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**Mar 23 2023**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Anderson County

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

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JOHN A. VILLARREAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001681

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to adequately advise petitioner regarding the sentencing consequences of his guilty pleas.

## STATEMENT OF FACTS

Petitioner John A. Farrell Villarreal pled guilty to murder, attempted murder, carjacking, and possession of a weapon during the commission of a violent crime during the 2017 term of the Anderson County General Sessions Court before Judge R. Scott Sprouse. Petitioner was sentenced to imprisonment for life on the murder conviction, thirty years (concurrent) on the attempted murder conviction, thirty years (concurrent) on the carjacking conviction, and five years (concurrent) on the weapon charge. App. 1-29. Gregory Lee Cole, Junior, represented petitioner at the plea proceeding, and Assistant Solicitor Lauren Davis Price prosecuted the case. Petitioner did not appeal his convictions or sentences.

On May 30, 2018, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court. App. 31-39. The Respondent filed a Return dated October 12, 2018, requesting that a hearing be held in response to petitioner's PCR action. App. 40-48.

A PCR hearing was convened on August 22, 2022, at the Anderson County Courthouse before Judge G.D. Morgan, Junior. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney General Lillian L. Meadows appeared on behalf of the state. App. 50-88. On November 4, 2022, Judge Morgan signed an Order of Dismissal in the case, which was filed with the Anderson County Clerk's Office on November 14, 2022. App. 90-121. Petitioner appealed Judge Morgan's Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to adequately advise petitioner regarding the sentencing consequences of his guilty pleas.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Petitioner was accused of shooting a man and woman with whom he was riding in a car on December 24, 2014. The female died of her gunshot wound, but the male survived his injuries. Ultimately, petitioner was arrested in connection with these shootings. App. 7, l. 18- p. 12, l. 11.

During the PCR hearing held in the case, petitioner testified that trial counsel led him to believe that he would receive a thirty-year sentence if he pled guilty as charged due to his young age (22 years old when arrested), and because he had no prior record. App. 78, l. 11 – p. 79, l.11; App. 84, lines 4-17. Petitioner received a sentence of life imprisonment on his murder conviction instead of the promised thirty-year sentence.

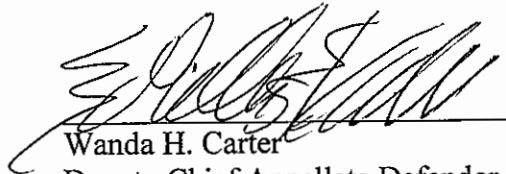
Trial counsel testified during the PCR hearing and admitted that he told petitioner that “due to his youth and due to his lack of [a] record that we had a chance of getting sentence...closer to the minimum...instead of life.” App. 85, l. 22 – p. 86, l. 17; App. 62, l. 5 – p. 63, l. 22

In the case at bar, counsel misadvised petitioner about what to expect regarding the length of one sentence, and failed to make clear that the maximum life sentence for a murder conviction was a realistic sentencing possibility in the case. 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(s). 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 realistic sentencing consequences that he might receive after pleading guilty to the murder charge filed against him. Counsel's error in this regard constituted deficient legal representation in petitioner's case in violation of the Sixth Amendment (See Hill v. Lockhart, 474 U.S.52 (1985); and but for counsel's ineffectiveness as outlined above and in light of the life sentence handed down in the case, a reasonable likelihood exists that petitioner would have pled not guilty and exercised his right to a jury trial.

### **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.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2023.

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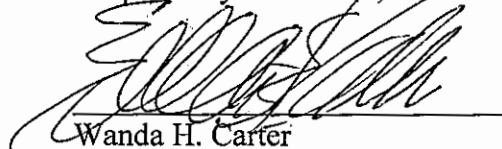
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Counsel for John A. Villarreal states:

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 August 22, 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 John A. Villarreal.

Respectfully Submitted,



Wanda H. Carter

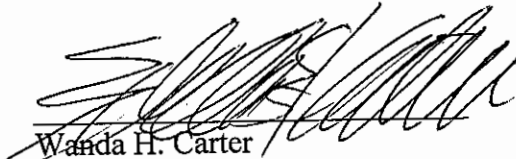
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2023.

**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."



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This 23rd day of March, 2023.