

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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AUG 16 2013

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Certiorari to Richland County

**S.C. Supreme Court**

L. Casey Manning, Circuit Court Judge  
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WILLIE GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 201<sup>2</sup>~~4~~-213568

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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## ISSUE PRESENTED

Trial counsel erred in advising petitioner of the possibility of receiving probation sentences in exchange for his guilty pleas because one of the offenses charged against him<sup>1</sup> required a mandatory minimum one-year prison sentence as a penalty.

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<sup>1</sup> S.C. Code Ann§16-15-20 (incest).

## STATEMENT

Petitioner Willie Green pled guilty to incest, third degree criminal sexual conduct, and two counts of second degree criminal sexual conduct with a minor during the July, 2008 term of the Richland County General Sessions Court before Judge J. Michelle Childs. Petitioner received an aggregate fifty-year sentence in the case. App. 1-80. George McElveen represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

On April 30, 2010, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 81-109. On July 23, 2010, the respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 110-113.

A PCR hearing was convened on May 23, 2012, at the Richland County Courthouse before Judge L. Casey Manning. App. 114-142. Petitioner was present at the hearing and represented by Robert Corney.

On November 19, 2012, Judge Manning issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 143-153.

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

## ARGUMENT

Trial counsel erred in advising petitioner of the possibility of receiving probation sentences in the case because one of the offenses charged against him<sup>2</sup> required a mandatory minimum one-year prison sentence as a penalty.

The solicitor summarized petitioner's case to the trial judge during the plea proceeding. The solicitor stated that petitioner committed acts of sexual misconduct with his three daughters whereinafter one daughter bore one baby and another daughter bore two babies. The DNA paternity tests showed that petitioner was the father of his daughters' babies. App. 59, l. 22-p. 62 l. 3.

During the PCR hearing held in the case, petitioner testified that counsel promised that he would receive probation sentences in exchange for his guilty pleas on the state's charges levied against him, and that he pled guilty only because he believed counsel's promise that the pleas would yield probation sentences. App. 125, l. 6-p. 127, l. 9. Petitioner stated that he would not have pled guilty if he had known that he would not have received probation sentences in the case. App. 127, l. 20-25.

Trial counsel testified at the hearing and explained that there were no plea negotiations in the case and that since the state's case against petitioner was "extremely strong," then there was "really only one course of action," i.e., that he should plead guilty as charged. App. 132, l. 6-15.

In order for a plea to be voluntarily given per Boykin v. Alabama, 395 U.S. 238 (1969), a defendant must understand the nature and the crucial elements of the charges, the consequences of the plea, and the constitutional rights waived, and that the record reflect a factual basis for the plea. Anderson v. State, 342 S.C. 54; 535 S.E. 2d 649 (2000). Here, in the case at bar, petitioner was misadvised regarding sentencing consequences. For example, per S.C. Code §16-15-20, the penalty for incest is a fine of not less than \$500.00 or imprisonment for not less than one year. Therefore, if

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<sup>2</sup> S.C. Code Ann§16-15-20 (incest).

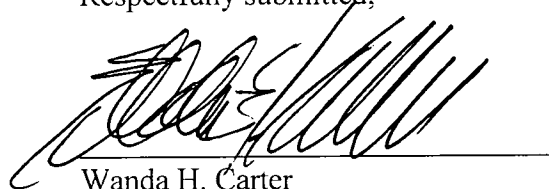
the judge did not want to fine petitioner, then petitioner would have faced a mandatory minimum sentence of one year sans any opportunity of probation under such a scenario. Nonetheless, petitioner understood counsel's advice to mean that there was a likelihood of receiving probation sentences on the charges to which he pled guilty. In order for a defendant to plead guilty, he must know all maximum and mandatory minimum sentences attached to the crimes charged against him. Pittman v. State, 537 S.C. 597; 524 S.E.2d 623 (1999). Trial counsel rendered ineffective assistance in miscounseling petitioner regarding sentencing.

Counsel's error in failing to truthfully explain sentencing consequences to petitioner constituted deficient legal representation in violation of the Sixth Amendment to the United States Constitution such that sans this error, petitioner would not have pled guilty a charged, but rather exercised his right to a trial by jury on the state's charges against him. 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 issue.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of August, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
L. CASEY MANNING, CIRCUIT COURT JUDGE

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WILLIE GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Willie Green 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 May 23, 2012. 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 Willie Green.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 16th day of August, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

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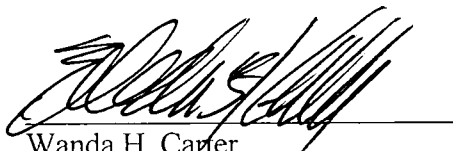
STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-213568  
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CERTIFICATE OF SERVICE  
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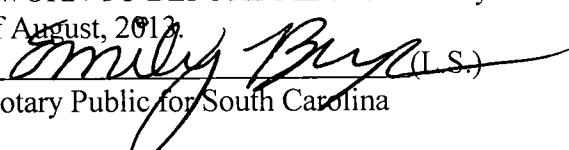
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire and Willie Green, #334538, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 16th day of August, 2013.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day  
of August, 2013.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: November 16, 2022.