

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

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DEAN SEAGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000276

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**Aug 02 2024**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Trial counsel erred in failing to convey the state's plea offer to petitioner prior to trial.

## STATEMENT

Petitioner Dean N. Seagers was found guilty of distribution of cocaine per jury trial held during the July 2015 term of the Berkeley County General Sessions Court before Judge Kristi L. Harrington. Petitioner was sentenced to life imprisonment without parole. Assistant Solicitors J. Whit Sowards and Lauren L. Mulkey prosecuted the case, and Attorney Cameron L. Marshall represented petitioner at trial. App. 1-512. Petitioner appealed, but his conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Seagers, 2017 WL 4676636 (filed June 28, 2017). The South Carolina Supreme Court granted a petition for writ of certiorari filed in the case, but ultimately dismissed the petition.

On January 28, 2020, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 514-519. The Respondent filed a Return on July 10, 2020. App. 520-529. Petitioner subsequently filed three additional PCR applications dated March 14, 2022, June 22, 2023, and August 9, 2023. App. 530-538.

A PCR hearing in the case was convened on October 19, 2023, at the Berkeley County Courthouse before Judge Maite Murphy. Attorney Elizabeth Franklin-Best represented petitioner at the PCR hearing, and Assistant Attorney General Danielle Dixon appeared on behalf of the state. App. 539-668. On February 14, 2024, Judge Murphy issued an Order of Dismissal in the case therein denying PCR relief to petitioner. App. 764-800.

Petitioner appealed Judge Murphy's Order of Dismissal in the case. This petition for Writ of Certiorari follows.

## ARGUMENT

Trial counsel erred in failing to convey the state's plea offer to petitioner prior to trial.

In the case at bar, a confidential informant (Robert Drayton) testified that on June 20, 2012, he purchased a cocaine base drug from one of three people who were located in a house, and that petitioner was one of the persons present in that house wherein the drug exchange occurred. App, 212, l. 12 – p. 222, l. 11.

During the PCR hearing held in the case, petitioner testified that he found out that a plea offer had been made prior to trial, but complained that he was not aware of this offer until after the trial ended. App. 554 lines 11-24. Trial counsel testified that he did not recall talking to petitioner about the “17-to-20-year offer that Judge Harrington was sort of suggesting that she might impose on a plea.” App. 601, l.20 - p. 602, l.1.

In Lafler v. Cooper, 132 S.Ct. 1376 (2012), the United States Supreme Court held that defendants have a Sixth Amendment right to effective assistance of counsel during the plea bargaining process. In Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), the South Carolina Supreme Court also held that the Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process. Note that State v. Judge supra, was overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000), to the extent that the applicant's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process could satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Jackson, supra, counsel was found ineffective in failing to advise the defendant that the crime he was pleading to was a felony, because but for that omission, the defendant would not have plead guilty in the case.

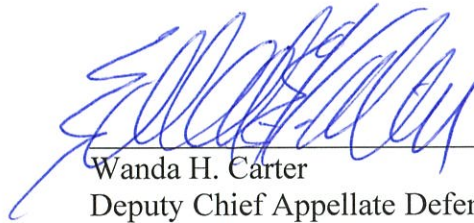
Specifically, with respect to plea offers, the Sixth Amendment right to effective assistance of counsel extends to cases where plea offers lapse, and where prejudice is shown to the extent that the defendant would have accepted the plea offer and received a more favorable conviction and/or sentence had the defendant been advised of said offer before the expiration date. See Missouri v. Frye, 132 S.Ct. 1399 (2012), where counsel did not communicate the plea offer to the defendant and as a result, the plea offer expired. Compare Davie v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009), where the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (mail snafu after counsel moved to another office) until after the plea offer had expired, and where it was likely that the defendant would have accepted that plea offer had it been communicated to him. See also Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (2014), where the Court held that counsel was ineffective in failing to extend the state's plea offer of ten years to the defendant prior to sentencing (which was when he first heard of the offer), and where the defendant was prejudiced by counsel's deficient performance as he received a greater sentence (twenty years) in the case. In Bell, the case had been transferred to counsel and there was a note in the previous attorney's file indicating that a plea offer of ten years had been made, but a review of the file revealed no notes or any indication showing that the plea offer was conveyed to the client by either counsel who represented the client.

Here, it was obvious that counsel failed to convey a plea offer of a lesser sentence (17-to-20 years versus life imprisonment) to petitioner, which probably would have been accepted by petitioner. Petitioner was prejudiced by counsel's error because he ultimately ended up with an excessive sentence in the case. Counsel's deficient performance in petitioner's case with respect

to the failure to communicate a plea off to him violated the Sixth Amendment right to competent counsel in criminal cases during the plea bargaining process. See Hill v. Lockhart 474 U.S.52 (1985). Moreover, but for counsel’s error, a reasonable likelihood existed that petitioner would have accepted the offer and received a lower sentence.

**CONCLUSION**

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



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2<sup>nd</sup> day of August, 2024.

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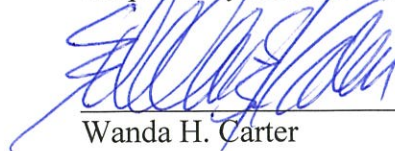
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Dean Nelson Seagers states that:

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 Maite Murphy, which was held on Oct. 19, 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 Dean Nelson Seagers.

Respectfully Submitted,



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2<sup>nd</sup> day of August, 2024.

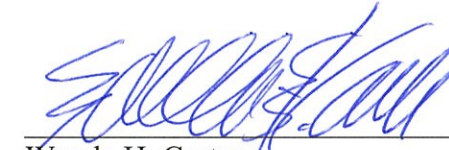
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CERTIFICATE OF COUNSEL

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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This 2nd day of August, 2024.