

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Carmen T. Mullen, Circuit Court Judge

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AUG 13 2013

S.C. Supreme Court

JOHN STANFORD JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000082

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

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ISSUE PRESENTED

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentences because petitioner desired a jury trial in his case.

STATEMENT

Petitioner John Stanford Johnson pled guilty to three counts of second degree burglary, malicious injury to real property, and receiving stolen goods during the February 2011 term of the Orangeburg County General Sessions Court before Judge Edgar Dickson. Petitioner was sentenced to imprisonment for an aggregate ten-year period.¹ App. 1-21. Charles H. Williams and Melissa Gay represented petitioner on the burglary charges at the plea proceeding and David Williams represented petitioner on the property charges at the plea proceeding.² Petitioner did not enjoy the benefit of a direct appeal of his guilty pleas.

On October 7, 2011, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 23-34. The respondent filed a return requesting that a hearing be held in the case. App. 36-40.

A PCR hearing was convened on October 31, 2012, at the Orangeburg County Courthouse before Judge Carmen T. Mullen. App. 42-80. Petitioner was present at the PCR hearing and represented by Michael Culler. On November 29, 2012, Judge Mullen issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 82-96.

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

¹ During the plea proceeding, the solicitor advised the plea judge of the existence of an agreed upon negotiated sentencing cap of ten years reached in the case. App. p. 3, l. 20-21.

² Petitioner waived ineffective assistance of counsel allegations against all counsels save Melissa Gay. Petitioner proceeded with his PCR hearing on allegations against Ms. Gay only. App. 63, lines 10-25.

ARGUMENT

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentences because petitioner desired a jury trial in his case.

During the plea proceeding, the solicitor outlined the facts that led to the charges filed against petitioner. The solicitor alleged that petitioner entered the Orangeburg County homes of Henry and Ryan Carson, Gaius Baker, and Kenneth Green and took items out of their homes; and that petitioner received stolen guns in a St. George incident also and set afire a cash discount store in Georgetown as well. App. 8, l. 10-p. 16, l. 23. During the PCR hearing, petitioner testified that he denied guilt in reference to the charges and added that counsel coerced him into pleading guilty to avoid receipt of harsh sentences. App. 49, lines 12 -14 Petitioner explained that counsel did not adequately discuss the facts with him and that he never wanted to plead guilty as charged. App. 51, l. 14-22; App. 54, l. 8-11; App. 54, l. 21-p. 55, l. 5; App 62, l. 12-23. Petitioner explained as follows:

Attorney General: If you wanted a trial and you indicated that to both of your attorneys, why did you end up pleading guilty?

Defendant: Because they kept threatening me with you're going to catch this amount of time, so just to like secure my family, honestly, I just caved into a plea.

Attorney General: So one of your allegations is that you were coerced into this plea. Who coerced you, was it Ms. Gay or Mr. Williams or both?

Defendant: I can't really say anything bad about Mr. Williams. I was really, like, pleased with him, but Ms. Gay was, like, she was, like, iffy.

The Court: Sir, let me ask you a question. You said you felt like you were forced into accepting this plea because you were afraid of them telling you you would get a much longer sentence if you didn't accept the negotiated plea; is that correct? Is that a yes, for the record?

Defendant: Yes, ma'am.

The Court: Did your lawyers explain to you that you were facing a burglary first violent charge which carries a mandatory minimum sentence of 15 years up to life? Did they instruct and tell you that?

Defendant: With my prior record, yes, ma'am.

The Court: Okay. And understanding -- regardless of your prior record, a burglary first degree is, number one, a violent offense. It is also a strike and additionally it carries a mandatory minimum sentence of 15 years up to life. Are you stating the reason why you accepted a negotiated plea here is because you were fearful if you had gone to trial and [been] convicted of that first burglary that you, in fact, could have been sentenced to life? Is that what you're saying? I mean, did they tell you that and was that one of your concerns and one of your considerations in entering or accepting this negotiated plea?

Defendant: Yes, ma'am. App. 63, lines 4-15.

