

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAR 30 2016

SC SUPREME COURT

Certiorari to Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

JASON WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001963

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 dissuading petitioner from testifying at trial because petitioner's testimony would have corroborated and thus established his third-party guilt defense in the case.

STATEMENT

Petitioner Jason Williams was convicted of armed robbery, possession of a firearm during the commission of a violent crime, robbery, assault and battery of a high and aggravated nature, and failure to stop during the February 2011 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Judge Cole sentenced petitioner to life imprisonment on his armed robbery conviction, fifteen years on his robbery conviction, ten years on his aggravated assault conviction, and three years on his failure to stop conviction. J. Roger Poole represented petitioner at trial, and Assistant Solicitor Barry Joe Barnette appeared on behalf of the state. App. 1 – 274. Petitioner’s appellate counsel, Robert M. Dudek, filed an Anders brief on appeal. The appeal was dismissed. See State v. Williams, No. 2013-UP-105 (filed March 13, 2013).

On July 3, 2013, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 275 – 281. The respondent filed a return dated June 30, 2014, requesting that a hearing be held in response to petitioner’s PCR application. App. 282 – 285.

A PCR hearing was held on March 23, 2015, at the Spartanburg County Courthouse before Judge Roger L. Couch. App. 287 – 347. Petitioner was present at the PCR hearing and represented by J. Brandt Tucker and Assistant Attorney General Suzanne H. White appeared on behalf of the state. On August 17, 2015, Judge Couch issued an Order of Dismissal in the case denying petitioner’s ineffective assistance of counsel allegations. App. 344 – 355.

Petitioner appealed Judge Couch’s Order of Dismissal. This brief follows.

ARGUMENT

Trial counsel erred in dissuading petitioner from testifying at trial because petitioner's testimony would have corroborated and thus established his third-party guilt defense in the case.

Two robberies occurred in Spartanburg County on March 8, 2010. State's witness Anita Swofford Smith testified at trial and explained that she was working at Smile Makers at Exit 78 on I-85 around 1:00 p.m. and had been outside taking her break when she saw a dark blue pick-up truck pull over, and a masked man exit and grab her purse. Smith stated that this man swung a hammer at her when she attempted to pull her purse away from his grasp before he fled. App.107, l. 9 - App. 113, l. 17.

State's witness Randall Seay testified at trial and explained that he was working inside Cherokee Springs Baptist Church located on highway 221 on that same date when a man entered asking for the whereabouts of the church pastor. Seay stated that this man accosted him in the choir area, knocked him down and began choking him. Seay stated that the man took his wallet when it dropped and asked him for his PIN. Seay added that the man fled in a black pick-up truck upon receipt of the PIN number. App. 139, l. 13 - p. 143, l. 16.

Officer William Kish stated that after receiving calls about the two robberies in question, he observed the suspect's pick-up truck in the area and gave chase up Highway 29 until the truck overturned at Hammet Road. The driver, who was later identified as the perpetrator, (i.e. petitioner), was apprehended at that time. A mask and the contents of Smith's purse and Seay's wallet were found in the truck. App. 161, l. 21 – p. 169, l. 18. During the PCR hearing held in the case, petitioner testified that he wanted to testify at trial, but that he was dissuaded him from doing so by counsel because of his prior record. Petitioner stated that he wanted to testify in order to

personally explain that his statement¹ was involuntarily given and untrue, and to present testimony in support of his third-party guilt defense claim. App. 301, l. 18 – p. 303, l. 2. Petitioner stated that he was too banged-up, bruised, and medicated after being released from the hospital to give a statement, and that he barely remembered what he confessed to because he was under the influence of pain killers and that he should not have been allowed to give a statement then. In addition, petitioner could have explained his third-party guilt theory had he been allowed to testify at trial. Petitioner's defense was that Phillip Young drove the pick-up truck on that date and committed the robberies in question. App. 320, l. 25 – p. 322, l. 14.

Trial counsel testified at the PCR hearing held in the case. Counsel explained that petitioner's defense was that Phillip Young committed the crime, and that he subpoenaed Young who appeared in court, but added that after he talked with Young, it became clear that Young would have testified that petitioner was the perpetrator. App. 324, l. 3 – p. 326, l. 14. Counsel stated that he and petitioner discussed the matter of him testifying at trial and the fact that his prior record would have been revealed, but that petitioner decided not to testify, which he believed that was a good decision. App. 329, l. 2 – 15; App. 333, l. 6 – p. 341, l. 6.

The PCR judge ruled that counsel was thoroughly competent in his legal representation which did not fall below the objective standard of reasonableness in the case. App. 354 – 355.

