

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Thomas A. Russo, Circuit Court Judge

HAROLD LEE JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001089

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in not allowing and/or encouraging petitioner to testify at trial.

STATEMENT

Petitioner Harold Lee Jackson was convicted of murder and two counts of assault and battery with intent to kill per jury trial held during the April 2009 term of the Beaufort County General Sessions Court before Judge Carmen T. Muller, and received an aggregate fifty-year prison sentence in the case. Petitioner was represented at trial by Donald Christopher Colongeli, and Assistant Solicitors Angela McCall Tanner and Meredith Anne Bannon appeared on behalf of the state. App. 1-586. Petitioner appealed, but after briefing his case was affirmed on January 25, 2012, by the South Carolina Court of Appeals. App. 588-606.

Petitioner's convictions and sentences were affirmed on appeal. See State v. Harold Lee Jackson, Unpublished Opinion No. 2012-UP-038 (S.C. Ct. App. filed January 25, 2012). Chief Attorney Robert M. Dudek, of the South Carolina Office of Appellate Defense, represented petitioner on direct appeal.

On December 2, 2012, petitioner filed a PCR application with the Beaufort County Office of the Clerk of Court. App. 607-613. The respondent filed a Return requesting that a hearing be held in the case. App. 614-619. A PCR hearing was convened on October 11, 2017, at the Beaufort County Courthouse before Judge Thomas A. Russo. App. 620-701. Petitioner was present at the hearing and represented by James K. Falk, Esquire, and Assistant Attorney General Ruston Neely appeared on behalf of the state.

On June 11, 2019, Judge Russo issued an Order of Dismissal in the case. App. 703-715. Petitioner appealed Judge Russo's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in not allowing and/or encouraging petitioner to testify at trial.

The events in this case took place at the home of Nazerene Rene Laurent on January 2-3, 2007. Stepdaughter (Shella Laurent) and her boyfriend (Josh Scheafer) were at Nazerene Laurent's home at that time. The state alleged that petitioner, who was Laurent's boyfriend at that time, assaulted Nazerene, Shella, and Josh at the home. Josh died from his injuries. Nazerene Laurent and Shella Laurent survived their injuries.

At trial, Nazerene testified that petitioner argued with her in the parking lot where she was employed at the end of her work day on the date in question; and that when they argued later on at her residence on the same day, the argument escalated to a physical level. As a result, Nazerene had to exit from her house because petitioner started hitting her with a bat. App. 113, l. 21 – p. 127, l. 2.

According to Shella's testimony, Josh was the one inside the house who accosted petitioner and grabbed the bat from petitioner. Then, after Nazerene ran from her house, petitioner picked up the bat and fled. However, Shella explained that minutes later, petitioner returned to the house, came up behind Josh, and hit Josh about his head with the baseball bat; and that when Josh ran towards him, petitioner continued to hit Josh with the bat. Shella added that shortly thereafter, petitioner ran her as she fled and beat her with the bat when he caught up with her. App. 216, l. 14 – p. 235; l. 25.

The facts of the case supported self-defense. Note that Josh, who was big, was the aggressor who confronted petitioner and grabbed the bat from petitioner. App. 223, l.7-18. Note further that Nazerene admitted that she had a stick in her hand during the incident, and that there was in effect mutual combat going on during the fighting, and that the stick was bloody. App.

166, l. 12 - p. 178, l. 24. Also, when Josh took the bat, he asked petitioner if he were crazy and what he was doing. App.224, l. 7 – p. 18. Petitioner stated “they are trying to kill me” App. 259, line 1-4; App. 286, l. 24 – p. 287, l.4. Also, before Josh accosted petitioner, he stated that “that’s the way I was brought up,” (i.e. macho defender) when he attempted to assist Nazerene during the melee. App. 222, l. 17 – p. 223, l. 13.

Petitioner did not testify in his defense at trial.

During the PCR hearing, petitioner testified and explained that he had no prior criminal record, and that trial counsel advised him not to testify in that it would not have been in his best interest to testify. App. 644, l.8-p. 645, l.7.

Trial counsel testified during the PCR hearing and explained that he raised a claim for self-defense in the case, but that even though petitioner had no criminal record, he (counsel) advised petitioner not to testify because of his (petitioner’s) “non-emotional” personality. Counsel explained that petitioner “exuded a personality that [was] not...inviting to the general population, specifically a jury of his peers.” App. 613, l.16-p. 617, l.18.

The following issue was raised on direct appeal:

The court erred by refusing to instruct the jury on self-defense where there was evidence that appellant, in describing the incident, said “they tried to kill me” or those “people were trying to kill him” when appellant described the fatal incident since this evidence, as well as evidence appellant’s girlfriend had handled the bloody stick, the fact the decedent was big man acting in a macho fashion, and other evidence regarding the conflict, mandated a self-defense instruction.

The Court of Appeals affirmed the trial judge’s ruling and upheld the refusal to issue a self-defense charge per State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994), on the ground that a self-defense charge was not required as it was not supported by the evidence.

The PCR judge ruled that trial counsel advised petitioner that he had a right to testify, but that “it was ultimately [petitioner’s] decision” not to testify, and thus trial counsel was not ineffective with respect to this matter; and further that petitioner failed to prove that trial counsel erred in advising him not to testify; and finally, that there was no prejudice connected to the issue of whether to testify at trial. App. 694-695.

An accused has the right to put the state to its burden of proof. State v. Johnson, 293 S.C. 321, 360 S.E.2d (1987). In addition, a defendant has a right to present his defense at trial. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (2001). Furthermore, a defendant in a criminal case has the right to take the witness stand and testify in his or her behalf under the due process clause of the Fourteenth Amendment, which guarantees that no one shall be deprived of liberty without due process of law, and under the compulsory process clause of the Sixth Amendment that grants the defendant the right to call witnesses, and under the Fifth Amendment’s privilege against self-incrimination. State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013), citing to Rock v. Arkansas, 483 U.S. 44 (1987), and Faretta v. California, 422 U.S. 806 (1975). In Rivera, the Court reversed because the defendant’s was denied his right to testify in his defense at trial (despite the position that “**preventing [the defendant] from testifying may have been an advantageous strategic decision ... [because this position]..had no basis in the law**”) and that the denial of the right to testify at trial could not have been harmless as it was considered structural error.

During the PCR hearing, petitioner’s testimony as follows gave rise to facts that supported a self-defense claim:

Q So, in your mind, what was the basis for your self-defense claim?

A The stick. She had—she had me against the door. She had the stick to my throat. And, you know, that is what caused the injury to the right side of the neck, when I tried to push the stick

off that is what caused, you know, the stick to brace against my neck. That is what caused the injury. When Josh came down stairs he attacked me with the baseball bat. It is in her testimony, one of the victim's testimony, I think it was Shella, Joshua is her boyfriend, that when she came from downstairs and came into the room, he had the baseball bat. But he came down the steps with the baseball bat in his hand and he attacked me. App. 645, 1.8 – 21.

Q. If you testified what would you—and Ms. Tanner came on in cross-examination, what would you have testified to when she was asking you why you didn't retreat?

A I left the house. Once me and Rene got into it and Josh came down and, you know, he attacked me and I got up and I went outside behind Rene. I went outside behind Rene. And when I came back, when I finally came back to the house, I saw Josh on the floor and I just, you know, went back in the room and tried to find my keys and, you know, turned up the mattress or whatever, went up under the bed and there was my keys right there. So I, you know, jumped in my vehicle and I left and I went to Ridgeland and I got my cousin and I told her I needed to turn myself in. And, you know, I told him – he asked me, Why you want to turn yourself in. I said, They was trying to kill me. He said, Where at? I never said anything else. I just kept saying that they were trying to kill me. And then my cousin told me that they were looking for me in Beaufort County. 647, 1.2-20.

Q Okay. So, your testimony is that she said she had you against the wall with the stick?

A Yes, Sir.

Q And then you used your hands?

A No, she had me like this up against the wall and we was struggling over the stick and she was pushing one way and I was trying to, you know, pull it down. The stick went across my neck and where it was broke at it sort of like dug into my skin. We were still wrestling over the stick. We went to the floor with the stick. Both of us still had the stick. I reached up on the TV stand and grabbed a bottle and smacked her because she was biting my leg by that time. That is it. App. 664, 1.16-p. 6 65, 1.3.


The above testimony given at PCR hearing should have been submitted to the jury at trial in connection with the self-defense matter. Josh and Nazerne were the aggressors who

fought petitioner on the day in question. Self-defense was apparent in this case and should have been charged. 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 reasonable person would have believed, and he had no other means of avoiding the difficulty. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Although the state is required to disprove the elements of self-defense beyond a reasonable doubt in self-defense cases, (per State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012)); nonetheless, a self-defense charge should have been given in the case.

Petitioner's right to testify at trial should not have been stifled by counsel. Counsel erred in advising petitioner not to testify at trial and petitioner was prejudiced as a result in that his self-defense claim was not fully aired before the jury at trial and not fully presented on appeal. Hence, counsel's misadvice regarding petitioner's right to testify at trial constituted ineffective assistance of counsel, which violated the Sixth Amendment guarantee of effective legal assistance by criminal attorneys in criminal cases. Additionally, but for this error, 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 briefing on the above raised issue.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of December, 2019

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Harold Lee Jackson 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 Thomas A. Russo, which was held on October 12, 2017, 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 Harold Lee Jackson.

Respectfully Submitted



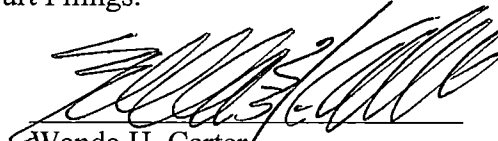
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of December, 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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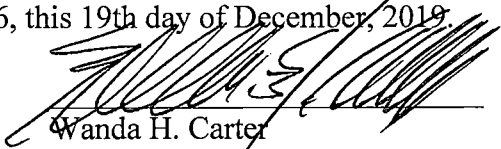
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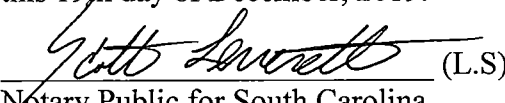
RESPONDENT

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 Harold Lee Jackson, #334411, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 19th day of December, 2019.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of December, 2019.



Notary Public for South Carolina
My Commission Expires: September 27, 2028.