

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Orangeburg County

Maite Murphy, Circuit Court Judge

\_\_\_\_\_  
DEVOURSHAY WILLIAMS,

PETITIONER

RECEIVED

MAR 13 2017

V.

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001458

\_\_\_\_\_  
JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Wanda H. Carter  
Deputy Chief 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

INDEX

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

Trial counsel erred in advising petitioner to plead guilty as charged without interviewing the investigator from the scene and numerous other neighbors at the scene because an investigation would have uncovered several defenses such as mutual combat, self-defense, and the defense of others that were available on behalf of the defense as the facts indicated that a shoot-out between all parties occurred in the case..... 4

CONCLUSION ..... 6

PETITION TO BE RELIEVED AS COUNSEL ..... 7

### **ISSUE PRESENTED**

Trial counsel erred in advising petitioner to plead guilty as charged without interviewing the investigator from the crime scene and numerous other neighbors at the scene because an investigation would have uncovered several defenses such as mutual combat, self-defense, and the defense of others that were available on behalf of the defense as the facts indicated that a shoot-out between all parties occurred in the case.

## STATEMENT

Petitioner Devourshay A. Williams, Jr. pled guilty to four counts of attempted murder during the January 2013 term of the Orangeburg County General Sessions Court before Judge Edgar W. Dickson. Petitioner received an aggregate fifteen-year sentence. R. Douglas Mellard represented petitioner at the plea proceeding, and Assistant Solicitor D. Sorenson appeared on behalf of the state. App. 1 – 15. Petitioner appealed, but his case was dismissed for failure to present a sufficient explanation for appeal per Rule 203(d)(1)(B)(iv), SCACR.

On January 17, 2014, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 17 – 24. The respondent filed a return dated April 16, 2014, requesting that a hearing be held in response to petitioner's PCR action. App. 25 – 30.

A PCR hearing was convened on May 20, 2015, at the Orangeburg County Courthouse before Judge Maite Murphy. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney General J. Clayton Mitchell appeared on behalf of the state. App. 31 – 50.

On August 18, 2015, Judge Murphy issued an Order of Dismissal denying and dismissing petitioner's allegations of ineffective assistance of counsel in the case. App. 52 – 58.

Petitioner appealed. This petition follows.

## ARGUMENT

Trial counsel erred in advising petitioner to plead guilty as charged without interviewing the investigator from the scene and numerous other neighbors at the scene because an investigation would have uncovered several defenses such as mutual combat, self-defense, and the defense of others that were available on behalf of the defense as the facts indicated that a shoot-out between all parties occurred in the case.

At trial, the solicitor apprised the plea judge of the facts in the case. Apparently, some neighborhood citizens in a Branchville, South Carolina, residential area were questioning why three men were in their neighborhood on the afternoon of September 16, 2011. The neighbors suspected that a burglary might have been in progress at that time. The concerned citizens cornered the suspicious men off and surrounded them in a nearby wooded area until police arrived on the scene. One man, who was later identified as petitioner, started firing gunshots from a pistol when the police investigator appeared on the scene. Then, another man (co-defendant), who was in possession of a gun also, came out of the woods. A third man also surrendered. App. 10, l. 2 – p. 12, l. 14. Ultimately, petitioner was charged with four counts of attempted murder.

During the PCR hearing held in the case, petitioner testified that trial counsel did not discuss the co-defendant's statement, but rather summarized his (petitioner's) case by saying "the co-defendant wrote a statement on him [petitioner] and that it was best for [him] to plead instead of go to trial...[in order to avoid a sentence] of thirty years." App. 36, l. 25 – p. 37, l. 15; App. 38, l. 7-8; App. 38, l. 23 – p. 39, l. 2; App. 40, l. 5-6. Petitioner stated that the co-defendant's accounts were incorrect. Petitioner stated that he did not shoot four times during the incident and that he was "threatened" by the co-defendants that he would get shot if he ran.

App. 39, l. 5-9; pp. 40, l.12 - 21. Petitioner stated he wrote his statement while under duress. App. 42, l. 20-23.

