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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Brooks P. Goldsmith, Circuit Court Judge

TRAVIS ABE POLITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000241

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did trial counsel provide ineffective assistance in derogation of Petitioner's rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution by failing to move for a mistrial contemporaneously with the state's introduction of improper testimony by the lead investigator who claimed he was "familiar" with Petitioner's "street name or nickname" of "Travi"?

STATEMENT

Quantize Greer and Jessica Power went to Taylor's Mobile Home Park on September 6, 2012, so that Greer could purchase a large quantity of marijuana from Brandon Singleton and Walter "Oowee" Tucker. App. 124, l. 5 – App. 126, l. 14. Antonio Brewer owned the mobile home at which the drug deal was to take place. App. 194, ll. 2-4. According to Brewer, Tucker, Singleton, and two other unknown males used his home to do "a lick." App. 194, ll. 2-4. Brewer claimed he was fearful because Tucker had a gun, and as a result, he was in the back room during the drug deal. App. 195, ll. 10-17. Brewer testified that he stayed in the backroom – checking his lottery numbers from his mobile phone – until he heard gunshots and ran out of the backdoor of the mobile home. App. 195, ll. 16-17; App. 199, l. 19 – App. 200, l. 17; App. 200, l. 23 – App. 201, ll. 7; App. 221, l. 6 – App. 222, l. 3; App. 224, l. 6 – App. 226, l. 20. Greer suffered a gunshot wound to the chest and died. App. 339, l. 19 – App. 341, l. 15.

Shortly after the shooting, Brewer told police that Singleton and Tucker were at his house on September 6, 2012, but he could not identify anyone else who was present. App. 227, l. 23 – App. 228, l. 7; App. 230, l. 13 – App. 236, l. 19; App. 246, ll. 5-25; App. 312, l. 12 – 313, l. 22; App. 315, l. 24 – 316, l. 16. Over a month later, on October 10, 2012, after detectives had met with him multiple times threatened that he could "catch a murder charge," Brewer claimed he saw Petitioner shoot Greer. App. 207, l. 14 – App. 213, l. 14; App. 304, l. 5 – App. 312, l. 9; App. 334, l. 13 – App. 335, l. 21.

According to Power, when she and Greer pulled up to the mobile home Tucker was outside waiting for them. App. 125, ll. 14-23. Greer tried to negotiate a better price for the marijuana but was unsuccessful. App. 126, ll. 1-4. Greer counted out the amount requested and gave it to Power to put into her purse because it was too much money to put into his pockets.

App. 126, ll. 4-12. Power and Greer then approached the home to enter for the drug deal. App. 126, ll. 13-19. Power claimed after she entered, Tucker slammed the door behind her, leaving Greer outside. App. 126, ll. 20-22. Tucker forced her to the floor and demanded the $2,500 that was supposed to be used to buy marijuana. App. 127, ll. 14-25.

Power claimed that at this point, a man sitting on the couch inside the mobile home asked Tucker for a gun and went outside the trailer. App. 127, ll. 1-3; App. 128, ll. 10-15. Power then heard a gunshot. App. 128, l. 15. After, Tucker went outside, Power ran to the back of the mobile home to hide. App. 129, ll. 7-10. She claimed she heard several more gunshots during this time. App. 129, ll. 5-6. In the backroom, Power saw Brewer. App. 129, ll. 11-22. Both ran out of the back of the mobile home. App. 130, ll. 4-11. Power could *not* identify Petitioner as the man who was sitting in the chair during the incident. App. 127, ll. 4-6; App. 160, l. 22 – App. 161, l. 1.

Based on the information provided by Brewer, the police arrested Petitioner. During the first custodial interrogation, Petitioner denied any knowledge of or involvement in the incident. App. 320, l. 21 – App. 321, l. 21. During the second interrogation, Petitioner admitted he was present at the time of the shooting, but he denied being involved. App. 369, ll. 22-23.

On December 13, 2012, the Beaufort County grand jury indicted Petitioner Travis Abe Polite for murder, armed robbery, and kidnapping. App. 30, ll. 17-22; App. 588-589; App. 591-592. On January 20-22, 2015, the state, represented by Sean Thornton and Hunter Swanson, called the case to trial before the Honorable Brooks P. Goldsmith and jury for a trial. App. 1. Gene G. Hood and Lauren Carroway represented Petitioner. App. 1. The jury found Petitioner guilty of the murder and armed robbery, and determined he was not guilty of kidnapping. Tr. 449, ll. 3-9. Judge

Goldsmith sentenced Petitioner to imprisonment for thirty-nine years for murder and twenty years for armed robbery. App. 461, ll. 18-23; App. 590; App. 593.

