

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County

Honorable Michael G. Nettles, Circuit Court Judge

EDWARD W. STACKHOUSE,

RECEIVED

SEP 17 2019

S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002169

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
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to object to the solicitor's improper vouching at closing argument when referencing the credibility of the state's two eyewitnesses in the case.

STATEMENT

Petitioner Edward Stackhouse was found guilty of murder, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime during the May 2012 term of the Marion County General Sessions Court before Judge William H. Seals, Junior. Petitioner was represented by Scott P. Floyd at trial, and Assistant Solicitor E.L. Clements, III, appeared on behalf of the state. Petitioner was sentenced to life imprisonment for murder, twenty years consecutive on the assault conviction, and five years concurrent on the weapon conviction. App. 1-440.

Petitioner appealed, but his appeal was dismissed by the South Carolina Court of Appeals on February 5, 2014. See State v. Stackhouse, Unpublished Opinion No. 2014-UP-051 (filed February 5, 2014). App 456-457. Petitioner was represented on appeal by Chief Appellate Defender Robert M. Dudek of the Appellate Division of the South Carolina Commission on Indigent Defense. App. 444-455.

On March 11, 2014, petitioner filed a PCR application with the Marion County Office of the Clerk of Court. App. 458-466. The respondent filed a return dated June 28, 2016, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 467-471. Petitioner filed an Amended PCR application on January 25, 2018. App. 473-475.

A PCR hearing was convened on January 30, 2018, at the Marion County Courthouse before Judge Michael G. Nettles. App 476-560. Petitioner was present at the PCR hearing and represented by Jonathan Waller, and Assistant Attorney General Lindsey McCallister appeared on behalf of the state. On November 6, 2018, Judge Nettles issued an Order of Dismissal in the case. App. 570– 592. Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to the solicitor's improper vouching at closing argument when referencing the credibility of the two state's eyewitnesses in the case.

Petitioner was indicted for murder in connection with the stabbing death of his wife, and also for attempted murder in connection with the knife wound upon a young male child.

On September 17, 2010, Marion County Police Officer Kenneth Alford arrived at Meadow Park Apartments and found a young male child, who was bleeding from ear/neck wounds, yelling that petitioner killed his mom. App. 95, 1.1-p.111, 1.6. Sharon Stackhouse was found dead from a knife stab wound that punctured her lung and heart, but the young male child survived his knife wound. App, 254, 1.9-p.260, 1.3. Petitioner was arrested shortly after the incident per a description given to police and taken to the police station for questioning.

At trial, one brother (Daquan), who was the oldest brother of the deceased wife's two sons and the one who was injured by a knife, testified that he was fifteen and living with his brother, mom, and petitioner on the day in question when he heard noise coming from the room where his mom and petitioner were inside, and that when he went in the room and saw petitioner stab his mom, he grabbed petitioner's hands and was injured. App. 335, 1.15-p. 345, 1.25; App. 273, 1.1-21. The youngest brother testified that he responded to the incident involving petitioner and his mother by running out to find help. App. 323, 1.3-p.331, 1.5; App. 273, lines 1-21.

Petitioner did not testify at trial, but the statement he gave to police was admitted into evidence at trial. According to petitioner's statement, he explained that he and his wife were fighting over a telephone call, and that as they fought, he was knocked down to the floor by the oldest son. Petitioner added that he came up with a knife at that point and rose up slashing to

defend himself because he was afraid that they (wife and oldest son) would hurt him. App.302, 1.18-p.303, 1.18.

During the PCR hearing held in the case, petitioner testified in effect that trial counsel erred in failing to object when the solicitor “vouched or bolstered... the witnesses’ testimony” by what was in effect a guarantee to the jury that there was no lying on behalf of the eyewitnesses (two sons) and that the eyewitnesses (two sons) were telling the truth. App. 505, lines 13-20.

Trial counsel testified at the PCR hearing and stated there was no reason to object to that portion of the closing argument in question. App. 522, 1.6-10, App. 547, 1. 13 - p. 549, 1. 25.

