

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

IVAN WILLIAMS,

PETITIONER

V,

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001644

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Trial counsel erred in failing to object the solicitor’s
inflammatory and speculative closing remarks that referred to
petitioner as a murderer at his burglary trial 3

CONCLUSION 4

PETITION TO BE RELIEVED AS COUNSEL 5

ISSUE PRESENTED

Trial counsel erred in failing to object the solicitor's inflammatory and speculative closing remarks that referred to petitioner as a murderer at his burglary trial.

STATEMENT

Petitioner Ivan Williams was convicted of first-degree burglary during a jury trial held at the November 2013 term of the Hampton County General Sessions Court before Judge Michael G. Nettles, who sentenced him to imprisonment for a period of fifteen years. Stephanie Smart-Gittings represented petitioner at trial and Assistant Solicitors Randolph Murdaugh, III, and Richard Alexander Murdaugh appeared on behalf of the state. App. 1-170. Petitioner appealed, but his conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Williams, Op. No. 2017-UP-027 (Ct.App. 2017). James Arthur Brown, Jr., Esquire, represented petitioner on appeal and filed an Anders¹ brief on petitioner's behalf.

On January 2, 2018, petitioner filed a PCR application with the Hampton County General Sessions Court. App. 172-177. On April 30, 2018, petitioner filed a Return requesting that an evidentiary hearing be held in the case. App. 178-182.

A PCR hearing was convened on June 6, 2018, at the Hampton County Courthouse before Judge Diane Schafer Goodstein. App. 183-224. Petitioner was present at the hearing and represented by Cory H. Fleming, and Assistant Attorney General Christian Saville appeared on behalf of the State.

On August 8, 2018, Judge Goodstein issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 226-287. Petitioner appealed Judge Goodstein's Order. This petition follows.

¹ Anders v. California, 386 U.S. 738 (1967).

ARGUMENT

Trial counsel erred in failing to object the solicitor's inflammatory and speculative closing remarks that referred to petitioner as a murderer at his burglary trial.

At trial, the homeowner testified that she came home to find two men, one of whom she recognized as petitioner, burglarizing her home, and later identified petitioner from a photographic layout. Several goods and items were out of order in the home, which indicated by inference that those objects were about to have been removed and taken away. App. 543, l. 10 – p.73, l. 22. Petitioner was charged with burglary first-degree to the extent that he entered the homeowner's dwelling without consent and with the intent to commit a crime therein, which appeared to have been the crime of taking certain goods (that were found laid out) from the home. See S.C. Code Ann §16-11-311. However, during closing arguments, the solicitor implied in effect that the "intent to commit a crime therein" was to murder the homeowner. The solicitor's comments regarding the matter follow:

It says, It's only by the grace of the God, Mr. Foreman, and ladies and gentlemen of the jury, she ain't dead laying on a slab right now. You come in your home, 12:30 at night and somebody has broken into it, you're lucky you're alive. App. 146, lines 20- 24

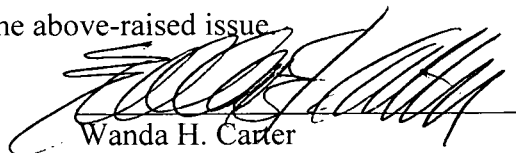
During the PCR hearing, counsel testified that she did not object to the solicitor's remarks at issue because it would have emphasized the drama and allowed the jury to hear the comment again, and that she wanted to minimize the comment and not allow the same to hurt petitioner's case. App. 211, l. 12- p. 212, l. 14.

Petitioner did not testify at the PCR hearing. The PCR judge dismissed the allegation regarding the solicitor's closing argument because PCR counsel waived the closing argument issue; however, there was no indication that petitioner waived this issue.

Although PCR counsel (not petitioner) dismissed the closing argument issue; nonetheless, a closer look at the error that occurred here would warrant a second look. There was no evidence in the record that petitioner was a violent man who would have harmed the homeowner by killing the homeowner, and that such was his “intent to commit a crime therein” element. See SC Code Ann section 16-11-311. The rule is that a solicitor must stay within reasonable inferences from and within the record. State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Here, there was no evidence in the record suggesting there was any peril to the homeowner’s life. To the contrary, it appeared that the goal, i.e. “intent to commit a crime therein,” was to confiscate certain household goods only based on the evidence rather than to commit murder. Also, to suggest that petitioner’s intent once inside the house was to kill the homeowner was very inflammatory and served only to portray petitioner in a negative light. Inflammatory remarks that are calculated to appeal to the passions and prejudices of the jury are not permitted in a criminal case. State v. Bennett, 369 S.C. 219, 632 S.E.2d 281 (2006). Here, counsel performed ineffectively in failing to object to the impermissible and inflammatory remarks made by the solicitor at closing because this prejudiced petitioner’s case; and but for the error, i.e., the failure to object to the inflammatory argument, a reasonable likelihood exists that the outcome of the case would have been different. See Strickland v. Washington, 668 U.S. 466 (1984).

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 6th day of May, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

IVAN WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

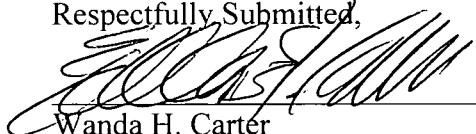
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ivan 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 post-conviction relief hearing before Judge Diane Schafer Goodstein, which was held on June 6, 2018, 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 Ivan Williams.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of May, 2019.

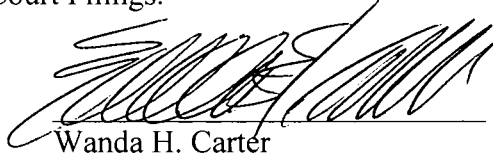
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CERTIFICATE OF COUNSEL

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
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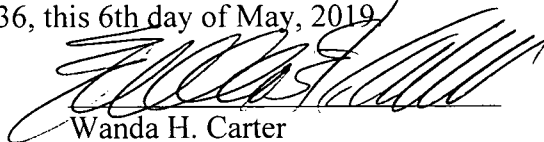
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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Benjamin Limbaugh, 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 Ivan Williams, #357781, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 6th day of May, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of May, 2019.

Courtney Powers (L.S)

Notary Public for South Carolina
My Commission Expires: May 2, 2027.