

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Feb 20 2024**

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge  
\_\_\_\_\_

RANDALL PRICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001625  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Trial counsel erred in presenting petitioner's case in mitigation to the plea judge in chambers prior to the plea proceeding as opposed to presenting the same in open court subsequent to the state's summary of the case because a more favorable sentencing outcome would probably have resulted if concurrent presentations had been submitted by both parties.

## STATEMENT

Petitioner Randall Price pled guilty to traffic hit and run with death during the December 2021 term of the Spartanburg County General Sessions Court before Judge Letitia Verdin, and was sentenced to imprisonment for a period of twelve years. App. 1-17. Steven Sumner, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Barry Barrette appeared on behalf of the state. Petitioner did not appeal his guilty plea or sentence.

Petitioner filed a PCR application and an Amended PCR application on March 3, 2022, and March 17, 2022, respectively, with the Spartanburg County Office of the Clerk of Court. App.19-33. The respondent filed a Return dated May 5, 2022. App. 34-42. On July 14, 2022, a second PCR application was filed in the case. App. 44.

A PCR hearing in the case was convened on October 20, 2022, at the Spartanburg Courthouse before Judge Brian M. Gibbons. App. 45-113. Petitioner was present at the hearing and represented by Attorney Rodney W. Richey, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

On March 21, 2023, Judge Gibbons issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App.118-127. On April 6, 2023, a Motion to Reconsider was filed, which was denied on October 6, 2023. App. 128-129; App. 136.

Petitioner appealed Judge Gibbons' Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in presenting petitioner's case in mitigation to the plea judge in chambers prior to the plea proceeding as opposed to presenting the same in open court subsequent to the state's summary of the case because a more favorable sentencing outcome would probably have resulted if concurrent presentations had been submitted by both parties.

In the case at bar, petitioner struck what he believed to have been a deer while driving along Highway 11 (Campobello) in Spartanburg County on January 13, 2007. Petitioner retraced his steps shortly thereafter, but found nothing on the driven path. However, apparently unbeknownst to petitioner, a male on a moped was struck by his vehicle. App. 6, l. 7 – p. 7, l. 13; App. 52, l. 11 – p. 61, l. 32; App. L. 1 – p. 67 l. 24.

During the PCR hearing, petitioner testified that his understanding of the defense strategy was that trial counsel promised to present his case in mitigation to the plea judge at the plea proceeding in an effort to obtain a three-year sentencing range via a split sentence in the case. However, petitioner stated in effect that trial counsel's decision to present his case in mitigation prior to the plea rather than to present the same in open court during the plea proceeding did not yield successful results. Petitioner stated that the better strategy would have been to present the mitigation case in open court during the plea proceeding (as opposed to before the proceeding) in order to reap the benefit of more favorable results, i.e., a lower sentence. Petitioner stated that counsel erred in presenting mitigating facts in his defense prior to the plea proceeding in the case. App. 69, l. 5 – p. 77, l. 19; App. 83, l. 5 – p. 84, l. 6; App. 92, lines 12-25.

Trial counsel testified at the hearing and explained that petitioner knew that the agreement reached was to present mitigating evidence in chambers prior to the plea proceeding, particularly in light of the predictably high volume of people who appeared in court on behalf of

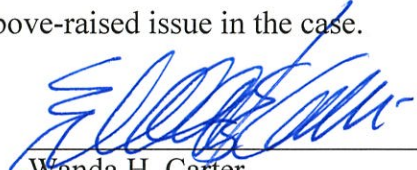
the victim during the plea proceeding. App. 93, l.10 - p. 94, l.11; App. 95, l.1 – p. 99, l. 15; App. 102, l. 10 – p. 103, l.23.

As a rule, when the initial presentation of mitigation evidence does not render the desired result, the defendant does not get a second chance. Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998). Clearly, counsel’s strategy to present mitigation before the plea to avoid an all-out emotional reaction from the large showing of supporters of the deceased that appeared in court constituted a failed strategy because the meritorious substance of petitioner’s case in mitigation ended up diluted, minimized, and practically forgotten most probably by the plea judge by the time the factual summary was presented by the prosecution at the plea proceeding. No second chance was afforded to petitioner regarding his case in mitigation. See Jones v. State, *supra*.

Clearly, had counsel presented petitioner’s mitigation during the plea proceeding at nearly the same time of the presentation of the state’s factual summary of the case, then such a defense scheme as this would have provided more balance to the case on both sides and leniency with respect to sentencing. Trial counsel erred with respect to the timing of the presentation of petitioner’s case in mitigation in the case, and but for the error a reasonable likelihood existed that petitioner would have received sentencing leniency in the case. See Hill v. Lockhart, 474 U.S. 52 (1985).

**CONCLUSION**

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



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2024.

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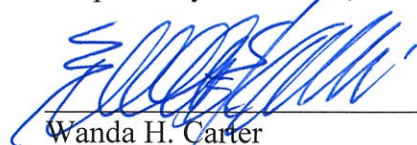
—————  
PETITION TO BE RELIEVED AS COUNSEL  
—————

Counsel for Randall Price 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 Randall Price.

Respectfully Submitted,



—————  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of February, 2024.

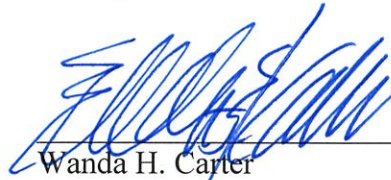
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**CERTIFICATE OF COUNSEL**

**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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ATTORNEY FOR PETITIONER

This 20th day of February, 2024.