Every defendant has a right to testify in his own defense as guaranteed under the Fourteenth Amendment Due Process Clause, and the Sixth Amendment Compulsory Clause (right to call witnesses in one's favor), and the Fifth Amendment's guarantee against compelled testimony (corollary). See State v. Rivera, 402 S.C. 225, 741 S.E.2d 691 (2013), citing to Rock v. Arkansas,

¹ See Supp. Appendix containing his medical records from the accident.

483 U.S. 44 (1987). Here, petitioner's testimony in his defense would have shed light on his third party defense and diluted the strength of the statement he made to police to the extent that said statement was involuntarily given. Also, this would have satisfied his constitutional Sixth Amendment right to present his defense (See Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975) at trial.

Note that Crystal Hensley testified that she and petitioner were living together during the month that this incident occurred and that petitioner would allow Phillip Young to drive the dark colored pick-up truck which belonged to her. Hensley stated that on March 7, 2010, petitioner arrived at their home without her truck because he had allowed Young to borrow her truck and that she did not see petitioner or the truck until later on when police informed her that her truck had been wrecked. App. 200, l. 1 – p. 208, l. 17. Therefore, Hensley's testimony supported petitioner's third party guilt defense, and had counsel encouraged petitioner to testify and corroborate Hensley's testimony verifying that Phillip Young was in possession of the truck in question during March 7-8, 2010, then this defense would have been presented and corroborated.

Additionally, petitioner's mother Deloris Spurling testified at trial and explained that petitioner was at the house with her around 2:00 p.m. on March 8, 2010, and that she knew at that time that petitioner had allowed Phillip Young to drive the truck. App. 209, l. 9 – p. 212, l. 18. Again, had petitioner testified at trial, he would have been able to corroborate his mother's testimony in support of his third-party guilt defense.

Third-party guilty guilt evidence offered by a defendant as to the commission of the crime by another person is limited to facts which are inconsistent with the defendant's guilt and must raise a reasonable inference as to the accused's innocence. State v. Rice, 375 S.C. 302, 652 S.E.2d 408 (2008); See Holmes v. South Carolina, 547 U.S. 319 (2008), which clarified South Carolina's long

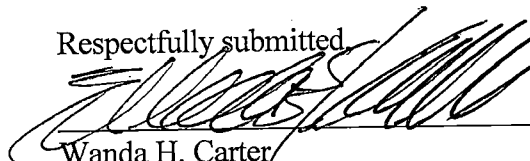
standing third-party guilt rule under State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941), to the effect that a defendant has a right to present third-party guilt evidence despite the state's strong showing of evidence of the defendant's guilt.

Finally, had petitioner testified, he would have been able to convince the jury that his statement was given involuntarily because he was heavily medicated after being released from the hospital per the accident and taken to the police station immediately after leaving the hospital. Petitioner did remember much of anything after his release from the hospital to the police station and as a result, his statement held no credence and was involuntarily given because he was under the influence of having received drugs from the hospital visit when questioned by police. In his statement given to police, petitioner in effect stated that he robbed Smith and Seay. See State v Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990), where the Court held that whether a statement was knowingly and voluntarily made would depend on the totality of the circumstances in the case.

Clearly, counsel's error in dissuading petitioner from testifying at trial hindered him from presenting a complete defense in his case at trial. Counsel's error in this regard constituted deficient representation at trial in violation of the Sixth Amendment, because but for the error a reasonable probability exists that the outcome of petitioner's trial might have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court allow full briefing on the above-raised issue.

Respectfully submitted

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY.

JASON WILLIAMS,

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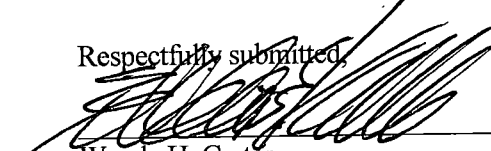
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Williams 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 March 23, 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 Jason Williams.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of March, 2016

STATE OF SOUTH CAROLINA

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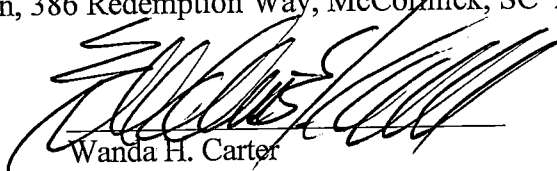
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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

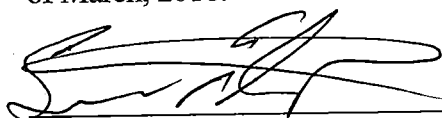
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jason Williams, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 30th day of March, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of March, 2016.

 (L.S.)

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