

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Orangeburg County
DeAndrea G. Benjamin, Circuit Court Judge

S.C. Supreme Court

PATRICK SPIGNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213349

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 into pleading guilty in order to receive lenient sentencing because this rendered his guilty pleas involuntarily given.

STATEMENT

Petitioner Patrick Spigner pled guilty to armed robbery and kidnapping during the May 2010 term of the Orangeburg County General Sessions Court before Judge Edgar Dickson. Petitioner was sentenced to imprisonment for an aggregate period of fifteen years. App. 1-15. Sara Ford represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal of his convictions and sentences.

On November 8, 2010, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 17-23. The respondent filed a return dated February 17, 2011, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 24-28.

A PCR hearing was convened on May 22, 2012, at the Orangeburg County Courthouse before Judge DeAndrea G. Benjamin. App. 29-60. Petitioner was present at the hearing and represented by Scott Palmer. On July 30, 2012, Judge Benjamin filed an order of dismissal in the case.

Petitioner appealed Judge Benjamin's order of dismissal. This petition follows.

ARGUMENT

Counsel erred in coercing petitioner into plead guilty in order to receive lenient sentencing because this rendered his guilty pleas involuntarily given.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. According to the solicitor, this case began on October 31, 2009, at 9:30 p.m. when Coy Glover was abducted by two males from his vehicle while at a car. One of the two males held a gun and was later identified as petitioner. Glover was driven in his car to a particular location and while there, the perpetrators took his wallet and cell phone, and then removed the speakers from his vehicle. Petitioner was subsequently apprehended, arrested, and charged in connection with this event. App. 7, l. 14-p. 9, l. 20.

During the PCR hearing, petitioner testified that trial counsel did not discuss defense theories, but rather kept badgering him to take the fifteen-year negotiated plea bargain in the case,¹ or face a thirty-year prison sentence. App. 38, lines 12-23. App. 39, lines 3-7. Petitioner stated that he did not want to accept the plea bargain because he wanted a trial, but pled guilty nonetheless in order to avoid a harsh sentence. App. 38, lines 15-16; App. 38, l. 18; App. 39, l. 3-5; App. 42, l. 8-25; App. 44, lines 8-16; App. 45, l. 24 - App. 46, l. 2.

Trial counsel testified at the PCR hearing and explained that the state's case against petitioner was strong and that his alibi defense was insufficient. Counsel added that the plea offer was considered in light of the co-defendant's statement and Glover's having selected petitioner's picture from a photographic-layout presented to him by police. App. 49, l. 2-p. 61, l. 10; App. 53, l. 1-p. 56 l. 1.

¹ Solicitor Sorenson stated the following to the trial judge at the plea proceeding: Before you is Patrick Spigner with his lawyer, Ms. Sara Ford. He's pleading guilty, waiving presentment and pleading on two indictments, 2010-GS-38-710 and 711, that's one count of armed robbery and one count of kidnapping, for a negotiated fifteen-year sentence. App. 3, lines 7-12.

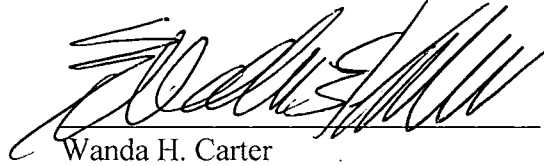
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly made. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Also, 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 alternative courses of action open to the defendant because some circumstances present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E. 2nd 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 enters a plea of guilty." See Gustine v. State, supra.

In the case at bar, petitioner desired to exercise his constitutional right to a jury trial. App. 48, line 8. Therefore, petitioner's guilty pleas were not voluntarily given within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964); and counsel's coercive measures used to coerce petitioner to plead guilty in order to obtain lenient sentencing in the case constituted ineffective assistance of legal counsel in a plea proceeding in violation of the Sixth Amendment to the United States Constitution. See also Hill v. Lockhart, 474 U.S. 52 (1985). But for the coercive measures used by counsel to gain petitioner's pleas, petitioner would probably have exercised his right to a trial by jury on the charges filed against him in the case.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of September, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ORANĠEBURG COUNTY
DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

PATRICK SPIGNER,

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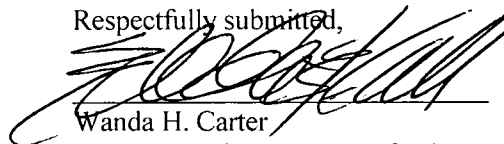
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Patrick Spigner 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 22, 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 Patrick Spigner.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of September, 2013

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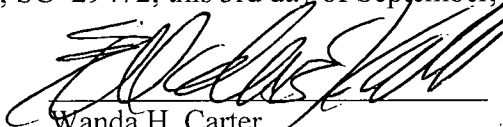
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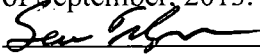
CERTIFICATE OF SERVICE

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 Patrick Spigner, #340898, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of September, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day
of September, 2013.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.