

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

—————  
Certiorari to Laurens County  
Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

ERICA LEIGH ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001888

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

Robert M. Dudek  
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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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The PCR court erred in finding petitioner was not ineffectively represented where petitioner requested that her attorney discuss a proper amount of restitution with the “victim” where her co-defendant boyfriend inflicted those injuries when the “victim” propositioned her for sex, where petitioner did not plan any crime, and proper restitution would have resulted in more favorable treatment of petitioner at sentencing.....3

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### **ISSUE PRESENTED**

Did the PCR court err in finding petitioner was not ineffectively represented where petitioner requested that her attorney discuss a proper amount of restitution with the victim where her co-defendant boyfriend inflicted those injuries when the victim propositioned her for sex, where petitioner did not plan any crime, and proper restitution would have resulted in more favorable treatment of petitioner at sentencing?

## **STATEMENT**

The factual basis of this case is contained in the argument that follows.

## ARGUMENT

The PCR court erred in finding petitioner was not ineffectively represented where petitioner requested that her attorney discuss a proper amount of restitution with the “victim” where her co-defendant boyfriend inflicted those injuries when the “victim” propositioned her for sex, where petitioner did not plan any crime, and proper restitution would have resulted in more favorable treatment of petitioner at sentencing.

### **Relevant Facts**

Petitioner Erica Anderson explained that she went to the Waffle House which was near Clinton, South Carolina, and next to her motel in the early morning – around five a.m. -- for breakfast. She was waiting for her boyfriend, the co-defendant, “to join her for breakfast.” App. 67, ll. 8-17.

She met Mr. Paragon, the victim, there. Paragon struck up a conversation with petitioner. He then offered her a ride back to her nearby motel because it was a “very cold” December day.

On the way back to the motel – which was only two hundred yards away -- Paragon made “suggestive” remarks about needing a girlfriend. Petitioner said she changed the subject to the “pet snake” that she had back in her motel room to deflect attention from Paragon’s suggestions. App. 65, l. 9 – 74, l. 11; App. 89, l. 15 – 90, l. 13; App. 95, l. 2 – 97, l. 13; App. 102, l. 7 – 106, l. 16; App. 118, l. 12 – 123, l. 10; App. 126, l. 12 – 127, l. 9.

Once in her motel room, Petitioner realized she left her cigarettes behind. She dialed several rooms in the motel, and eventually reached Paragon who said he would look in his car for the cigarettes.

Paragon knocked “very loudly” at the door of her motel room a short time later. Petitioner’s boyfriend was scared the police were at the door, and because he was engaged in

unlawful drug activity, and he hid in the bathroom. App. 65, l. 9 – 74, l. 11; App. 89, l. 15 – 90, l. 13; App. 95, l. 2 – 97, l. 13; App. 102, l. 7 – 106, l. 16; App. 118, l. 12 – 123, l. 10; App. 126, l. 12 – 127, l. 9.

When Paragon entered the hotel room he began undressing. Petitioner told him he “had it wrong, and that she did not want to have sex with him. Her angry boyfriend then emerged from the bathroom, and he began beating Paragon. The boyfriend fired two shots from his .22 pistol. One shot grazed petitioner’s head, and the other one hit Paragon in the shoulder. Petitioner admitted she participated in the struggle with Paragon so that her boyfriend would not be injured. Petitioner cut Paragon with the knife she had in her hands. Paragon was able to escape from the struggle with petitioner’s boyfriend, and he was found in the parking lot of the motel bleeding. App. 65, l. 9 – 74, l. 11; App. 89, l. 15 – 90, l. 13; App. 95, l. 2 – 97, l. 13; App. 102, l. 7 – 106, l. 16; App. 118, l. 12 – 123, l. 10; App. 126, l. 12 – 127, l. 9.

Petitioner was indicted for attempted murder, armed robbery, kidnapping, and possession of a weapon during a violent crime. App. 180 – 187. Petitioner’s mother helped her post the \$150,000 surety bond. App. 117, ll. 1-2. Petitioner retained Andrew Hodges as her attorney.

On June 5, 2014, petitioner appeared before the Honorable Frank R. Addy, Jr., and entered a guilty plea to attempted murder, common law robbery, kidnapping, and possession of a weapon during the commission of a violent crime. Petitioner’s boyfriend, Jason Lawson, pled guilty to the same charges. App. 3, ll. 9-25. Andrew Hodges represented petitioner and Daniel J. Farnsworth represented Jason Lawson. The victim was home in New York, and did not appear. App. 1.

The solicitor’s rendition of the facts to Judge Addy was much different than what petitioner said actually happened. Deputy Solicitor Dale Scott told the judge that on December

15, 2011, the victim, Paragon, was found running around the parking lot naked and bleeding near the Travelers Inn outside of Clinton, South Carolina. App. 9, ll. 12-19. Paragon claimed that a white female and a white male had tied him up, robbed him, stabbed him, and shot him. Paragon said the perpetrators were in Room 12 of the Travelers Inn. Petitioner Anderson and Lawson's identification and other property were located in Room 12.

Paragon's story was that he was coming back from Florida from a hunting trip on his way home to New York. Paragon said he went into the Waffle House and ate. Paragon and petitioner "strike up a conversation." They were seen leaving together. Mr. Paragon would tell law enforcement that Petitioner asked for a ride back to the Travelers Inn, and he obliged. "He has admitted to me that there was talk about a sexual proposition, I guess, that would occur back at the Travelers Inn." Paragon was staying in Room 8 and petitioner was in Room 12. App. 9, l. 2 – 13, l. 25.

