

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY BOYD TATE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000020

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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May 09 2023

S.C. SUPREME COURT

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ISSUE PRESENTED

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

STATEMENT

Petitioner Anthony Boyd Tate pled guilty to distribution of crack cocaine (third offense), distribution of crack cocaine within one half mile of a school/park, and distribution of marijuana (third offense) during the June 2015 term of the Cherokee County General Sessions Court before Judge R. Keith Kelly, who sentenced him per the recommendation to an aggregate fourteen-year prison term.¹ Petitioner did not appeal his guilty pleas or sentences.

On February 6, 2018, petitioner filed a PCR application with the Cherokee County Office of the Clerk of Court. App. 1-6. The respondent filed a Return dated March 2, 2020, requesting that the PCR case be dismissed as untimely filed.² An amended PCR application and a second Return dated March 17, 2021, were subsequently filed. App. 13-20. A PCR hearing was convened on October 20, 2022, at the Spartanburg County Courthouse before Judge Brian M Gibbons. App. 23-41. Petitioner was present at the hearing and represented by Attorney Rodney Richie, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

On December 16, 2022, Judge Gibbons signed an Order of Dismissal in the case. Petitioner appealed. App. 43-50. This petition follows.

¹ Petitioner's guilty plea record was unavailable for transcription in the case. App. 27, lines 15-21.

² A hearing was held on February 16, 2021 on the state's motion to dismiss petitioner's PCR action as untimely filed, but on May 18, 2022, Judge Cole denied the state's motion to dismiss and ordered a hearing. App. 22.

ARGUMENT

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

In the case at bar, petitioner was arrested after allegedly making a drug sale to a confidential informant. App. 38, lines 1-13.

During the PCR hearing held in the case, petitioner testified that trial counsel did not advise him that he would have to serve 85% of his prison time on his drug sentences. Petitioner stated that he was under the mistaken impression that he would have to serve 65% of his prison time on his drug sentences. Petitioner added that he would have opted for a jury trial if he had been warned of the 85% service prison time that was attached to his sentences. App. 28, l.5 - p.8, l.22.

Trial counsel testified at the hearing and stated that he never gives parole eligibility prediction dates to his clients. App. 35, lines 1-20.

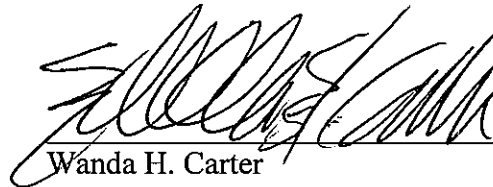
In the Order of Dismissal, the PCR judge ruled that trial counsel adequately advised petitioner regarding his pleas in the case. App. 48-50.

Here, it was clear that trial counsel failed to explain sentencing consequences to petitioner before he pled guilty to the charges against him. As a rule, a guilty plea is voluntarily and knowingly entered into only if the defendant has full understanding of the consequences of his pleas 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. Trial counsel's error in this instance constituted deficient legal representation in violation of the Sixth Amendment (See Hill v.

Lockhart, 474 U.S.52 (1985)), such that but for counsel's omission 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', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of May, 2023.

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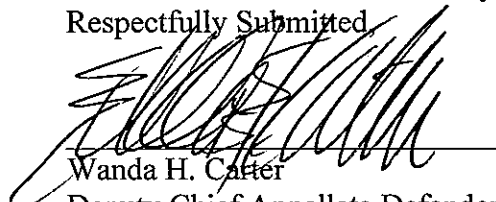
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Boyd Tate 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 Brian M. Gibbons, which was held on October 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 Anthony Boyd Tate.

Respectfully Submitted



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of May, 2023.

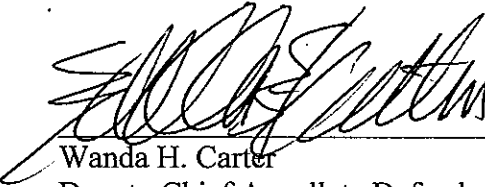
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CERTIFICATE OF COUNSEL

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 9th day of May, 2023.