Petitioner timely served a notice of appeal, which was perfected by Laura R. Baer. App. 464-479. On appeal, Petitioner challenged the trial judge's failure to grant a mistrial when the lead investigator testified that he was familiar with Petitioner and his "street name or nickname." App. 464-479. The state argued the issue was not preserved for appellate review. App. 480-500. The Court of Appeals affirmed in an unpublished opinion. State v. Polite, 2016-UP-480 (S.C. Ct. App. filed Nov. 16, 2016); App. 515-516. The Court's opinion included that the trial judge's decision was affirmed pursuant to State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996) because "[n]o issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial." State v. Polite, 2016-UP-480 (S.C. Ct. App. filed Nov. 16, 2016); App. 515-516. Remittitur issued on December 2, 2016. App. 517-518.

Petitioner filed a pro se application for post-conviction relief (PCR) on May 15, 2017. App. 519-535. Through counsel, Petitioner amended his application to include a claim that trial counsel was ineffective for failing to preserve for appeal the improper testimony by the lead investigator regarding his knowledge of Petitioner by a street name or nickname. App. 543-544. The Honorable Brooks P. Goldsmith[1] convened a hearing on the application on November 4, 2019. App. 545. James K. Falk represented Petitioner, and Benjamin Limbaugh represented the state. App. 545. At the conclusion of the hearing, Judge Goldsmith orally denied Petitioner relief. App. 573, ll. 2-13.

[1] During the post-conviction relief hearing, Petitioner waived his right to have his application heard by a judge other than his trial judge. App. 563, l. 9 – App. 565, l. 11; see Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991) (providing that a judge shall recuse himself if he was the judge presided over a criminal trial for which relief is being sought).

By an order filed on February 24, 2021, Judge Goldsmith formally denied Petitioner relief from his convictions and sentences. App. 575-587.

Petitioner received notice of the order on February 26, 2021, and served his notice of appeal on March 1, 2021. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel provided ineffective assistance in derogation of Petitioner's rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution by failing to move for a mistrial contemporaneously with the state's introduction of improper testimony by the lead investigator who claimed he was "familiar" with Petitioner's "street name or nickname" of "Travi."

Relevant facts

The sole issue before the jury was *who* shoot Greer. There were multiple suspects – Tucker, Singleton, Brewer, Power, and Petitioner. No physical evidence implicated any suspect. The sole evidence against Petitioner was Brewer's eyewitness identification of him as the shooter. Thus, in order for the state to carry its burden, it was necessary for the jury to believe Brewer when he claimed he saw Petitioner shoot Greer and that Petitioner was the type of person who would shoot someone. The lead investigator, John Gobel, provided the state with this crucial evidence.

First, Gobel identified the photographic lineup documentation that he used with Brewer in order for Brewer to identify Petitioner prior to the arrest. App. 292, ll. 27-33. He explained that the lineup showed six different photographs. "Five of the photographs are just random people who have the same type of hair, the same facial build, similarities to [Petitioner], but are not [Petitioner]. And then one photograph is that of [Petitioner]." App. 292, l. 25 – App. 293, l. 4. Next, the solicitor asked, "And when you were doing this, and let's not talk in generalities, when you did this lineup, did you in infer [*sic*] to Mr. Brewer that he should pick out a particular person or not?" App. 293, ll. 5-8. Gobel responded:

> No, sir. When -- during this interview, Mr. Brewer identified the defendant that he saw as the shooter in this case and he called him by the name, Travi. He didn't use the name Travis Polite; he used Travi. *We are familiar with that street name or nickname, as -- and we commonly know folks by their street names.*

App. 293, ll. 914 (emphasis added). Trial counsel immediately objected, and an off-the-record bench conference took place. The trial judge then sustained the objection and ordered the last statement of the witness to be stricken from the record. He ordered the jurors to disregard the last statement of the witness. App. 293, ll. 15-24.