Paragon said that petitioner called his room "and asked him to come to Room 12." He did so. She had a pet snake in the room. They talked about the snake for some time. At some point, he took his shirt off and she asked him to take all of his clothes off. He asked her to take her shirt off and she did. At that point, he felt comfortable enough to take his pants off." Paragon said that petitioner's boyfriend then emerged from "the back bedroom" and shined a flashlight in Paragon's face. Paragon said the boyfriend told him to turn around or "I'll blow your head off," and hits him in the head with the Maglite. Paragon claimed that the boyfriend ripped the telephone cord out of the wall and began tying him up. The solicitor claimed that Petitioner Erica Anderson "comes up behind him and slashes his throat with a knife." Paragon was shot by the boyfriend's .22 pistol in the rear shoulder. He was able to escape, and was found in the parking lot by the police. App. 9, l. 2 -13, l. 7.

Defense counsel Hodges only told the judge that petitioner “disagrees with some of the factual presentation.” App. 14, l. 19 – 15, l. 2.

Defense counsel Hodges told the judge that petitioner “gets the snake out for him to pet it and when she turns to put the snake back in the aquarium and turns around, he’s got his pants off and she’s like, well, wait a minute, you’ve got the wrong idea. At that point is when Mr. Lawson comes out of the bathroom and they start struggling over it and that’s when the whole thing spins out of control.” App. 33, ll. 9-21.

Defense counsel would later testify that they discussed a sentence of between fifteen and twenty years with the judge in chambers, and the importance of petitioner not having to register as a sex offender. Judge Addy sentenced petitioner to fifteen years imprisonment. She did not have to register as a sex offender. App. 44, l. 18 – 45, l. 5.

Petitioner filed an application for post-conviction relief alleging she was ineffectively represented. The state filed a return. App. 47-57. Petitioner, through counsel, filed an amended application for post-conviction relief. App. 188-191.

An evidentiary hearing was convened on June 7, 2017 before the Honorable G. Thomas Cooper, Jr. Carson Henderson represented petitioner. Judah VanSyckel was the assistant attorney general. App. 58.

Trial counsel Andrew Hodges testified that petitioner thought she could pay the victim up to \$20,000 in restitution. Hodges admitted that paying the victim’s restitution “sometimes softens their heart.” Hodges claimed he “floated” the idea of the restitution to the solicitor “it didn’t work in this particular situation.” Hodges said he did not speak directly with the victim himself. App. 85, ll. 7-16.

Petitioner testified that with the assistance of her mother she was able to post \$150,000 bond. Petitioner alleged her attorney was ineffective for failing to discuss with the victim making restitution for his injury. App. 116, l. 4 – 117, l. 7.

An order of dismissal was issued dated August 23, 2017. App. 160 – 179. This order noted that petitioner alleged her attorney “should have done more to contact the victim about paying restitution ahead of time in order to mitigate [her] involvement.” App. 164. The order, citing no authority, concluded that defense counsel made a strategic decision not to talk with the victim directly about accepting restitution from petitioner. The order concluded this was reasonable because talking to the victim about restitution could have “irritated” the victim. App. 176.

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243 of the SCACR.

### **Discussion**

Making restitution to the victim would have shown a sincere acceptance of responsibility for the victim’s injuries sustained by the beating and gunshot wound inflicted by petitioner’s boyfriend. Although the solicitor allegedly was not interested in petitioner’s offer to pay substantial restitution, defense counsel was ineffective for not following through with the restitution offer with the victim himself.

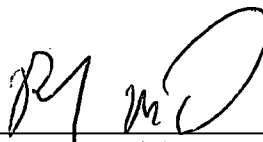
Defense counsel’s failure to investigate whether the victim was interested in accepting \$20,000 in restitution for his injuries constituted ineffective assistance of counsel based on the unusual facts of this case. In all likelihood, the victim would have been interested in accepting this restitution, and it would have resulted in a lesser sentence for petitioner because the judge would have been impressed with petitioner’s acceptance of responsibility for her actions despite

the fact the victim's propositioning her for sex set the unfortunate events involved in this case into motion. See Council v. State, 280 S.C. 159, 179, 670 S.E.2d 356, 366 (2008)(ineffective assistance of counsel for failure to investigate. It was undisputed that defense counsel never even broached or investigated the possibility of restitution with the victim himself. C.f. Simpson v. Moore, 367 S.C. 587, 605-607, 627 S.E.2d 701, 711-712 (2006); Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007).

Petitioner's attorney was deficient in his failure to discuss the \$20,000 in restitution petitioner could pay with the victim, and petitioner is serving more time in prison due to that deficiency, and thus she has proved prejudice.

**CONCLUSION**

By reason of the foregoing arguments, a petition for writ of certiorari should be issued, and petitioner's guilty plea should be vacated.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2018.

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IN THE SUPREME COURT

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PETITION TO BE RELIEVED AS COUNSEL

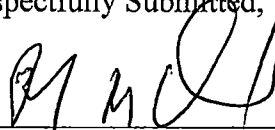
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Counsel for Erica Leigh Anderson states:

1. He is Chief 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 post-conviction hearing before Judge G. Thomas Cooper, which was held on June 7, 2017, 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 Erica Leigh Anderson.

Respectfully Submitted,



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Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of April, 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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ATTORNEY FOR PETITIONER

This 24th day of April, 2018.

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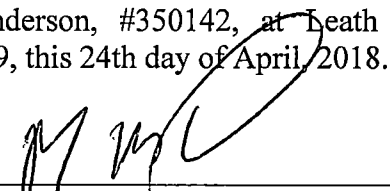
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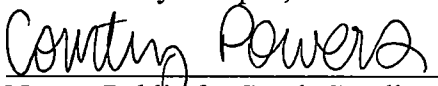
CERTIFICATE OF SERVICE

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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 Justin J. Hunter, 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 Erica Leigh Anderson, #350142, at Heath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 24th day of April, 2018.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of April, 2018.

 (L.S)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027.