

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jun 26 2020**

S.C. SUPREME COURT

—————  
Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge  
—————

TYREL RASHONE COLLINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001754  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

David Alexander  
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

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

STANDARD OF REVIEW ..... 3

ARGUMENT

Trial counsel’s failure to object to irrelevant comments about race  
and petitioner’s neighborhood made by the solicitor during his  
opening statement deprived petitioner of his Sixth Amendment  
right to the effective assistance of counsel. .... 4

CONCLUSION ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

**QUESTION PRESENTED**

Whether trial counsel's failure to object to irrelevant comments about race and petitioner's neighborhood made by the solicitor during his opening statement deprived petitioner of his Sixth Amendment right to the effective assistance of counsel?

## STATEMENT

On September 10, 2012, a Charleston County grand jury indicted petitioner Tyrel Rashone Collins for murder and a weapons charge. App. 790-92. The case was first tried in September 2013, but the Honorable J.C. Nicholson, Jr. declared a mistrial because defense counsel said in opening the decedent “was legendary in this area as a killer.” App. 611, l. 19 – 22. App. 624, l. 3 – 12.

On January 6, 2014, the case was called again before the Honorable Roger M. Young, Sr. App. 1. Stephanie B. Linder and Gregory Voigt represented the State. App. 1. Jason T. King and Luke J. Malloy, III, represented petitioner. App. 1. The jury convicted petitioner. App. 469, l. 3 – 16. Judge Young sentenced petitioner to life imprisonment. App. 476, l. 3 – 23. Petitioner’s conviction was affirmed by the Court of Appeals and certiorari was dismissed as improvidently granted by the Supreme Court. App. 763-64.

On February 7, 2018, petitioner filed a PCR application. App. 626. On July 23, 2019, a hearing was held before the Honorable Michael G. Nettles. App. 656. James Falk represented petitioner. App. 656. Jacob Isenberg and Benjamin Limbaugh represented petitioner. App. 656. On October 1, 2019, Judge Nettles denied petitioner’s PCR application. App. 762. This petition follows.

### **STANDARD OF REVIEW**

“This Court gives great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. Questions of law are reviewed de novo, and we will reverse the PCR court's decision when it is controlled by an error of law.” Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (internal citations omitted).

## ARGUMENT

Trial counsel's failure to object to irrelevant comments about race and petitioner's neighborhood made by the solicitor during his opening statement deprived petitioner of his Sixth Amendment right to the effective assistance of counsel.

The State's primary witness in prosecuting petitioner for the shooting of Solomon Chisolm was a career police informant and half-brother of Chisolm named Ronald Clement. App. 200, l. 1 – 201, l. 12. Clement received money from the federal government for his help on their cases. App. 200, l. 1 – 201, l. 12. In petitioner's case, Clement did not initially tell the police about petitioner's alleged involvement in the shooting, only that he saw a man who was brown-skinned, tall, slim, and wearing a black T-shirt, blue jeans, and a shirt over his head. App. 182, l. 14 – 19. Chisolm was shot in a public park on the east side of Charleston, but Clement did not speak to the police about his brother's shooting, despite a heavy police presence. App. 184, l. 1 – 15.

Clement later claimed petitioner was the shooter and testified to this at trial, but he also gave a written statement recanting his identification of petitioner. App. 201, l. 20 – 25. App. 193, l. 1 – Tr. 194, l. 14. Clement explained his vacillations: "the East Side is known, you know, like you tell on somebody, you cooperate with the police, there's going to be harm for you and your family or whatever." App. 187, l. 12 – 19.

The solicitor made the East Side the theme of this trial from the beginning and improperly injected race into the case. App. 105, l. 18 – 107, l. 24. The solicitor told the jury that even though the shooting took place in a public park, at the end of the case they would be asking "where were all those people?" App. 105, l. 18 – 22. He then told the jury "it was the

East Side of Charleston” and began an irrelevant digression into the history of the park and the East Side App. 105, l. 23 – 108, l. 19.

