

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

GOWNDELL CADES,

v.

STATE OF SOUTH CAROLINA,

RECEIVED
PETITIONER NOV 07 2019
S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2019-000108

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
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to object to the solicitor's inflammatory closing reference to petitioner as a "coward" because this violated his due process right to a fair trial.

STATEMENT OF CASE

Petitioner Gowndell Cades was convicted of third degree arson during the October 2013 term of the Florence County General Sessions Court before Judge D. Craig Brown and sentenced to imprisonment for a period of fifteen years. App. 1-215. Karen Parrott represented petitioner at trial, and Assistant Solicitor Todd Tucker appeared on behalf of the state. Petitioner appealed and was represented by Appellate Defender Katherine H. Hudgins on direct appeal. After briefing, the appeal was dismissed by the South Carolina Court of Appeals. App. 217-231. See State v. Gowndell Dean Cades, Unpublished Op. No. 2015-UP-185 (S.C. Ct. App. filed April 8, 2015). App. 230-231.

On May 4, 2015, petitioner filed a PCR application with the Florence County Office of the Clerk of Court, and an amended PCR application on January 25, 2018. App. 232-238. App. 244-245. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 239-242.

A PCR hearing was held on January 31, 2018, at the Florence County Courthouse before Judge Michael G. Nettles. App. 246-285. 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 January 10, 2019, Judge Nettles issued an Order of Dismissal in the case. App. 287-297. Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to the solicitor's inflammatory closing reference to petitioner as a "coward" because this violated his due process right to a fair trial.

Petitioner was charged with the offense of the third degree arson. At trial, Rachel Paul testified that petitioner lived with her in her trailer on and off along with her three children. Paul stated that after she and petitioner were engaged in a heated argument on November 19, 2012, she insisted that he leave her trailer. Then, she recalled that petitioner went into a back bedroom in the trailer before making his exit from the trailer. Immediately thereafter, she saw and smelled smoke. Apparently, a fire emanating from a closet had been set. Minutes later, the trailer burned to the ground. App. 34, 1.11-p. 44, 1.17.

Investigator Pat O'Hara detected "that the area of origin [of the fire] was in the master bedroom in that closet, and [that] this was set intentionally by possibly an open flame source, i.e., lighter, to set clothing and other debris on fire." App. 160, 1.11-16.

Petitioner was arrested shortly after the fire and a green lighter was found in his possession at that time. App. 86, 1.2-p. 90, 1.4.

During the PCR hearing held in the case, trial counsel stated that she had no reason to object to the solicitor's referencing petitioner as a coward at closing argument because it would have been a "disservice" to object and underestimate how the jury felt if they believed petitioner "selfishly may have run out of the house...[leaving] minor children." App. 267, 1.20-p.268, 1.25.

The solicitor's closing remarks in question follow:

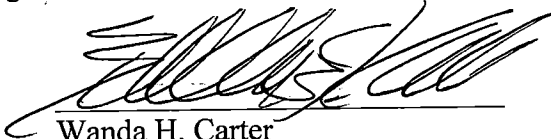
We hear things being smashed and then he comes out, slams the door and leaves without a hey, see ya later, you might want to go in there and check out that bedroom, you might...I've set a fire back there. Nothing. He unleashed a monster and he left, like a "coward," and left them to deal with it. App. 184, 1.21-p.185, 1.1.

A prosecutor's comments deprive the accused of due process of law where the comments so infect the trial with unfairness as to make the resulting conviction a denial of due process. Donnelly v. DeChristoforo, 416 U.S. 637 (1974). Compare, State v. Tubbs, 333 S.C. 316, 509 S.E.2d 815 (1999), where the solicitor referred to the defendant as "cobra." See State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10(1987), where the solicitor referred to the defendant as "mad dog." See also State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000), where the solicitor referred to the defendant as an "outlaw."

Here, the solicitor's reference to petitioner as a "coward" was a negative character description, which in turn deprived petitioner of his right to a fair trial, and trial counsel's failure to object to this denial of due process constituted deficient legal representation in violation of the Sixth Amendment. See Strickland v. Washington, 466 U.S. 668 (1984). But for this error, a reasonable probability exists that the outcome of the petitioner's trial would have been different.

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.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of November, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Honorable Michael G. Nettles, Circuit Court Judge

GOWNDELL CADES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

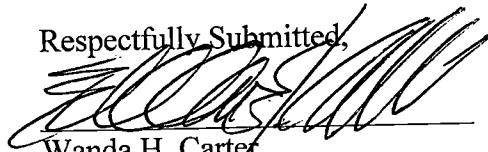
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gowndell D. Cades 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 31, 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 Gowndell D. Cades.

Respectfully Submitted,

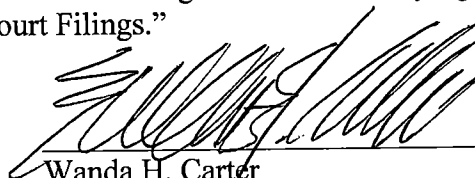


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of November, 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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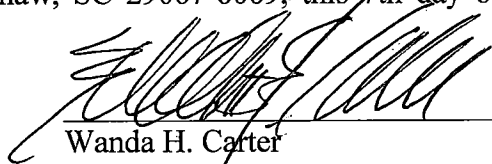
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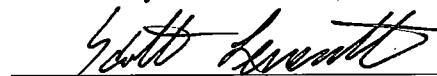
CERTIFICATE OF SERVICE

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 Gowndell D. Cades, #197569, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 7th day of November, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of November, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.

