

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

GREGORY QUINN GATHERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000993

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where trial counsel failed to object to the State's "Golden Rule" argument?

STATEMENT

On June 6, 2010, Petitioner met a woman at a bus stop in North Charleston who asked him if “he wanted to have fun with her.” App. 435 lines 8 – 25; App. 437 lines 5 – 11. Throughout the course of the night, Petitioner bought this woman drugs and they had sex. App. 438 lines 5 – 12. Petitioner passed out and was later awakened by his cell phone alarm. App. 438 lines 13 – 22. He began getting dressed for work when he realized that he was missing money from one of his pockets. App. 439 lines 9 – 25. Believing the woman had taken his money, Petitioner began arguing with her. App. 440 lines 2 – 4.

The woman grabbed a knife and threatened Petitioner. App. 441 lines 8 – 19. She offered to give him his money later. App. 442 lines 1 – 12. Because he was frightened, Petitioner left the home by way of the front door. App. 442 line 10 – App. 443 line 5. Petitioner called his brother and asked him to go by and check on the woman. App. 43 lines 17 – 25.

Petitioner’s father, Harry Gathers, Jr., claimed to have driven his other son, Ronald, to the woman’s house on the morning of June 7, 2010. App. 146 line 21 – App. 151 line 2. Ronald stated that “somebody’s stretched out on the floor in there” so Petitioner’s father called law enforcement. App. 150 line 19 – App. 151 line 22. Officer Lewis Bazzle responded to the call. App. 155 line 17 – App. 156 line 14. Officer Sean Baeur also responded and observed the woman’s body lying on the floor. App. 214 line 13 – App. 215 line 4.

Bazzle claimed that he and Petitioner began speaking on the stairs of the woman’s house when Petitioner told him “I’m the one you’re looking for, I F’d up,” after. App. 157 lines 10 – 19; App. 158 line 25 – App. 159 line 1. Petitioner gave a statement to law enforcement regarding the altercation with the woman he referred to as “Renee”. App. 166 lines 7 – 23; App. 173 line 25 – App. 174 line 2. The statement contained many remarks which incriminated

Petitioner, including a confession that Petitioner hit Renee four or five times in the face and then pulled her down the hall by her hair and hit her three or four more times. App. 170 line 14 – App. 175 line 21.

A Charleston County Grand Jury indicted Petitioner for murder in September 2010. He proceeded to a four day trial in front of the Honorable J.C. Nicholson, Jr. on November 14, 2011. E. Culver Kidd and Adam D. Young represented the State, and Martha Kent Runey and Ted Smith represented Petitioner.

During his closing argument, the solicitor urged the jury:

Ladies and gentlemen, the entire case that was presented to you from defense counsel was all designed for you to feel sorry for him, for you to have sympathy for Gregory Gathers. Ladies and gentlemen, save your sympathies. Save your sympathies for Tiffany Nevarez, for a daughter who no longer has a mother, for her grandchildren to no longer have a grandmother. Save your sympathies for a woman whose life was cut tragically short, who was beaten, dragged around by her hair in her own home. Save your sympathies for those people.

App. 511 lines 6 – 16.

Petitioner's trial counsel did not object to these remarks. The jury convicted Petitioner of murder. App. 543 line 23 – App. 544 line 2. Subsequently, Judge Nicholson sentenced Petitioner to life in prison. App. 561 lines 19 – 22.

Represented on appeal by Appellate Defender Benjamin Tripp, Petitioner's conviction was affirmed by the Court of Appeals. State v. Gathers, No. 13-UP-462 (S.C. Ct. App. December 18, 2013).

Petitioner filed a timely application for post-conviction relief on March 27, 2014. App. 563 - 569. Petitioner's application contained allegations of ineffective assistance of counsel, including counsel's failure to object to the remarks made by the solicitor in his closing argument. App. 565.

The State made its Return on or about March 4, 2015. App. 570. An evidentiary hearing was conducted on December 14, 2015 before the Honorable Deadra Jefferson. App. 575. Christopher L. Murphy represented Petitioner, and J. Rutledge Johnson represented the State. Trial counsel testified during the hearing.

On April 26, 2016, Judge Jefferson issued her order denying Petitioner relief. App. 606. She ruled that no “Golden Rule” rhetoric could be found in the record. App. 611. This Petition follows.

ARGUMENT

The PCR Court erred in denying Petitioner relief where trial counsel failed to object to the State's "Golden Rule" argument.

The PCR judge stated that asking a jury to “save your sympathy for [the decedent and her family members]” is “not appealing to the prejudices and biases and emotions of the jury.” App. 603 line 20 – App. 604 line 1. For the reasons outlined below, this ruling was error since the solicitor was doing exactly that: appealing to the emotions of the jury.

Solicitors should avoid comments that ask jurors to place themselves in the victim's—or another party's—shoes, because those types of comments tend to “completely destroy all sense of impartiality of the jurors.” *Brown v. State*, 383 S.C. 506, 515-15, 680 S.E.2d 909, 914 (2009) (quoting *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 989, 901 (2006)).

A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends arouse passion and prejudice. *State v. Reese*, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006). “A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.” *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). “The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” *Id.* at 609–10, 602 S.E.2d at 744.

On appeal, South Carolina courts view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt.” *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and

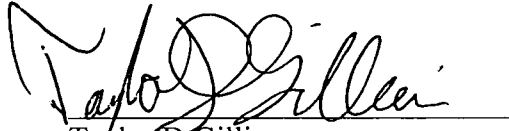
the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Id.*; see *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (“A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.”).

The solicitor’s remarks were prejudicial because they appealed to the passion and prejudice of the jury by asking the jury to be sympathetic to the decedent and her family. During the PCR evidentiary hearing, trial counsel defined a “Golden Rule” argument as one where the State asks a jury to walk in another person’s shoes. App. 596 lines 17 – 19. Counsel admitted that this sort of argument was “improper.” App. 596 line 19. Counsel denied she should have objected to this argument, adding that she never witnessed a “Golden Rule” argument during Petitioner’s trial. App. 596 lines 13 – 22. Had she heard “those words or that type of argument,” she contends she would have objected. App. 596 lines 23 – 25.

Trial counsel was deficient in failing to object to the challenged portion of the solicitor’s closing argument because it constituted a “Golden Rule” argument which impermissibly appealed to the passion of the jury by asking them to allocate their sympathetic emotions for the decedent and her family members. That the PCR judge erred in refusing to grant Petitioner a new trial on the ground that trial counsel was ineffective in failing to object to the above portions of the solicitor’s closing argument.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on this issue.

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

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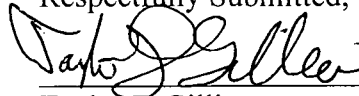
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gregory Quinn Gathers states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before Judge Deadra L. Jefferson, which was held on December 14, 2015 (Evidentiary Hearing), and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process. Therefore, counsel requests that the Court relieve him as counsel for Gregory Quinn Gathers.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of December, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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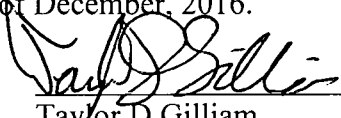
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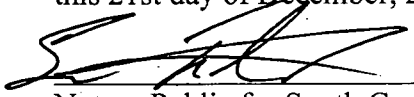
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Gregory Quinn Gathers, #161538, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of December, 2016.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of December, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022