Only after the state rested its case did trial counsel alert the trial judge to the matter again. App. 342, l. 1; App. 343, l. 21 – App. 345, l. 19. At the time, trial counsel reminded the judge of the exchange, the objection, the sustaining of the objection, and curative instruction. He then remarked, "I sort of still object to that, because I think that there is no curative instruction that can be given to a jury when the item is already before them. The cat is out of the bag and there's no way to successfully put it back in the bag to keep the jury from using that in their own minds as some type of evidence." App. 344, ll. 6-11. The judge specifically noted that he sustained trial counsel's objection and asked if trial counsel had any other motions of any kind. App. 345, ll. 11-19. Trial counsel indicated he did *not*. App. 345, l. 19. However, following the jury's verdict, trial counsel stated he was "renewing his motion for a mistrial." App. 454, ll. 11-12. The trial judge denied the motion. App. 454, ll. 20-22.

When appellate counsel raised on appeal that the trial judge erred in failing to grant a mistrial, the state argued the issue was not preserved for appellate review. App. 492-493. According to the state, trial counsel's failure to "make an additional objection to the sufficiency of the curative charge" and failure to move for a mistrial rendered the issue not preserved for review. App. 493. The Court of Appeals agreed with the state as shown by the Court's opinion affirming the trial judge pursuant to State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996) because "[n]o issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move

for a mistrial." State v. Polite, 2016-UP-480 (S.C. Ct. App. filed Nov. 16, 2016); App. 515-516. Remittitur issued on December 2, 2016. App. 517-518.

In his amended PCR application, Petitioner argued trial counsel provided prejudicial deficient performance by failing to object to the curative instruction and make a contemporaneous motion for a mistrial. App. 543-544. During the PCR hearing, Petitioner testified that he and trial counsel never discussed the lead detective's reference to him by the name of "Travi." App. 558, ll. 11-17. Trial counsel's co-counsel, Lauren Carroway, testified at the PCR hearing because trial counsel had died prior to the hearing. App. 562, ll. 14-17. Carroway explained that during Petitioner's trial, she realized trial counsel "was having a problem with his hearing," and implied this may have been why trial counsel failed to move for a mistrial. App. 565, ll. 23-25. Carroway further explained that trial counsel was her mentor and taught her how to try cases. App. 566, ll. 4-5. During those lessons, she learned from trial counsel that "inadmissible character evidence equals mistrial." App. 566, ll. 6-8. Therefore, she could offer no explanation for trial counsel's failure to move for a mistrial when the lead investigator provided inadmissible character evidence. App. 566, ll. 8-9.

At the conclusion of the hearing, PCR counsel noted that Gobel's reference to Petitioner as "Travi" should not have surprised trial counsel because Gobel referred to him that way in a pre-trial hearing. App. 569, l. 21 – App. 570, l. 8; App. 88, ll. 16-17. PCR counsel explained that the testimony was not harmful because the nickname was prejudicial in and of itself; rather, the testimony was harmful because it showed the lead investigator was "so familiar with [Petitioner} that he's calling him by his street name." App. 572, ll. 1-9. The lead investigator having knowledge of Petitioner would encourage jurors to believe Petitioner had frequent contacts with the police. App. 572, ll. 10-14.

Appearing to concede, the state noted "[t]here might have been deficiency on the part of [trial counsel] for not asking for a mistrial." App. 571, ll. 16-17. However, the state argued that even if trial counsel had requested a mistrial contemporaneously with the improper testimony, it would have been denied. App. 570, l. 25 – App. 571, l. 4. According to the state, one mention of the nickname was not "prejudicial enough." App. 571, ll. 5-8. Further, the state argued the curative instruction addressed the matter "as best it could be." App. 571, ll. 15-16. Essentially, the state argued Petitioner was not prejudiced by trial counsel's failure to request a mistrial. App. 571, ll. 17-20.

The PCR judge expressed doubt that the issue was not preserved for appellate review. App. 573, ll. 2-7. He further remarked that there was no evidence that had such a motion been made that it would have been granted. App. 573, ll. 9-11. Therefore, he denied relief. App. 573, ll. 11-13. In the formal order, the PCR judge found the "curative instruction to the jury concerning the street name cured any potential prejudice to [Petitioner]." App. 586. The PCR judge found petitioner could show "no deficiency by counsel in failing to move for a mistrial where counsel got the result he wanted by objecting and getting a curative instruction." App. 586. Additionally, the PCR court found Petitioner failed to show the trial court would have granted the mistrial where a mistrial was not absolutely necessary. App. 586. As a result, the PCR judge denied relief. App. 586.

