

STATE OF SOUTH CAROLINA **RECEIVED**

IN THE SUPREME COURT

---

JAN 09 2017

S.C. SUPREME COURT

Certiorari to Charleston County  
Honorable Larry B. Hyman, Circuit Court Judge

TRAMAINE D. NELSON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001024

---

JOHNSON PETITION FOR WRIT OF CERTIORARI

---

Tramaine D. Nelson  
Appellate

L.C.I-EB-16  
P.O. BOX 205  
Ridgeville, SC  
29472

petitioner

# INDEX

INDEX .....	i
ISSUES PRESENTED .....	1
STATEMENT .....	2
ARGUMENT .....	3
CONCLUSION .....	6
Certificate of Service .....	07
Table of Authorities .....	8

## ISSUE PRESENTED

Did the PCR Judge err in refusing to find trial Counsel ineffective for failure to instruct the jury of lesser-included offense when there is evidence in the record that would tend to show that the Appellate is guilty of the lesser rather than the greater offense?

## STATEMENT

In October of 2007, the Charleston County Grand Jury indicted Petitioner, Tramaine D. Nelson, for murder, indictment #2007-GS-10-11054. In October of 2008, the Charleston County Grand Jury indicted Petitioner for assault and battery with intent to kill, indictment #2008-GS-10-7463. On November 9, 2009, Petitioner proceeded to jury trial before the Honorable Kristi Lea Harrington. William L. Runyon represented Petitioner at trial. Harry C. Leventis prosecuted the case. The jury returned with verdicts of guilty and Judge Harrington sentenced Petitioner to forty five (45) years for murder and twenty years concurrent of assault and battery with intent to kill. Petitioner filed a timely notice of intent to appeal and the direct appeal was perfected. On September 12, 2012, the South Carolina Court of Appeals dismissed the appeal. State v. Tramaine D. Nelson, 2012-UP-518 (S.C. Ct.App. September 12, 2012).

On October 26, 2012, Petitioner filed an application for post-conviction relief {PCR}. The State filed a return on July 8, 2013. On September 10, 2015, an evidentiary PCR hearing was held before the Honorable Larry B. Hyman. Christopher L. Murphy represented Petitioner at the PCR hearing. J. Rutledge Johnson represented the State. In a written order filed May 2, 2016, Judge Hyman denied relief and dismissed the application. A timely notice of intent to appeal was filed on May 13, 2016. This petition for writ of certiorari follows.

## Argument II

PCR Judge erred in refusing to find Trial Counsel was ineffective for failure to instruct the jury of lesser-included offense State v Fields, 356 S.C 517 in violation of petitioner's Sixth Amendment right to counsel where Appellate is entitled to jury instructions on lesser-included offense when there is evidence in the record that would tend to show that the Appellate is guilty of the lesser rather than the greater offense. As a result Appellate received a harsher sentence.

I, Appellate was found guilty of a drug related shooting on July 13, 2007. I stated to the police that I had been robbed during a drug deal. (App. p. 215, Line 3 - p. 216, 217 Lines, 1-2). I provided a statement to police which was admitted in evidence at trial. I admitted my guilt before the court regarding the amount of shots fired. (App. p. 216 Lines 1-2) Officer John Neale with the Charleston County Sheriff's office that he found three 7.62 shell casings and one 223 shell casing at the scene even though there is no evidence of which bullet struck the victim (App. p. 111-114) There is a probability of 1 out of 4 chance that the fired bullet landed. (App. p. 178 Lines 11-14) The forensic pathologist was unable to determine the caliber of the fatal bullet. (App. p. 135 Lines 5-24). State prosecutor also stated "it is not necessary to establish intent by direct and positive evidence" (App. p. 347 Lines 21-22).

Appellate disagrees. After a review of cross-examination there was no reasonable explanation to how counsel articulated a valid strategy or assert as a mitigating factor the victim's conduct, lesser harm, and accepting responsibility which under the sentencing Guidelines allows a judge to depart downward where the judge has discretion to impose lesser sentence, probation, or supervised release.

## REVIEWING THE FACTS

The court did not clearly review the evidence presented at trial to see if there was any evidence presented to support a jury instruction on voluntary manslaughter. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). The robbery itself had a contentious history and bears weight in the determination of whether Mr. Brown provoked petitioner. It is clear from testimonial evidence that there was previous tension before arriving (App. p. 215 L. 4-25) and both petitioner and deceased was not sure that the tension had been resolved. There was evidence that petitioner was overcome by a sudden heat of passion as a result of engaging in the alleged shootout with Mr. Brown and is evidence that petitioner was overtaken by impulse regarding petitioner's emotional response. Since Mr. Brown's acts were unlawful in spite of the illegal transaction it serves as the basis for a factual finding of legally adequate provocation and would have been proper for the court to grant a jury instruction on voluntary manslaughter in this case along with testimonial evidence that Mr. Brown verbalized some threat while robbing petitioner with armed weapon (App. p. 215 L. 4-25). Therefore the trial court's refusal to grant such an instruction <sup>lines 18-19</sup> was erroneous and PCR Judge's decision was unjust.

# CONCLUSION

Based on the above arguement, this Court should grant the petition for writ of Certiorari and petitioner desires to seek review of the denial of Application and pray that the above issues be viewed in the light most favorable and that you rule these grounds as having merits with respect to the hearing of the court. Thank You

This 39 day of 12 2016

Tramaine Nelson

TRAMAINE D. NELSON

Appellate

RECEIVED

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

JAN 09 2017

S.C. SUPREME COURT

Certiorari to Charleston County  
Honorable Larry B. Hyman, Circuit Court Judge

TRAMAINED NELSON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Johnson Petition for Writ of Certiorari in the above referenced case has been served upon Alicia Olive, Esquire at the Rembert Dennis Building, 10000 Assembly Street, Room 519, Columbia, SC 29201

Subscribed and Sworn to Before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2016  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Tramaine D. Nelson  
Appellate

# TABLE OF AUTHORITIES

## Cases

State v. Peak, 134 S.C. 329, 133 S.E. 31 (1926)

State v. Hardin, 114 S.C. 280, 287, 294-295, 103 S.E. 557 (1920)

State v. Hill, 129 S.C. 166, 123 S.E. 817 (1924)

State v. Jackson, 315 S.C. 219

State v. Scipio, 283 S.C. 124

State v. Foxworth, 269 S.C. 496, 238 S.E.2d 172 (1977)

State v. Fennel, 340 S.C. 266, 531 S.E.2d 512 (2000)

Termaine Nelson # 316883  
Lieber Corr Inst  
PO Box 205  
Ridgeville, SC 29472  
EB-16

**RECEIVED**

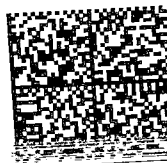
DEC 29 2016

MAIL ROOM  
LIEBER CL.

**FOR LEGAL USE ONLY**

2920133205 0020

FIRST CLASS



UNITED STATES POSTAGE



PITNEY BOWES  
\$ 000.675

02 1P

0000835844

JAN 03 2017

MAILED FROM ZIP CODE 29472

Clerk of South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29201

