

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Mar 15 2023**

S.C. SUPREME COURT

—————  
Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge  
—————

DONALD PARTAKA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001308  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences in the case.

## STATEMENT OF FACTS

Petitioner Donald A. Partaka was indicted for murder and possessing a weapon during the commission of a violent crime, but pled guilty to voluntary manslaughter and possession of a weapon during a violent crime at the April 2019 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Petitioner received an aggregate twenty-four year prison sentence in the case. App. 1-47. Deputy Solicitor Derrick Balsa prosecuted petitioner in case, and Ryan Beasley, Esquire, represented petitioner at the plea proceeding.

On September 18, 2019, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 53-74. The respondent filed a Return dated November 20, 2019. App. 75-90. An Amended PCR application was filed on April 8, 2022. App. 91.

A PCR hearing was convened on April 20, 2022 at the Spartanburg County Courthouse before Judge G.D. Morgan, App. 93-133. Petitioner was present at the PCR hearing and represented by Susannah Ross, Esquire, and Assistant Attorney General Chelsey Marto appeared on behalf of the state. On September 8, 2022, Judge Morgan filed an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel presented in the PCR case. App.136-151.

Petitioner appealed the Order of Dismissal filed in the case. This petition follows.

## ARGUMENT

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences in the case.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. The police responded to a 911 call on October 11, 2017 based on a report that petitioner shot someone whom he believed to have been an intruder inside his residence. The intruder, Laura Ashley, was seated on petitioner's couch inside his home at the time of the shooting. Ashley died as a result of the gunshot wound. Petitioner stated that he believed the intruder was a male migrant worker who had broken in, and that he fired his gun as a result. App. 19, l.21-p. 24, l.24. Petitioner claimed he "shot from outside...[because] somebody was inside...by the front door in the shadows." App. 25, lines 14-16; App. 38, lines 3-8. The evidence in the case revealed that petitioner suffered from dementia and alcoholism.

During the PCR hearing, petitioner testified that trial counsel advised him that he would likely receive a sentence of between ten-to-fifteen years in exchange for his guilty plea. App. P. 101, lines 13-25; App. 104, lines 4-11. Petitioner's sister testified at the PCR hearing and stated that trial counsel promised receipt of a sentence of up to fifteen years, and that no one knew parole was not a possibility, and that petitioner would have gone to trial had he known better. App. 111, l. 23-p. 112, l.18; App. 117 lines 10-21. Petitioner was 64 years old at the time of the PCR hearing, which meant that his 24-year sentence that he received when he was 61 years old at the plea proceeding was the equivalent of a life sentence for him. App. 119, lines 2-12.

Trial counsel testified at the PCR hearing and stated that he never promised petitioner that he would receive a fifteen-year sentence. App. 122, lines 11-13. Trial counsel testified as follows:

The offer from the solicitor was twenty years, negotiated, or plead straight up...he obviously didn't want to do twenty years...[so it was] roll the dice and let me try to argue for less...and I thought we had a good shot of getting less than that...he may have asked what I thought personally and I was like ten to 15." App. 122, lines 16-25.

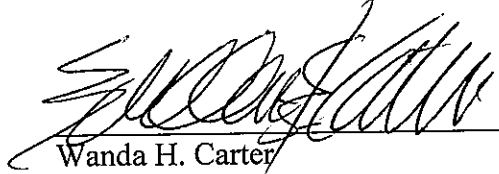
Therefore, trial counsel in effect admitted that his advice to petitioner was that he would receive a sentence of from ten to fifteen years prison time. App. 122, lines 23-25.

The PCR judge ruled that petitioner's allegation regarding sentencing was not credible. App. 151.

In the case at bar, it was clear that trial counsel led petitioner to believe that he would receive a sentence of 15 years or less in the case. Petitioner was unaware of the fact that his sentence could also exceed 15 years. As a rule, a guilty plea is voluntarily and knowingly entered into only if the defendant has full understanding of the consequences of his plea and the charges against him. See Dalton v. State, 376 S.C. 130, 654, S.E.2d 870 (2007), and Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), citing to Boykin v. Alabama, 395 U.S. 238 (2000). Clearly, in the case at bar, petitioner's guilty pleas were not given voluntarily because he was unaware of the sentencing consequences in the case due to trial counsel's failure to explain the same to him. Counsel's error in this omission constituted deficient legal representation in violation of the Sixth Amendment (See Hill v. Lockhart, 474 U.S.52 (1985)), and but for counsel's ineffectiveness in this regard, a reasonable probability existed that petitioner would not have pled guilty in the lower court.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of March, 2023.

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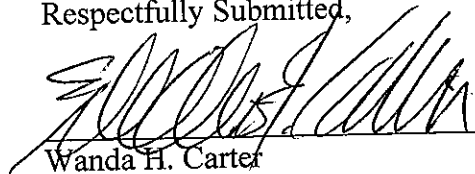
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Donald Partaka states that:

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 G.D. Morgan, Jr., which was held on April 20, 2022, 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 Donald Partaka.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of March, 2023.

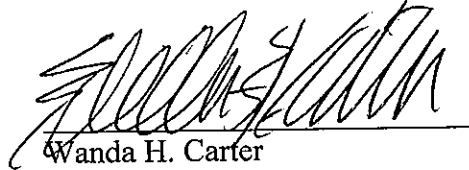
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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This 15th day of March, 2023.