Discussion

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984).

To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

Deficient performance

There can be little doubt here that trial counsel performed deficiently by failing to move for a mistrial. Contrary to the PCR judge's finding, trial counsel's failure to move for a mistrial contemporaneous with the improper testimony was not sufficient to preserve the issue for appeal. The state conceded this point during the PCR hearing, and rightly so, as the state had argued the issue was not preserved during the direct appeal. South Carolina law is clear that "[n]o issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial." State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996); see also State v. Johnson, 334 S.C. 78, 89, 512 S.E.2d 795, 801 (1999); State v. McEachern, 399 S.C. 125, 138, 731 S.E.2d 604, 610 (Ct. App. 2012); State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999).

Trial counsel accepted the judge's curative instruction and failed to move for a mistrial. Therefore, trial counsel performed deficiently.

Prejudice

As a threshold matter, the PCR judge applied the wrong standard when he required Petitioner prove the trial court would have granted the mistrial. The question before the PCR court was not whether the trial court would have granted the mistrial. The question was simply whether Petitioner proved by a preponderance of the evidence there existed a reasonable probability that the outcome of the trial would have been different. He was not required to meet the high bar set by the PCR judge – demonstrating beyond all doubt the motion would have been granted. Applying the correct standard shows Petitioner is entitled to relief.

According to the South Carolina Supreme Court, "[t]he less than lucid test is … declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). Although the decision to grant or deny a mistrial is within the sound discretion of the trial court, the appellate court must reverse the ruling if the decision was an abuse of discretion amounting to an error of law. State v. Dial, 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013) (citing State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010); State v. Ferguson, 376 S.C. 615, 618, 658 S.E.2d 101, 103 (Ct. App 2008) (citing State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007)). While a mistrial should be granted only when "absolutely necessary" and when a defendant can show error and resulting prejudice, a mistrial must be ordered when the incident "is so grievous that the prejudicial effect can be removed in no other way." Dial, 405 S.C. at 257, 746 S.E.2d at 500. Another way of describing when a mistrial must be granted is when there is "manifest necessity."

State v. Bilton, 156 S.C. 324, 153 S.E. 269 (1930). This Court has held a "mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010). Thus, to warrant reversal, "the errors must adversely affect [the defendant's] right to a fair trial." State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999).

The Court of Appeals' decision in State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012) is instructive. Manning was charged with felony DUI and drug possession, and at the beginning of jury selection, the trial judge read both indictments to the prospective jurors. After jury selection, Manning moved to sever the charges, and the judge granted the motion. Thereafter, Manning moved for a mistrial because the jurors were aware of both charges. The trial judge denied the motion. Id. at 268-269, 734 S.E.2d at 320. Although the Court found Manning waived this issue on appeal, the Court addressed the merits and found the "single reference to the schedule three drug charge contained in the indictments read at the beginning of trial [did] not constitute sufficient prejudice to justify a mistrial." Id. at 270, 734 S.E.2d at 320.

In State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), the Court of Appeals confronted a related issue, although postured differently. During the trial, the judge learned that a newspaper containing an article about the trial was in the jury room. The judge questioned the jurors regarding their having read, seen, or heard about the article. Six jurors responded affirmatively. Only one juror admitted to having read the article. She remembered details in a paragraph following one reference to the defendant's prior record. As a result, this juror was excused by the trial judge. The Court held the trial judge's actions were proper and a mistrial was not warranted where the other five jurors had very limited exposure to the article and

testified the article had not caused them to form any opinions. Id. at 184-185, 603 S.E.2d at 913-914.

The Court of Appeals confronted a similar issue in State v. Thompson, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003). A police officer, testifying on behalf of the prosecution, informed the jury that Thompson had warrants pending against him. Thompson moved for a mistrial based upon the prejudicial and improper testimony. Id. at 560, 575 S.E.2d at 82. The Court held the officer's "single reference to warrants that existed against Thompson did not constitute sufficient prejudice to justify a mistrial." Id. at 561, 575 S.E.2d at 82. The officer's statement did not convey that the warrants concerned unrelated charges or other bad acts. In light of the jury hearing evidence that the police were looking for Thompson in connection with the offense for which he was on trial, "it would be reasonable to assume the jury inferred that the warrants related to the charged offenses." Id. at 561-562, 575 S.E.2d at 82-83.

