

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 18 2020

SC Court of Appeals

APPEAL FROM Charleston COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-10-03018

Joseph Richard Graddick, Petitioner,

v.

State of South Carolina, Respondent.

Petition for Rehearing

By written order dated November 3, 2020, this Court denied Joseph Graddick’s petition for a writ of *certiorari* (“petition”). Pursuant to Rule 221, SCACR, Mr. Graddick petitions this Court for rehearing because this Court overlooked or misapprehended the following points:

1) The petition raised two issues involving *State v. Rayfield*, 369 S.C. 106, 631 S.E.2d 244 (2006). Question I, at pp. 12-15, alleges ineffective assistance of appellate counsel for failing to appeal the trial judge instructing S.C. Code § 16-3-657 when that instruction did not comply with *Rayfield*. Question II, at pp. 15-16, alleges ineffectiveness of trial counsel for failing to renew the objection to the trial judge instructing section 16-3-657 when that instruction did not comply with *Rayfield*. Although *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016) prohibits instructing section 16-3-657 under any circumstances, *Rayfield* already recognized instructing S.C. Code § 16-3-657 is improper when the charge

is repeated or unduly emphasized. *State v. Orozco*, 392 S.C. 212, 224, 708 S.E.2d 227, 233 (Ct. App. 2011) (noting reversal not required because “this single instruction was not unduly emphasized”); *State v. Hill*, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011). This Court, accordingly, should rehear this matter and address these issues on the merits. If this Court feels constrained by *Stukes*, then this Court can certify the case to the Supreme Court pursuant to Rule 204(b), SCACR.

2) Question III, at pp. 16-20 of the petition, alleges ineffective assistance of trial counsel for failing to object to the trial judge instructing the jurors “to seek the truth regardless of its source” and “to determine what the true facts are, and to apply the law to those facts, and the render a true and just verdict in this case” when these instructions violated *Cage v. Louisiana*, 498 U.S. 39 (1990). Perhaps this Court relied on *Teamer v. State*, 416 S.C. 171, 786 S.E.2d 109 (2016), which declined to appeal *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012) retroactively. This instruction was improper under *Cage*. Our Supreme Court has not addressed this instruction under *Cage*. This Court should rehear this case and address this issue under *Cage*. If this Court feels constrained by *Teamer*, then this Court should certify this case to the Supreme Court pursuant to Rule 204(b), SCACR to allow it to consider this issue under *Cage*.

3) Question IV, at pp. 20-21 of the petition, alleges ineffective assistance of trial counsel by failing to object to testimony about Mr. Graddick’s pre-trial incarceration which implied incarceration on other charges. This Court failure to grant the petition and consider this issue is contrary to *State v. Lawson*, 424 S.C. 51, 817 S.E.2d 509 (Ct. App. 2018), *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 345 (1991) (citing *State v. Tate*, 288 S.C. 104, 341 S.E.2d 380 (1986)). *See also Deck v. Missouri*, 544 U.S. 622 (2005);

Estelle v. Williams, 425 U.S. 501 (1976). This Court should rehear this case and address this issue.

4) Question V, at pp. 22-23 of the petition, alleges ineffective assistance of appellate counsel for failing to brief on appeal testimony by Officer George Van Tine about statements made by Ms. Dunham that were impermissible hearsay and violated the Confrontation Clause. *See Crawford v. Washington*, 541 U.S. 36 (2004). This Court failure to grant the petition and consider this issue is contrary to *State v. King*, 422 S.C. 47, 67, 810 S.E.2d 18, 29 (2017), *State v. Brown*, 317 S.C. 55, 451 S.E.2d 888 (1994), and *German v. State*, 325 S.C. 25, 478 S.E.2d 687 (1996). This Court should rehear this case and address this issue.

5) Question VI, at pp. 23-24 of the petition, alleges ineffective assistance of trial counsel for failing to call Leroy Graddick to corroborate Joseph Graddick's testimony that he knew the complaining witness prior to the incident giving rise to the underlying charges. This Court failure to grant the petition and consider this issue is contrary to *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (trial counsel was ineffective for failing to call as defense witness triage nurse whose notes indicated that victim stated that her vagina was not penetrated); *see also Washington v. Texas*, 388 U.S. 14, 22 (1967) ("Sixth Amendment was designed in part to make the testimony of a defendant's witnesses admissible on his behalf in court."). This Court should rehear this case and address this issue.

6) Question VII, at pp. 24-25 of the petition, alleges ineffective assistance of appellate counsel for failing to brief on the merits the trial judge limiting trial counsel's closing argument. This Court should rehear this case and address this issue.

7) Finally, the multiple errors in this case militates in favor of granting the petition and considering the issues under the cumulative error doctrine. *Kyles v. Whitley*, 514 U.S. 419, 436 (1995) (the prejudice must be “considered collectively, not item-by-item”).

CONCLUSION

For the reasons set forth in the petition for writ of certiorari, the reply, and this petition, this Court should grant this petition, rehear this matter, grant the petition for a writ of certiorari, and consider the issues. Alternatively, this Court should certify this case to the Supreme Court pursuant to Rule 204(b), SCACR.

IT IS SO MOVED.

Respectfully submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Petitioner

November 18, 2020
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 18 2020

APPEAL FROM Charleston COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2014-CP-10-03018

Joseph Richard Graddick, Petitioner,

v.

State of South Carolina, Respondent.

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina by emailing a copy, on the date reflected below, addressed to

Megan Harrigan Jameson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
mjameson@scag.gov

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.
The Grose Law Firm, LLC.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

November 18, 2020
Greenwood, South Carolina

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: chasgrose@gmail.com
Web: GroseLawFirm.com

November 18, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Nov 18 2020

SC Court of Appeals

Re: *Joseph Richard Graddick v. State of South Carolina*
Appellate Case No. 2018-000193

Dear Ms. Kitchings:

Enclosed please find Mr. Graddick's petition for rehearing, along with a certificate of service.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: Megan Harrigan Jameson, Esquire