The portion of the solicitor’s argument in question follows:

The state should have to prove you’re guilty beyond a doubt. I believe we’ve done that. I believe we’ve done that. Y’all didn’t fall off a turnip truck last night. Y’all heard the story and y’all listened to the evidence, and I believe y’all are going to bring back a verdict that finds the truth and you’re going to say, Ed, you met the burden of proof, we don’t have a reasonable doubt. It’s a horrible, horrible, thing. That’s kind of like a curse across our nation on domestic abuse resulted in a murder of two young boys’ momma in front of them; and now here they come and tell what they endured and what they saw, what they heard, to y’all under oath four days after the mother died. They don’t have anything that shows they’re lying ‘cause they’re not lying. They told you the truth. Now y’all bring back a verdict that speaks the truth. Edward Stackhouse is guilty of murder; he’s guilty of attempted murder. And he is guilty of possessing this during the commission of a violent crime. Take this back and look at it. Thank you. App. 392, 1.24-p. 393, 1.20.

The PCR judge ruled that after reviewing the closing argument it appeared that “any deficiency was harmless” and that in the “context of the entire closing argument, it appear[ed] [that] the solicitor was making a legitimate factual argument as to who was telling the truth.” App. 580-581.

Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the state to assure the jury of a government witness' credibility; and therefore, a solicitor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness. Gilchrist v. State, 350 S.C. 221, 565 S.E. 2d 281 (2002). Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity. See Gilchrist, supra, citing to State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). In Gilchrist, the Court found that trial counsel was ineffective in failing to object to the solicitor's statement at opening argument that a witness, who was arrested and charged in connection with the defendant in a robbery in the case, was coming "clean" about the incident and what happened, and that he (this witness) was therefore in effect believable for coming clean. See also Tappeiner v. State, 416 S.C. 239, 785 S.E.2d 471 (2016), where the Court held that trial counsel was ineffective in failing to object to the solicitor's closing comments where he improperly vouched for the credibility of the child victim in the case when credibility was the main issue in the case.

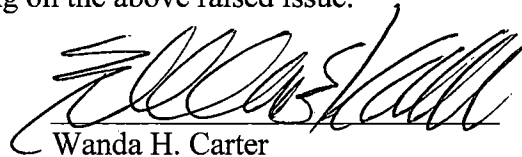
In the case at bar, both sons were the only two eyewitnesses to the altercation between petitioner and his wife, and one son became part of the altercation. Therefore, since the state's case hinged primarily on the testimony of these two boys, it was error for the solicitor to vouch for the two boys' credibility at closing argument, and thus assert that the two boys were not lying, and in effect that she (solicitor) believed the two boys were not lying and they (the jury) should believe the same. This was error, particularly in that petitioner claimed self-defense.

As a result, trial counsel's error in failing to object to the solicitor's improper vouching as described above constituted ineffective legal assistance at petitioner's trial such that but for counsel's deficient representation in this regard, a reasonable probability exists that the outcome

of the trial (based on a ruling per an objection to the same had it been made) would have resulted in a different outcome in the case at trial. This error by counsel violated the Sixth Amendment guarantee that criminal attorneys perform competently at trial. See Strickland v. Washington, 466 U.S. 668 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant petitioner's petition and allow full briefing on the above raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 2019.

STATE OF SOUTH CAROLINA
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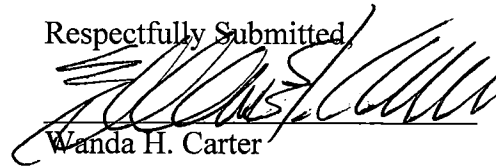
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edward W. Stackhouse 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 Michael G. Nettles, which was held on January 30, 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 Edward W. Stackhouse.

Respectfully Submitted,

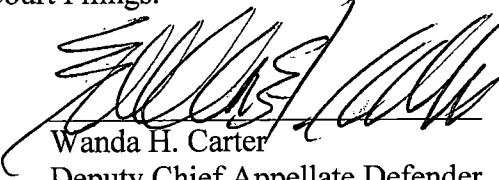


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of September, 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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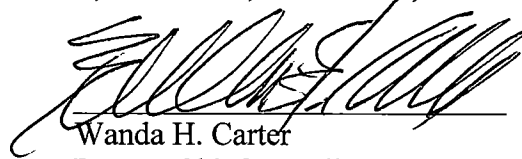
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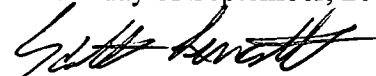
CERTIFICATE OF SERVICE

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 Lindsey McCallister, 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 Edward W. Stackhouse, #296243, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 17th day of September, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of September, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.