In another case, State v. Knighton, 334 S.C. 125, 134, 512 S.E.2d 117, 121-122 (Ct. App. 1999), the Court of Appeals found a mistrial was not warranted where the solicitor asked a question of Knighton during cross-examination which would have elicited evidence of Knighton's prior conviction. During direct examination, Knighton testified that he requested videotaping of his DUI testing subsequent to his arrest in Orangeburg and that Charleston and Greenville made videotaping of the tests available. On cross-examination, the prosecutor asked how Knighton knew the other counties used such measures. The judge immediately instructed Knighton not to answer the question. Knighton moved for mistrial and argued that the question "implied to the jury that he had a prior conviction for DUI." Id. at 134, 512 S.E.2d at 121. The Court held "[t]hough there was the potential for prejudicial testimony to have been submitted to the jury, the trial judge prevented any prejudice by instructing Knighton not to answer the

question." Id. at 134, 512 S.E.2d at 122. Thus, the Court affirmed the trial court's denial of the mistrial motion. Id.

Here, the lead detective's testimony that he was "familiar" with Petitioner's "street name or nickname" of "Travi" was improper character evidence as the trial judge recognized when he sustained trial counsel's objection. App. 292, l. 17 – App. 293, l. 14; see also State v. Nelson, 331 S.C. 1, 6, 501 S.E.2d 716, 718 (1998) ("In a criminal case, the state cannot attack the character of the defendant unless the defendant first places his character in issue"); Rule 404, SCRE ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"). The lead investigator's sworn testimony conveyed to the jury that Polite had a criminal record and had frequent contacts with law enforcement.

The state had no physical evidence against Petitioner, and the *only* evidence against him was the word of an individual – Brewer – who was a suspect in the shooting. Further, Brewer, according to the state, who lied to the police numerous times. Brewer had every reason to fabricate his testimony naming Petitioner as the shooter. Petitioner defended that he was merely present at the scene for the drug deal and was not involved in the shooting. The lead investigator's insinuation that Petitioner was a known criminal greatly impacted his defense. The instruction to the jury to disregard the testimony was insufficient. No juror would be able to disregard this testimony from a seasoned detective whose job it was to serve and protect them. Importantly, trial judge only ordered the statement "stricken" and instructed the jurors to "disregard the last statement." He never instructed the jury that the statement should not be considered for any purpose during deliberations. App. 293, ll. 20-23; see State v. Smith, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986) ("Great care should be exercised in the 'delicate,

difficult, and important matter' of instructing the jury to disregard incompetent evidence. The jury should be specifically instructed to disregard the evidence, and not to consider it for any purpose during deliberations." Trial counsel should not have accepted the curative instruction. He should have objected to the curative instruction as insufficient and moved for a mistrial. Had trial counsel done so, there is a reasonable probability that the outcome of the proceedings would have been different.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order fully briefing on the issue presented. If this Court grants the petition and dispenses with full briefing, Petitioner respectfully requests this Court reverse the PCR court, hold trial counsel provided ineffective assistance, and remand for a new trial.

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of August, 2021.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Brooks P. Goldsmith, Circuit Court Judge

TRAVIS ABE POLITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Abe Polite states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and she was appointed to represent Petitioner for purposes of appealing the denial of post-conviction relief (PCR).

2. She has reviewed the trial transcript, direct appeal pleadings, and the PCR recording, including the transcript of Petitioner's PCR hearing before the Honorable Brooks P. Goldsmith, which was held on November 4, 2019. In her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed an arguable legal issue which arose during the PCR process.

Therefore, counsel requests that the Court relieve her as counsel for Travis Abe Polite.

Respectfully Submitted,

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of August, 2021.

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/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

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TRAVIS ABE POLITE,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000241

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Johnson Petition for Writ of Certiorari and Appendix in the above referenced case have been served upon Samantha Weidauer, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is sammieweidauer@scag.gov; and on Travis Abe Polite, #362894, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of August, 2021.

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER