

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Orangeburg County

Honorable George M. McFaddin, Circuit Court Judge

MAURICE BOOKARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001572

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that his guilty plea was given involuntarily because he was coerced into pleading guilty as charged in the case.

STATEMENT

Petitioner Maurice Bookard entered a no contest plea to second degree criminal sexual conduct during the July 2018 term of the Orangeburg County General Sessions Court before Judge Edgar W. Dickson, and was sentenced to imprisonment for a period of fifteen years. App. 1-20. Minh L. Wyman, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Ashley Cornwell appeared on behalf of the state. Petitioner did not appeal his guilty plea or sentence.

On July 1, 2019, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 22-28. The respondent filed a Return dated November 8, 2021. App. 29-39. A PCR hearing in the case was convened on September 5, 2023, at the Orangeburg County Courthouse before Judge George M. McFaddin. App. 41-74. Petitioner was present at the hearing and represented by Attorney Rodney W. Richey, and Assistant Attorney General Bryan Tyjarris Hall appeared on behalf of the state.

On September 14, 2023, Judge McFaddin issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 76-83. Petitioner appealed Judge McFaddin's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty plea was given involuntarily because he was coerced into pleading guilty as charged in the case.

Petitioner was indicted on a sexual misconduct offense involving his daughter, but claimed in effect that the allegation was false and fabricated by his daughter as retaliation after he confiscated her cellular phone. App. 48, l. 3 – p. 49, l. 25. Petitioner stated that he wanted a jury trial, but pled guilty because trial counsel repeatedly told him that he would lose if he opted for a jury trial, and that he would receive a thirty-five-to-forty-five-year sentence if he went to trial. App. 45, l. 22 – p. 47, l. 19; App. 50, lines 1-7.

Trial counsel testified that she merely highlighted the weaknesses in petitioner's case, particularly with respect to the cellular phone explanation given on his behalf. Counsel admitted that she advised petitioner that if he went to trial, then the state would have indicted him on additional charges of incest and unlawful conduct toward a child. App. 68, lines 16-25.

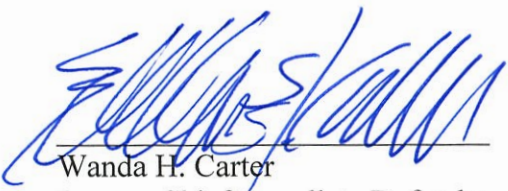
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970).

Therefore, “the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty.” See Gustine v. State, *supra*.

In the case at bar, petitioner’s position was that he was not guilty, but clearly felt coerced by counsel into pleading guilty after being warned that he would lose at trial and face increased sentencing exposure on additional charges if he did not enter a guilty plea in the case. This meant that petitioner’s plea was coerced and not voluntarily given. Apparently, counsel was complicit in coercing petitioner to take the plea because she insisted that he would lose at trial and end up with more charges brought against him if he chose to present his case to a jury. Hence, the coercive measures counsel used to encourage petitioner to plead guilty as charged violated petitioner’s right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case (See Hill v. Lockhart, 484 U.S. 52 (1985)).

CONCLUSION

Based on the foregoing argument, petitioner requests 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 1st day of February, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Maurice D. Bookard 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 George M. McFaddin, which was held on September 5, 2023, 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 Maurice D. Bookard.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of February, 2024.

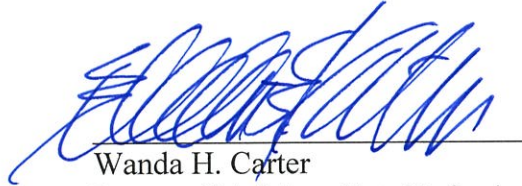
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CERTIFICATE OF COUNSEL

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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