The Solicitor said the park was originally part of a “mall” in the 1860s “where all the rich rice planters from Georgetown would come and build their vacation homes.” App. 105, l. 23 – 108, l. 19. “And the idea was that all the gentlemen and their ladies would promenade down the mall. And that never really worked out, that part of town.” App. 105, l. 23 – 108, l. 19. He said in Charleston, people talk about “before the war” and “after the war” and that the East Side “was already mixed before the war.” App. 105, l. 23 – 108, l. 19.

The solicitor said “tradesmen” moved into the area and there were modest homes, “group homes and tenant homes.” App. 105, l. 23 – 108, l. 19. The park was built in 1915, but “most of the people who lived in that neighborhood park, they weren’t allowed to even use the park.” App. 105, l. 23 – 108, l. 19. He said that not until the 1950s did the city “let African-Americans use the park in the neighborhood that had been by that point for 100 years primarily African-American.” App. 105, l. 23 – 108, l. 19.

The solicitor continued: “The East Side, in every sense in the 20<sup>th</sup> Century, lost population.” App. 105, l. 23 – 108, l. 19. He referenced Hurricane Hugo, and “broken windows.” App. 105, l. 23 – 108, l. 19. He said the East Side had the lowest literacy in the city, the highest unemployment, and was “one of the least-blessed neighborhoods in our city.” App. 105, l. 23 – 108, l. 19. The solicitor then tied the neighborhood into something called the “Genovese effect” about bystanders not reporting crime and used the neighborhood as an excuse for his weak case. App. 105, l. 23 – 108, l. 19. Trial counsel never objected during this improper soliloquy.

The PCR Court found neither deficient performance nor prejudice in trial counsel's failure to object. App. 772-73. See Strickland v. Washington, 466 U.S. 668 (1984). The court credited trial counsel with a strategic reason for not objecting, noting the opening line of his opening statement, "That was a nice history lesson and all....." App. 772-73. The PCR judge also ruled that any mention of "state-sponsored segregation" would not prejudice petitioner, but the State who was the perpetrator of segregation. App. 772-73.

The PCR court erred in not granting post-conviction relief because the solicitor's remarks were improper, inflammatory, and injected the arbitrary factor of race into petitioner's case. In a Fourth Circuit case from South Carolina, the court affirmed the grant of habeas relief when the solicitor's comments "plugged into potent symbols of racial prejudice." Bennett v. Stirling, 842 F.3d 319, 325 (4th Cir. 2016). While the comments by the solicitor in Bennett were more egregious and blatant than in this case and directed specifically at the defendant, here the solicitor's comments were intended to put an entire community on trial.

Defense counsel agreed with this assessment at the PCR hearing. App. 673, l. 21 – 24. When asked, "And again he's really putting the east side on trial here, is he not," defense counsel responded, "Right; that he was making that an issue with the case." App. 673, l. 21 – 24. Despite this, however, defense counsel maintained that the comments were not so inflammatory as to draw an objection. App. 671, l. 19 – 24.

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. Here, the solicitor's strategy was to appeal to the jurors' personal biases against

the East Side community, of which petitioner was a part. The solicitor tied this bias to the lack of witnesses from the community, creating an excuse for the lack of evidence against petitioner. Trial counsel's deficient performance in failing to object to the injection of the arbitrary and inflammatory issue of race into the case prejudiced petitioner. This Court should grant certiorari and ultimately reverse his conviction.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

This 26<sup>th</sup> day of June, 2020.

s/David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

Jun 26 2020

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

TYREL RASHONE COLLINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrel Rashone Collins states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Michael G. Nettles, which was held on July 23, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Tyrel Rashone Collins.

Respectfully Submitted,

This 26th day of June, 2020.

s/David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

RECEIVED

Jun 26 2020

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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."

This 26th day of June, 2020.

s/David Alexander  
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