Trial counsel testified at the PCR hearing and explained that it was his understanding that petitioner panicked at the scene, and that he advised petitioner to plead guilty, particularly in light of the co-defendant's statement. App. 42, l. 16 – p. 48, l. 18. Counsel admitted that he never spoke with the investigator or the neighbors who were present at the scene in the case. App. 50, l. 4-6.

Counsel has a duty to conduct reasonable investigations in a criminal case. Strickland v. Washington, 466 U.S. 668 (1984). However, the duty to conduct reasonable investigations does not include as a standard the requirement for defense lawyers to interview every potential witness in a case. See Edwards. State, 392 S.C. 449, 710 S.E.2d 60 (2011). In Edwards, the Court held that as long as counsel conducts a reasonable investigation, which would include interviewing witnesses when reasonably required, then counsel's representation would not be considered deficient. The alleged accomplice in Edwards was not interviewed by Edwards' trial counsel, but said counsel was in attendance at the alleged accomplice's guilty plea and surmised that his presence as a witness at Edwards' trial would not have resulted in any beneficial value to the defense.

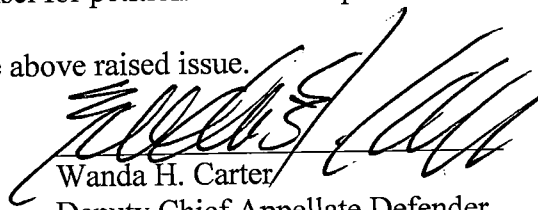
In petitioner's case, however, plea counsel conducted no additional inquiries other than to read the statement of petitioner's codefendant in the case. Numerous participants, including the neighbors, and an investigator appeared to have been involved in a shootout at the scene where even the petitioner himself was shot. In addition, there was a third male who was apparently at the scene but not mentioned in the case. Although duress is not a defense to murder (see State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) and State v. New, 371 S.C. 523, 640 S.E.2d 871 (2007); nonetheless, the defense of self-defense, the defense of others, or mutual combat could have been

developed in the case but for counsel's failure to conduct adequate investigations with respect to petitioner's possible defenses in the case.

In the case at bar, counsel's failure to investigate into and interview witnesses from this incident in order to develop possible defenses on petitioner's behalf constituted ineffective legal representation in petitioner's case. See Hill v. Lockhart, 484 U.S. 52 (1985). This violated petitioner's Sixth Amendment right to competent counsel in a criminal case. But for counsel's deficient representation before the plea proceeding, petitioner might have elected a trial by jury and not plead guilty as charged in the case.

### CONCLUSION

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



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

\_\_\_\_\_  
DEVOURSHAY WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Devourshay Antwan Williams states that:

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 record of petitioner's trial before Judge Maite Murphy, which was held on May 20, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Devourshay Antwan Williams.

Respectfully Submitted,

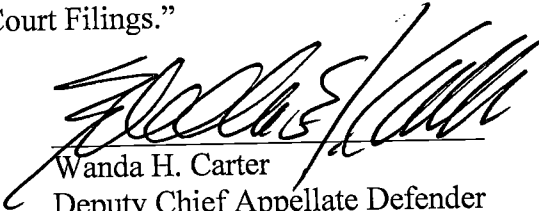
  
\_\_\_\_\_  
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 13th day of March, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her 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."



Wanda H. Carter  
Deputy Chief 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

This 13th day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Orangeburg County

Maite Murphy, Circuit Court Judge

\_\_\_\_\_

DEVOURSHAY WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

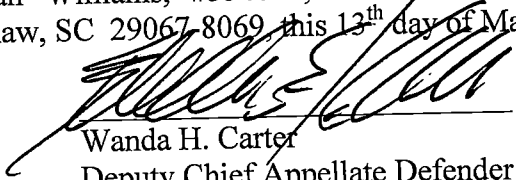
RESPONDENT

\_\_\_\_\_

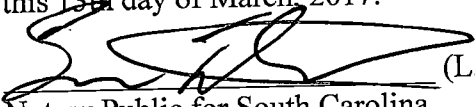
CERTIFICATE OF SERVICE

\_\_\_\_\_

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 Ruston Neely, 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 Devourshay Antwan Williams, #354051, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067 8069, this 13<sup>th</sup> day of March, 2017.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 13<sup>th</sup> day of March, 2017.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.