

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Jr., Circuit Court Judge

WILLIAM RICKY WELCH,

V.

STATE OF SOUTH CAROLINA,

RECEIVED
JUN 18 2010
PETITIONER
S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO. 2017-002375

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

David Alexander
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

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ISSUE PRESENTED

Whether trial counsel was ineffective under the Sixth Amendment because he failed to object to the solicitor's statements in closing argument that improperly vouched for the complainant's credibility?

STATEMENT

In a trial in Sumter County, a jury found petitioner guilty of first-degree CSC with a minor and lewd act on a minor. App. 1. App. 573, l. 21 – 574, l. 18. The Honorable R. Ferrell Cothran, Jr. presided over petitioner's trial. App. 1. Ernest Finney represented petitioner and Suzanne Mayes represented the State. App. 1. Judge Cothran sentenced petitioner to concurrent terms of twenty years' imprisonment for CSC and fifteen years' imprisonment for lewd act. App. 583, ll. 5 – 16.

After an unsuccessful appeal, petitioner filed a PCR application on July 9, 2013. App. 585. On April 15, 2015, the Honorable George C. James, Jr. held a hearing. App. 599. Fulton Casey Dale Cornwell represented petitioner and Daniel F. Gourley represented the State. App. 599. On October 8, 2015, then-Judge James denied petitioner's application. App. 628. Petitioner attempted to file a *pro se* notice of appeal, but it was dismissed. App. 655.

On May 9, 2012, petitioner filed a subsequent PCR application. App. 637. On the consent of all parties, Judge Cothran granted petitioner a belated appeal from his first PCR application and dismissed all other claims. App. 653. Petitioner now files this petition pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), seeking review of the 2015 Order denying him relief.

ARGUMENT

Trial counsel was ineffective under the Sixth Amendment because he failed to object to the solicitor's statements in closing argument that improperly vouched for the complainant's credibility.

Like all child sexual abuse cases, the complainant's credibility at petitioner's trial was a key issue. Complainant was nine years old at the time of trial. App. 143, ll. 9 – 10. Her family had a cookout near Christmas. App. 145, l. 17 – 147, l. 15. More than eleven people were at the cookout. App. 146, l. 6 – 147, l. 13. Party attendees rode four-wheelers in the woods. App. 148, l. 17 – 150, l. 9.

Complainant and another child rode the four-wheeler with petitioner into the woods. App. 152, l. 7 – 153, l. 14. Complainant said petitioner began touching her inside of her underwear. App. 153, l. 11 – 155, l. 9. Complainant testified that petitioner ultimately digitally penetrated her vagina. App. 155, ll. 10 – 23. Petitioner made complainant promise not to tell. App. 157, ll. 20 – 24.

Complainant told her cousin, HM, when they came back to the house. App. 158, l. 15 – 160, l. 12. HM told her mother, who told complainant's parents. App. 160, ll. 13 – 16. Her mother asked her about the alleged abuse and then took complainant to the doctor. App. 161, l. 13 – 162, l. 19. Complainant claimed she was in pain from the abuse, but rode the four-wheeler again with HM. App. 184, ll. 8 – 23.

Petitioner testified in his own defense. App. 465, ll. 7 – 10. Petitioner owned his own mobile home repair business. App. 465, ll. 15 – 18. He denied taking the four-wheeler into the woods by himself with Complainant and the other small child. App. 481, ll. 11 – 15. Petitioner's daughter rode a smaller four-wheeler with a friend on the back. App. 481, ll. 3 – 15.

At one point, petitioner stopped the four-wheeler to reposition the small child between himself and Complainant. App. 482, l. 2 – 483, l. 7. Petitioner told Complainant to hold the child tight and put her arms around petitioner. App. 483, ll. 10 – 22. Later in the day, Petitioner took the child and Complainant on another four-wheeler ride. App. 484, l. 1 – 485, l. 9. Petitioner vehemently denied abusing Complainant. App. 490, l. 8 – 491, l. 19.

