

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County

JUL 03 2019

Honorable Alex Kinlaw, Circuit Court Judge

S.C. SUPREME COURT

DAVID A. YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002043

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
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to present petitioner's self-defense claim as a defense at trial and in failing to request a self-defense jury charge in the case

STATEMENT

Petitioner David A. Young was convicted of murder, possession of a weapon during the commission of a crime, and failure to stop for a blue light during the February 2015 term of the Greenville County General Sessions Court before Judge R. Keith Kelly. Randall Chambers represented petitioner at trial, and Assistant Solicitors Jeff Weston and Elizabeth Major appeared on behalf of the state at trial. Petitioner was sentenced to life without parole. App. 1-471. Petitioner appealed and was represented on appeal by Robert M. Dudek, Esquire, of the Office of Appellate Defense, who filed an Anders brief in the case. On April 19, 2017, the South Carolina Court of Appeals dismissed the appeal. See State v. Young, Op. No. 2017-UP-168 (S.C. Ct. App. April 19, 2017).

On October 13, 2017, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 473-480. The respondent filed a Return dated January 17, 2018, requesting that a hearing be held in the case. App. 481-486.

A PCR hearing was convened on October 23, 2018, at the Greenville County Courthouse before Judge Alex Kinlaw. App. 487-529. Petitioner was present at the PCR hearing and represented by Rodney W. Richey, and Assistant Attorney General Deshawn H. Mitchell appeared on behalf of the state at the hearing. On November 5, 2018, Judge Kinlaw issued an Order of Dismissal in the case. App. 531-542.

Petitioner appealed Judge Kinlaw's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to present petitioner's self-defense claim as a defense at trial and in failing to request a self-defense jury charge in the case.

On the morning of January 13, 2013, petitioner and Porchae Adams went to Bobby T's Club to confront Marcus McGee, who had allegedly sold fake cocaine to Porchae Adams. App. 137, l.10-22.

Robert Bowens, who was working as a security staff member at Bobby T's Club on the morning in question, testified that he saw petitioner fire gun shots at Marcus McGee, who died from his gunshot wounds; and that before the shots were fired, he heard McGee utter words to the effect that he wanted them to stop bothering him. App. 144, l.2-p. 158, l.25.

Porchae Adams testified that she and petitioner went to Bobby T's Club on that morning, and that petitioner went inside, and that minutes later approached her with the report that he had killed McGee. App. 219, l.19-p. 237, l.25.

Petitioner testified at trial and explained that he had no weapon on him while at Bobby T's on the morning in question, but that Porchae Adams and Stephen Chapman were armed. In addition, petitioner claimed that he confronted McGee, but that before McGee could respond, he (McGee) was shot, and that either Porchae Adams or Jack Frost shot McGee. Petitioner stated initially that he killed McGee in order to protect Prochae Adams from being charged with the crime of murder. App. 345, l.11-p. 383, l.25. Petitioner stated further that McGee reached for a gun during the exchange on that night and that he (petitioner) believed he was in danger. App. 374 lines 4-10; App. 381, lines 2-10. Note that at trial the state introduced jail cell taped calls where petitioner was recorded stating that he killed McGee. App. 325, l. 13 – p. 337, l. 14.

During the PCR hearing, petitioner testified that he did not shoot McGee and that counsel neither properly prepared for trial nor had a trial strategy for use at trial. App. 493, 1.25-p. 494, 1.25; App. 498, 1.1-8; App. 501, 1.10-20.

Trial counsel testified that he believed self-defense would have been a good defense in the case because petitioner told him that he saw a gun in McGee's possession and that he saw McGee going for the gun as he was moving out of the door, but that he did not develop the self defense claim since petitioner "talked to everybody about how he killed [McGee]." App. 516, 18-p.517, 1.6.

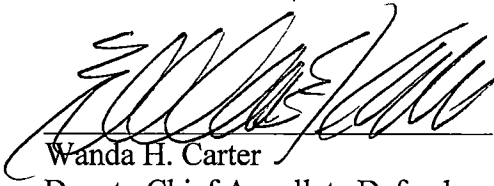
The PCR judge ruled that petitioner investigated petitioner's his case and that counsel's investigation was reasonable and not ineffective legal assistance. App. 531-542.

In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed and that he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Here, petitioner was unarmed and used words to confront McGee and could not be considered the aggressor. Moreover, petitioner was fearful of injury or loss of life when he realized that McGee was armed and when he realized he was trapped at the club environment and could not escape. Furthermore, the recorded jail cell tapes that were introduced into evidence and the eyewitness testimony given at trial should not have precluded the presentation of petitioner's self-defense case because a jury may believe or disbelieve evidence in whole or in part. See State v. Johnson 236 SC 207, 111 S.E.2d 540 (1960); State v. Smith, 227 S.C. 400, 88 S.E.2d 345 (1955). Finally, a self-defense jury charge was warranted in the case because the facts supported a self-defense claim.

Trial counsel's error in failing to present petitioner's self-defense claim at trial and his error in failing to ask for a self-defense jury charge based on the evidence presented at trial constituted deficient representation in violation of petitioner's Sixth Amendment right to receipt of competent legal representation during a criminal trial. Petitioner was prejudiced by trial counsel's ineffective representation at trial because but for the errors, a reasonable probability exists that the outcome of petitioner's trial would have been different. See Strickland v. Washington 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests 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 3rd day of July, 2019.

STATE OF SOUTH CAROLINA
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V.

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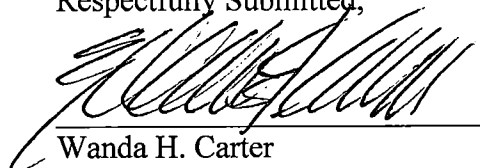
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Adam Young 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 Alex Kinlaw, which was held on October 23, 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 David Adam Young.

Respectfully Submitted,

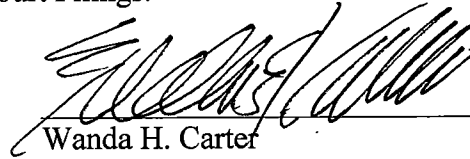


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of July, 2019.

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."



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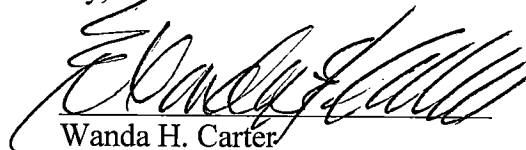
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STATE OF SOUTH CAROLINA,

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 Taylor Z. Smith, 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 David Adam Young, #146369, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 3rd day of July, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.

