

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge
—————

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S.C. SUPREME COURT

JAMES TINSLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002428
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

Robert M. Pachak
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

Whether appellate counsel was ineffective in failing to raise the issue of venue on direct appeal?

STATEMENT

Petitioner was convicted of receiving stolen goods after a jury trial held before the Honorable Roger L. Couch on November 10, 2010, in Spartanburg County. Petitioner was sentenced to ten (10) years suspended upon service of three (3) years to five (5) years of probation. That sentence was ordered to be served consecutively with prior convictions petitioner had from Oconee County. Petitioner represented himself at trial and had Andrea D. Price, Esq. as stand-by counsel. Matt Kendall and Ryan McCanty were the assistant solicitors. (App. 1-p 543).

Petitioner appealed his conviction and the South Carolina Court of Appeals affirmed the conviction. State v. Tinsley, Op. No. 2012-UP-639 (filed December 5, 2012). Petitioner filed a petition for writ of certiorari to the South Carolina Supreme Court. The Petition was denied on January 8, 2014 (App. p. 597-p. 598).

Petitioner filed an application for post-conviction relief on February 7, 2014. (App. p. 544-p. 596). Respondent filed a return dated September 8, 2014. (App. p. 597-p. 602). An evidentiary hearing was held on January 13, 2016, before the Honorable R. Ferrell Cothran, Jr. Petitioner was present and was represented by Leah B. Moody, Esq. Respondent was represented by Alicia A. Olive, Assistant Attorney General. (App. p 603-p. 621). On September 1, 2016, Judge Cothran issued an order denying and dismissing the application for post-conviction relief. (App. p. 622- p. 640).

ARGUMENT

Appellate counsel was ineffective in failing to argue on appeal whether petitioner's case was tried in the proper venue.

On appeal a defendant is entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Appellate counsel was ineffective on appeal because he failed to argue that petitioner was not tried in the proper venue. The indictment in this case alleged that petitioner received or possessed stolen goods of Holiday Camper being a camper in excess of \$5,000.00. This was further alleged to have occurred in Spartanburg County. (App. p. 644).

At trial at the close of the State's case petitioner moved for a directed verdict to the charge of receiving stolen goods because the State must prove that the crime happened in Spartanburg County. (App. 357, line 19-p. 360, line 9). Appellate counsel did not raise this issue on direct appeal.

Petitioner brought the issue up again in his application for post-conviction relief. (App. p. 549-p. 557). He argued in part:

The State did not establish venue. State v. Williams, 321 S.C. 327, 468 S.E.2d 626, 630 (1996) (a criminal defendant is entitled to a directed verdict when the state fails to present evidence that the offense was committed in the County alleged in the indictment). While it is true that some evidence existed that the that applicant had dominion and control over a "trailer" at Mr. Dotson's shop in Spartanburg County, there was no substantial circumstantial evidence that that "trailer" was in fact the stolen "camper" subject to this action. The stolen camper was located in Greenville County, a County other than that listed in the indictment. The conjecture that the stolen "camper" was possessed in Spartanburg or that Applicant at some point traveled to Spartanburg to "receive" the stolen "camper" does not constitute sufficient evidence upon which guilt can be infer-red, but rather, constitutes pure suspicion and

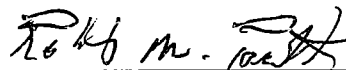
speculation as to the guilt of Applicant and is insufficient to submit the case to the jury.

The elements of receiving stolen good are that the goods must have been stolen and that the defendant must have bought them, received them or possessed them, in the County alleged in the indictment, and he must have knowledge that they are stolen. Hicks v. State, 314 S.C. 280, 443 S.E.2d 455 (2005), or if there is material variance between the charge and proof at trial, the defendant is entitled to directed verdict. State v. Jones, 536 S.E.2d 397 (2000). Evidence which raises a mere suspicion of guilt or could only require the jury to speculate as to the guilt of the accused, is insufficient to submit the case to the jury. State v. Ballenger, 470 S.E.2d 851, 853 (1996).

Most importantly, in circumstantial cases, the State may not prove guilt by stacking inference upon inference. State v. Gunn, 437 S.E. 2d 75, 81 (1993); State v. Maines, 273 S.E.2d 289, 294 (1981) (inference may not be based upon inference. Every inference must stand upon some clear or direct evidence and not upon some other inference or presumption) (App. p. 555-p. 556).

CONCLUSION

Because appellate counsel did not raise the issue of venue on direct appeal he should be held ineffective and petitioner's conviction should be reversed.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of March, 2018.

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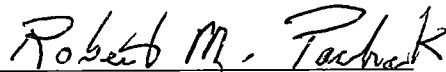
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Tinsley 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 R. Ferrell Cothran, which was held on January 13, 2016, 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 James Tinsley.

Respectfully Submitted,



Robert M. Pachak

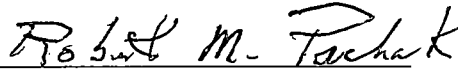
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of March, 2018.

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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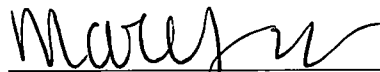
CERTIFICATE OF SERVICE

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 Megan Harrigan Jameson, 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 James Tinsley, at 1004 South Welcome Road, , Greenville, SC 29611, this 19th day of March, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of March, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2027.