At the PCR hearing, petitioner alleged his attorney should have objected to comments during the solicitor’s closing argument that vouched for Complainant’s credibility. App. 607, l. 1 – 608, l. 18. Trial counsel claimed he did not see anything in the solicitor’s closing argument that was objectionable. App. 615, l. 7 – 616, l. 5. The PCR court denied relief and held nothing about the solicitor’s closing argument “concerning witness credibility was objectionable.” App. 633.

The PCR court erred in denying relief on this ground. The solicitor repeatedly referred to the credibility of Complainant during her closing argument. App. 546, l. 6 – 549, l. 21. She told the jury that Complainant had “absolutely nothing to gain by coming in this courtroom and saying that about him. Absolutely nothing to gain.” App. 546, l. 6 – 549, l. 21. Playing on the jury’s sympathy for Complainant undergoing a medical examination, she told the jury that Complainant was credible because her “Christmas Eve was in an emergency room.” App. 546, l. 6 – 549, l. 21. She also told the jury about the embarrassment of coming to Court to testify that she was abused. App. 546, l. 6 – 549, l. 21.

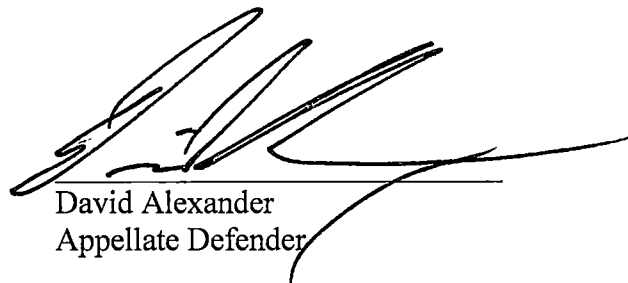
The solicitor’s comments improperly vouched for Complainant’s credibility. As this Court held in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), the child’s credibility is the central issue in a sexual abuse trial. The Stukes Court held the “no corroboration” charge was an improper comment on the facts. Id. “By addressing the veracity of a victim’s testimony in its

instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury.” Id., 787 S.E.2d at 483. “The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak.” Id.

A solicitor’s argument that appeals to the personal biases of the jury and arouses their passions and prejudices violates due process. Tappeiner v. State, 416 S.C. 239, 250-51, 785 S.E.2d 471, 477 (2016); Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974). See also Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (“The State’s closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence.”). Here, the solicitor’s argument commented on Complainant’s credibility in a fashion intended to elicit sympathy and prejudice from the jury. Trial counsel performed deficiently and, in this close case, the deficient performance prejudiced petitioner. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and extends to the right of the line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of June, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

WILLIAM RICKY WELCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

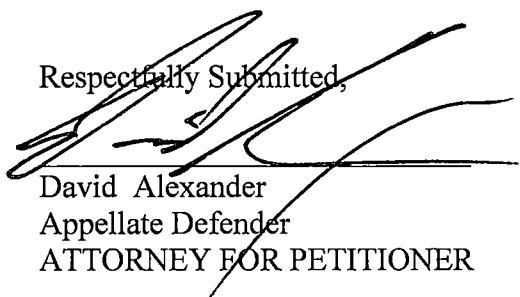
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Ricky Welch 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 April 15, 2015, 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 William Ricky Welch.

Respectfully Submitted,

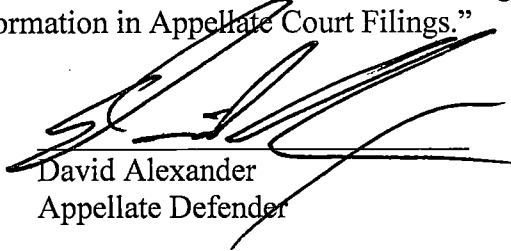


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of June, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari Pursuant to Austin v. State 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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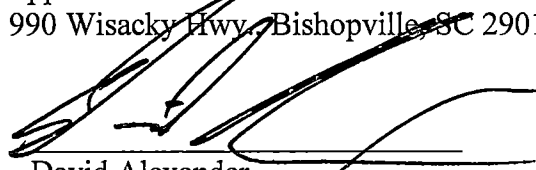
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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, 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 Pursuant to Austin v. State and a copy of the Appendix have been served on William Ricky Welch, #208451, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 18th day of June, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of June, 2018.

Mark Kendall (L.S)
Notary Public for South Carolina
My Commission Expires: