

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Jun 22 2020**

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Certiorari to Sumter County

S.C. SUPREME COURT

Honorable Brooks P. Goldsmith, Circuit Court Judge

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HENRY ONEAL DINGLE, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001558

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to develop a stand your ground defense on petitioner's behalf in response to the attempted murder charges filed against him.

## STATEMENT

Petitioner Henry O'Neal Dingle, Jr. pled guilty to criminal conspiracy, unlawful carrying of a pistol, and four counts of attempted murder during the April 2016 term of the Sumter County General Sessions Court before Judge George C. James, Junior, and was sentenced to imprisonment for an aggregate period of eighteen and one-half years. App. 1-31. Steven S. McKenzie represented petitioner at the plea proceeding and Assistant Solicitor Bronwyn M. McElveen appeared on behalf of the state. Petitioner did not appeal his convictions or sentences.

On April 10, 2017, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 39-44. The respondent filed a Return dated February 13, 2018, requesting that a PCR hearing be held in the case. App. 39-44.

A PCR hearing was convened on July 31, 2019, at the Sumter County Courthouse before Judge Brooks P. Goldsmith. App. 46-135. Petitioner was present at the hearing and represented by James H. Falk, and Assistant Attorney General Janell H. Gregory appeared on behalf of the state.

On August 28, 2019, Judge Goldsmith issued an Order of Dismissal denying petitioner's PCR allegations from the case. App. 138-153. Petitioner appealed. This petition follows.

## ARGUMENT

Trial counsel erred in failing to develop a stand your ground defense on petitioner's behalf in response to the attempted murder charges filed against him.

This case involved multiple shootings between people in two cars at multiple times. Apparently, shots were fired from a vehicle that contained four individuals,<sup>1</sup> and shots were fired from two individuals (petitioner and William J. Spann) who were inside a separate vehicle. This happened in Sumter County on December 29, 2015, at 9:40 am, 11:34 am, 2:30 pm, and 3:30 pm. Petitioner was charged with four counts of attempted murder. During the plea proceeding, petitioner explained the incidents as follows:

The Court: And why were you doing that, (shooting)?

Petitioner: I didn't mean to intentionally. They came—they just came and started shooting at me. So---

The Court: Well do you want to stop now and you all assert self-defense?

Petitioner: I'm not sure who was in the car. App. 23, 1.19-p.24, 1.1

The Court: What was it about?

Petitioner: It was about something that somebody else stole something from them. It wasn't even involving me...they came to their house looking and I just happened to be around the area...they end up shooting at me. App. 24, 1.23-p. 25, 1.9.

During the PCR hearing, petitioner testified that he was only present during the first and last shootings. Petitioner explained that he was unarmed during the morning shooting, and that the men shot at him at that time. Petitioner added later on he was backing out of his driveway when the afternoon shooting occurred, and that when the perpetrators shot at him, then he shot

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<sup>1</sup> Eriz Phillips, Rodriguez Lewis, Jacquan Wells, and Rominique Lewis-Brand.

back to protect and defend himself. Petitioner added that his lawyer did not talk to him about a stand your ground defense. App. 58, 1.5-p. 69, 1.1; App. 71, 1.6-22; App. 91, 1.7-17.

Trial counsel testified during the PCR hearing and stated that the stand your ground defense did not apply in the case because petitioner was going to buy marijuana, and that this was a drug deal gone bad, and that since such an act was a crime, then self-defense was unavailable. App. 93, 1.20-p.99, 1.16.

The PCR judge ruled that counsel “assessed a stand your ground defense would not be applicable to petitioner’s [case],” and therefore, there was no establishment of any legal representation deficiency on counsel’s behalf in the case. App. 148-149.

Immunity under the Act is applicable if the one who used force was attacked in a place where he had a right to be. Specifically, under 16-11-440 (C) the Act provides that one is justified in using deadly force if:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person...

Also, the Immunity Act requires “a valid case of self-defense must exist” in order to successfully claim the immunity. In Jones, the Court held that one who uses deadly force in response to an attack in his or her own home by a cohabitant can seek immunity from prosecution under that provision under 16-11-440(C) as long as the person can establish his reasonable fear of the attacker and there is evidence supporting a self-defense claim. In State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016), the Court held as follows:

“Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a

defendant's entitlement to the Act's immunity." State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). Therefore, the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence. *Id.* However, if section 16-11-440 (A) applies, there is not requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A).

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 he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Also, depending on the circumstances, words accompanied by hostile acts may establish self-defense and one has a right to act on appearances. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Moreover, when a one claims self-defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 4 89 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

A defendant claiming immunity under the Immunity Act must show by a preponderance of the evidence that he was not engaged in an unlawful activity, and was in a place where he had a right to be, and was attacked there, and used deadly force via self-defense to protect himself, and had no duty to retreat. Petitioner established this by a preponderance of the evidence. In the case at bar, petitioner was not involved in a drug deal which would have exempted him from a stand your ground defense. To the contrary, petitioner was acting lawfully by simply exiting by driving his vehicle out of his driveway, and therefore had a right to defend himself when accosted by bullets from the guns of the occupants of another vehicle that approached his (petitioner's) vehicle. Thus, counsel's failure to develop a stand your ground defense for

petitioner constituted deficient representation in violation of the Sixth Amendment. See Hill v. Lockhart, 474 U.S. 688 (1985). Also, but for the omission, a reasonable probability exists that petitioner would have pled not guilty on the attempted murder indictments and opted for a trial by jury on those charges.

### **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.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22st day of June, 2020.

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PETITION TO BE RELIEVED AS COUNSEL  
—————

Counsel for Henry Oneal Dingle 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 Brooks P. Goldsmith, which was held on July 31, 2019, 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 Henry Oneal Dingle.

Respectfully Submitted,

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 22nd day of June, 2020.

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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.”

s/Wanda H. Carter

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This 22nd day of June, 2020.