

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
George M. McFaddin, Circuit Court Judge

RECEIVED
Oct 15 2021
S.C. SUPREME COURT

DARIUS RANSOM-WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000397

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding that trial counsel did not provide ineffective assistance in failing to have petitioner's statements suppressed as involuntary?

STATEMENT

On December 5, 2011, an Orangeburg County jury indicted petitioner for first-degree burglary and attempted murder. App. 411-13. On July 16, 2012, a trial was held before the Honorable Edgar W. Dickson and a jury. App. 1. Donald N. Sorenson represented the State and Mark Wise and John Stroud represented petitioner. App. 1. The jury convicted petitioner of first-degree burglary and the lesser-included offense of ABHAN. App. 320, l. 2 – 12. Judge Dickson sentenced petitioner to concurrent terms of thirty years for burglary and twenty years for ABHAN. App. 329, l. 16 – 23.

On appeal, petitioner was represented by Sheila M. Bias as part of the Appellate Practice Project. Supp. App. 63. David Spencer represented the State. Supp. App. 97. Because of missing portions of the transcript, a reconstruction hearing was held on January 3, 2014, before Judge Dickson with both of the trial lawyers. Supp. App. 1. Judge Dickson found the record reconstructed and petitioner challenged this ruling on appeal. Supp. App. 1. After oral argument, the Court of Appeals affirmed petitioner's convictions. Supp. App. 143. Petitions for rehearing and for certiorari were denied. Supp. App. 160, 219.

On September 26, 2017, petitioner filed a PCR application. App. 332. On February 3, 2020, a hearing was held before the Honorable George M. McFaddin, Jr. App. 353. C. Bradley Hutto represented petitioner and Sara E. Gunton represented the State. App. 353. Judge McFaddin denied relief and this petition follows. App. 398.

ARGUMENT

The PCR court erred in finding that trial counsel did not provide ineffective assistance in failing to have petitioner's statements suppressed as involuntary.

When petitioner was arrested, he was taken to the sheriff's investigation room. App. 360, l. 6 – 21. Petitioner told the detective that he wanted a lawyer. App. 360, l. 20 – 361, l. 9. The investigator left and petitioner was returned to the jail. App. 361, l. 8 – 16.

Petitioner was then transferred to the Bamberg jail. App. 361, l. 21 – 362, l. 6. The same detective came to the Bamberg jail with another officer and petitioner's mother. App. 362, l. 3 – 25. Petitioner had not been able to speak to a lawyer. App. 363, l. 1 – 3. Despite petitioner telling the detective he did not want to speak, the detective continued interrogating petitioner. App. 363, l. 6 – 25. Petitioner's mother became so upset that she was taken to another room. App. 363, l. 6 – 25.

Petitioner could see his mother through a glass partition while the detective continued to interrogate and berate him. App. 364, l. 1 – 365, l. 17. A woman was holding his mother down. App. 365, l. 2 – 5. His mother was crying and "breaking down right there." App. 365, l. 2 – 5. Petitioner eventually told the detective, "Well, you said I did it; I did it. Just leave me alone." App. 365, l. 8 – 11. The detective wrote out a statement which was used against petitioner in his trial. App. 366, l. 6 – 367, l. 25. Petitioner then went to his mother. App. 365, l. 8 – 11.

At the PCR hearing, trial counsel said he was aware of this interrogation and confirmed the events with petitioner's mother. App. 372, l. 24 – 373, l. 9. He called petitioner's mother as a witness during the pretrial hearing on the voluntariness of petitioner's statement. App. 374, l. 4 – 375, l. 13. Trial counsel could not remember whether he raised the issue of admissibility under the Sixth Amendment. App. 375, l. 16 – 376, l. 14. Petitioner argued to the PCR court that trial

counsel failed to make the proper objection under the Sixth Amendment. App. 393, l. 2 – 7. The PCR court found that the Court of Appeals affirmed the admission of petitioner’s statements, finding them voluntary, and denied relief. App. 406-07.

The Sixth Amendment right to counsel provides different protections from invocation of the right to counsel under the Fifth Amendment. State v. George, 323 S.C. 496, 508-09, 476 S.E.2d 903, 911 (1996). See also McNeil v. Wisconsin, 501 U.S. 171 (1991). “The Sixth Amendment guarantee of the assistance of counsel also provides the right to counsel at post arraignment interrogations.” Michigan v. Jackson, 475 U.S. 625, 629 (1986), overruled by Montejo v. Louisiana, 556 U.S. 778 (2009).

Petitioner’s appeal only involved the Fifth Amendment. App. 84-90. Appellate counsel was limited to the Fifth Amendment analysis of Edwards v. Arizona, 451 U.S. 477 (1981). Edwards forbids custodial interrogation after an accused invokes his right to counsel unless the prisoner initiates further communication. Edwards, 451 U.S. at 484-85.

While the United States Supreme Court overruled Michigan v. Jackson in Montejo and applied the Edwards analysis to statements made in violation of the Sixth Amendment right to counsel, trial counsel’s failure to argue any point of inadmissibility under the Sixth Amendment deprived petitioner of the ability to raise this issue on appeal. With the proper argument, petitioner could have argued for a return to (and expansion of) Michigan v. Jackson that would apply to custodial interrogations held before formal arraignment. Under such a regime, petitioner’s statements would have been inadmissible because of the invocation of his right to counsel. Without his confession, he would not have been convicted. For these reasons, this Court should reverse petitioner’s convictions.

CONCLUSION

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

s/David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darius Ransom-Williams 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 George M. McFaddin, which was held on February 3, 2020, 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 Darius Ransom-Williams.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2021.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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.”

s/David Alexander
Appellate Defender

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ATTORNEY FOR PETITIONER

This 15th day of October, 2021.