circuit Court Judge

Appellate Case No. 2015-000136

RECEIVED

DEC 29 2015

S.C. Supreme Court

KEVIN C. BRADLEY, 339031,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

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ARGUMENT

In response to the arguments presented by Respondent in their Return filed in this matter, Petitioner would draw this Honorable Court's attention to the following points in addition to the arguments and authorities presented in his Petition for Writ of Certiorari.

I

Failure to preserve right to Direct Appeal

Petitioner relies upon the arguments and authorities advanced in his Petition for Writ of Certiorari.

II

***Batson* Related Claims**

Respondent notes that Trial Counsel testified that he did not see any reason to strike the jurors in question, that he essentially humored Petitioner by advancing the reasons given to him by Petitioner for striking them and felt he could not have argued or developed Petitioner's reasons for striking these jurors any better. Return, Section II, p. 6, para. 2. Respondent's reliance upon these assertions by Trial Counsel is misplaced where the record below refutes these claims. Some of the explanations advanced by Trial Counsel for the strikes in dispute actually went to his own preferences and practices. As for saying he could not have argued Petitioner's position any better, the record clearly reflects that when he made his first statements to the Court concerning Petitioner's reasons for not wanting these jurors to serve, *he did* advance a more thorough, clear and adequate reason for these strikes than he ultimately argued when he addressed each strike individually. Further, he literally just bailed out on his client, and virtually conceded error in the use of a strike against juror number 29, Patricia Chandler. App. p. 36, ll. 12-16. This juror served on Petitioner's second jury. App. p. 14. Further, the general explanation for all the strikes in dispute would have been sufficient to withstand a *Batson*

challenge had Trial Counsel effectively advanced that same explanation for using a peremptory strike with regard to each juror in dispute. The record reflects Trial Counsel's own lack of knowledge with regard to the law in this area and his utter failure to advocate for Petitioner's position by arguing existing authority, such as that presented in the Petition for Writ of Certiorari filed in this matter, to support Petitioner's position that his reasons for striking these jurors were in fact race neutral.

It is likely that the State would not have prevailed on their *Batson* challenge had Trial Counsel provided Petitioner effective representation in his defense against that motion. If not, Petitioner's position on direct appeal would have been much stronger. It is impossible to know the degree to which Petitioner was prejudiced by Trial Counsel's deficiency in this aspect of his representation. It is however, reasonable to believe the prejudice to Petitioner was exacerbated by the fact that three (3) of the jurors in question ultimately served on Petitioner's trial jury.

III

Failure to Request a Continuance

Regardless of Trial Counsel's claims concerning how prepared he was to defend against the material amendment to Petitioner's indictment, the record below refutes his opinion of his preparedness to meet the new claim that the Victim was under age eleven (11) when the first act of sexual battery occurred. For all the very detailed reasons advanced during the evidentiary hearing, and in the Certiorari Petition, Petitioner asserts that Trial Counsel clearly was not prepared to tackle this critical change in the charge against him. His failure to recognize this reality and request a continuance was highly prejudicial to Petitioner. Judge Newman gave Petitioner a sentence of twenty-five (25) years on his conviction on this count. Had Trial Counsel been better prepared to attack the claim that the Victim was less than eleven (11) years old when Petitioner began having sex with her the most Petitioner could have been sentenced to

on that indictment would have been twenty (20) years. Trial Counsel needed a continuance to fully prepare to challenge this crucial charge in the allegations against Petitioner. The fact that he had false confidence in his ability to respond to the material change on the charge against Petitioner is not dispositive of the operative question. As Petitioner has fully demonstrated, Trial Counsel was not adequately prepared to respond to the critical element changed by this amendment; the victim's age. For that reason, he was ineffective for failing to seek a continuance on the ground that the very recent amendment of this indictment required that he have additional time to prepare a defense to the change in that indictment.

IV

Was Trial Counsel ineffective for failing to fully articulate the Petitioner's objection to the testimony of State witness Barbara Gregg, RN, for failing to present appropriate authority in support of the Petitioner's objection to this testimony and for failing to object to hearsay testimony from State witnesses Trina Hamlet and Robin Tyler Griggs, where said testimony was clearly hearsay and as such violated Petitioner's right to fully confront his accusers?

Petitioner relies upon the arguments and authorities advanced in his Petition for Writ of Certiorari.

V

Was Trial Counsel ineffective for failing to object to testimony from forensic interviewer Robin Tyler Griggs in which she was allowed to offer expert opinion concerning the Victim's competency at the time of her taped interview where said testimony went beyond the scope of the expertise for which she was qualified as a witness and improperly bolstered the Victim's testimony?

Petitioner relies upon the arguments and authorities advanced in his Petition for Writ of Certiorari.

CONCLUSION

Based upon all the arguments advanced above, as well as those presented in the Petition for Writ of Certiorari, Petitioner submits that the lower court erred in denying his Application for Post-Conviction Relief. He asks that his judgments and sentences be vacated, and that is case be remanded to the Williamsburg County Court of General Sessions for a new trial.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 21st day of December, 2015

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KEVIN C. BRADLEY, 339031,

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RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Reply to the State's Return to the Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, on this the 21st day of December, 2015 to:

Daniel Gourley
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211


TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 21st day
of December 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

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LAW OFFICE OF



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December 21, 2015

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Kevin C. Bradley, 339031 v. State of South Carolina;
Appellate Case No.: 2015-000136

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to the State's Return to the Petition for Writ of Certiorari and the Certificate of Service in the above-captioned case. I have also enclosed two (2) extra copies of the Reply and a copy of the Certificate of Service and would appreciate having them clocked and returned in the enclosed self-addressed envelope. Thank you for your assistance in this matter. I hope you and those you love have a very Merry Christmas and a blessed New Year. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Daniel Gourley, Assistant Attorney General (w/enclosures)
Kevin Bradley, 339031 (w/enclosures)

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