

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**  
**Mar 18 2024**  
S.C. SUPREME COURT

\_\_\_\_\_

Certiorari to Florence County

Honorable Debra R. McCaslin, Circuit Court Judge

\_\_\_\_\_

VANCE ROSS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000024

\_\_\_\_\_

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  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

Trial counsel erred in failing to properly advise petitioner  
regarding the plea offer in the case. ....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

**ISSUE PRESENTED**

Trial counsel erred in failing to properly advise petitioner regarding the plea offer in the case.

## STATEMENT

Vance Ross was found guilty of six counts of first degree criminal sexual conduct with a minor per jury trial held during the April 2017 term of the Florence County General Sessions Court before Judge D. Craig Brown. Petitioner was sentenced to life imprisonment. App. 1-386. Thurmond Brooker, Esquire, represented petitioner at trial, and Assistant Solicitor David Richardson appeared on behalf of the state. Petitioner appealed, but his appeal was dismissed. See State v. Ross Op. No. 2020-UP-U38 (S.C. Ct. App. Feb 12, 2020).

On December 29, 2020, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App.388-394. The respondent filed a Return dated April 20, 2021. App. 395-406.

A PCR hearing in the case was convened on June 3, 2023, at the Florence County Courthouse before Debra McCaslin. App. 407-452. Petitioner was present at the PCR hearing and represented by Attorney Steven W. Fowler, and Assistant Attorney General Russell Barlow appeared on behalf of the state.

On November 1, 2023, Judge McCaslin issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 454- 481.

Petitioner appealed Judge McCaslin's Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to properly advise petitioner regarding the plea offer in the case.

Petitioner was sentenced to six concurrent life sentences on each of his six convictions of first degree criminal sexual conduct with a minor at the close of his trial.

During the PCR hearing held in the case, petitioner testified that he received a plea offer of twenty-five years in the case, and that his response was “absolutely not...I’m not taking that.” App. 422, l. 14 – p. 424, l. 8.

Trial counsel testified that his method of operation would include a discussion about a plea offer with a client and allow him to reject or accept it. App. 438, l. 14 – p. 439, l. 18; App. 448, lines 3-22.

Clearly, trial counsel erred in merely discussing rather than advising petitioner with respect to the twenty-five-year plea offer in light of the lengthier sentencing possibilities on the charges in the case, i.e., life sentences with no suspensions and no probation. S. C. Code Ann §16-3-655 (D) (1) requires a mandatory minimum of twenty-five years, with no part of which may be suspended nor probation granted, or life imprisonment. Indeed, petitioner received six life sentences in the case. Therefore, an in depth conversation and strong encouragement was needed from trial counsel in order to impress upon petitioner the benefit of a twenty-five year plea bargain offered in the case.

The PCR judge ruled that petitioner failed to show any alleged deficiencies with respect to counsel’s representation in the case. App. 454-481.

An appellate court can review issues of ineffective assistance of counsel in cases where counsel offers advice regarding what action to take on plea offers. Hyman v. State, 397 S.C. 35, 723 S.E.2d 375 (2012). In Hyman, the Court held that counsel was not ineffective in advising the

defendant to accept a plea offer despite the fact that the defendant rejected the plea offer in light of counsel's advice. In Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010), the Court found that trial counsel was ineffective in advising the defendant to reject the state's initial plea offer of a 10-year sentence suspended upon five years and three years probation where the defendant faced 7 to 25 years imprisonment. Compare Stalk v. State<sup>1</sup> where the issue was whether counsel was effective in advising a defendant to accept the state's plea deal without doing any investigation or preparation into matters of defense in the case. Ultimately, the Stalk Court found that counsel's advice would have remained the same even if counsel had conducted proper pre-trial investigations in the case.

Here, counsel's obvious hands off approach in this plea offer, where he conveyed the same to petitioner sans any apparent advice with regard to the risk of greater sentences imposed in the event of a trial, constituted ineffective assistance of counsel in violation of the Sixth Amendment (See Strickland v. Washington, 466 U.S. 668 (1984)). A defendant has a right to effective assistance of counsel during the plea bargaining process. Lafler v. Cooper, 132 S.Ct. 1376 (2012). In Lafler v. Cooper, *supra*, the Supreme Court held that counsel was ineffective in advising the defendant to reject a plea offer. Lafler was charged under Michigan law with assault with intent to murder and three other offenses. The prosecution offered to dismiss two of the charges and agreed to a 51-to-85-month-sentence on the other two in exchange for guilty pleas. Lafler expressed a willingness to accept the offer, but he rejected the offer per his attorney's advice on the ground that the prosecution would be unable to establish intent to murder because the victim had been shot below the waist. Ultimately, Lafler was convicted on all counts at trial and received a mandatory minimum 185-to-360-month sentence. The rule regarding competent

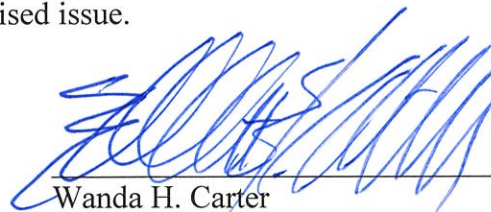
---

<sup>1</sup> Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (2007); affirmed as modified at 383 S.C. 559, 681 S.E.2d 592 (2009).

counsel during the plea bargaining process applies in South Carolina as well. See Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), where the Court held that the Sixth Amendment protects defendants against ineffective assistance of counsel during the plea bargaining process. State v. Judge, supra, was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner’s statement that he was prejudiced by counsel’s deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Judge, the issue was whether counsel was ineffective in advising the defendant to reject a plea offer and opt for a trial by jury. In Jackson, supra, the Court held that counsel was ineffective in failing to advise the defendant that the crime he was pleading to was a felony and that but for that omission, the defendant would not have plead guilty in his case. Here, counsel erred in not advising petitioner properly on the pros and/or cons of accepting or rejecting the plea offer submitted to him. This was blatant ineffective assistance of counsel in violation of the Sixth Amendment in the case.

**CONCLUSION**

Based on the foregoing argument, counsel 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 18th day of March, 2024.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Florence County

Honorable Debra R. McCaslin, Circuit Court Judge

---

VANCE ROSS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

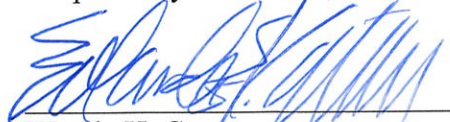
---

Counsel for Vance Ross 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 Debra R. McCaslin, which was held on June 13, 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 Vance Ross.

Respectfully Submitted,



---

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of March, 2024.

**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.”



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 18th day of March, 2024.