Petitioner testified that there was a negotiated offer for a ten-year sentencing cap and that he was advised that he should not refuse this offer. Petitioner stated that he pled guilty involuntarily because the attorney with whom he was dissatisfied "already had proceeded to go forward with it." App. 56, l. 15-19; App. 55, l. 17-p. 56, l. 13.

The trial counsel testified at the PCR hearing and explained that she talked with the solicitor and worked out a ten-year sentencing cap in the case and in effect that petitioner understood, agreed to, and approved of this. App. 71, l. 18-p. 73, l. 8. Trial counsel stated that it was not in petitioner's best interest to go to trial and that he rightfully considered the plea offer with respect to sentencing. Trial counsel explained as follows:

Trial Counsel: If he had chosen to have a trial, there could have been some impeachment issues, but there was a lot of risk associated with that, and if it didn't go his way, he was going to end up with at least 15 years, 85 percent, and that was something he chose as part of the plea process to avoid.

Attorney General: This was a negotiated plea?

Trial Counsel: Yes, that we did not negotiate for ten nonviolent...

Attorney General: Did you inform your client that it was negotiated, he would be getting ten years if he pled that day?

Trial Counsel: Yes.

Attorney General: And did he have any hesitation in regards to entering a plea that day?

Trial Counsel: I would imagine he had hesitation about entering a plea, but in the long run he chose to [plead]. App. 75, l. 19-24; App. 77 l. 8 – p.78, l. 7.

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 was not pleased with the plea negotiations as he wanted a five-year sentencing cap³ or in the alternate, a jury trial since he claimed his innocence. Per these circumstances in the instant case, clearly petitioner did not plead guilty within the meaning of

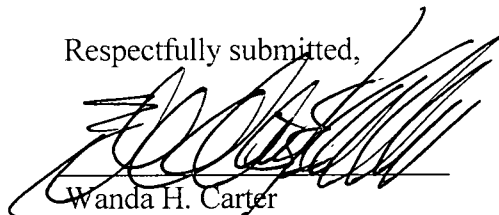
³ Defendant: I wrote down zero to five [sentencing years on] possession and receiving [as to] what I would plead to, and then, like, two weeks, two days, or something like that after that...[the solicitor] don't (sic) want to budge...but [the solicitor] don't (sic) want to budge of nothing under ten. App. 53, l. 20 – p. 54, l. 7.

Boykin v. Alabama, 395 U.S. 268 (1964). Additionally, the coercive measures counsel used (threat of harsh sentencing to obtain petitioner's pleas) 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)), particularly since petitioner would rather have opted for a jury trial in the case. Also, but for the coercive measure used by trial counsel to secure petitioner's involuntary pleas, petitioner would probably have exercised his right to a jury trial on the charges filed against him in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of August, 2013.

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IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
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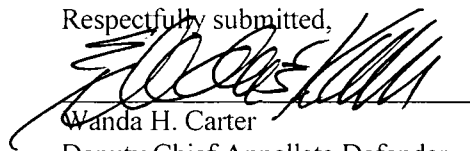
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Stanford Johnson 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 records and transcript of petitioner's post-conviction relief hearing which was held on October 7, 2011, and in her opinion, seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for John Stanford Johnson.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of August, 2013

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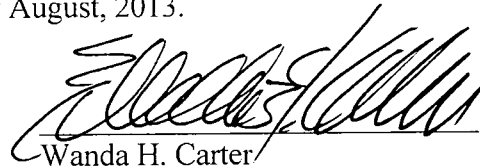
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CERTIFICATE OF SERVICE

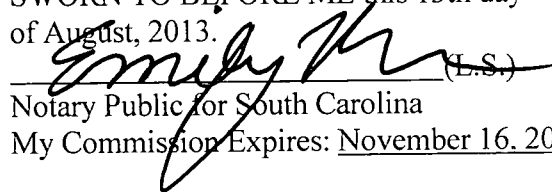
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and John Stanford Johnson, #250659, at Ridgeland Correctional Institution this, 13th day of August, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of August, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.