

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

TYQUEZ GYTRELL BRISBANE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000626

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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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to fully advise petitioner regarding
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ISSUE PRESENTED

Trial counsel erred in failing to fully advise petitioner regarding sentencing consequences in the case.

STATEMENT

Petitioner Tyquez Gytrell Brisbane pled guilty to voluntary manslaughter during the December 2022 term of the Greenville County General Sessions Court before Judge Alex Kinlaw, Junior. Petitioner was sentenced to imprisonment for a period of thirty years. Attorney Ryan L. Beasley represented petitioner at the guilty plea proceeding, and Assistant Solicitor Jenna H. McLeod prosecuted the case. App. 1-29. Petitioner appealed, but his case on appeal was dismissed pursuant to Rule 203, SCACR.

On May 8, 2023, petitioner filed a PCR Application with the Greenville County Office of the Clerk of Court. App. 31-37. The Respondent filed a Return dated August 30, 2023, requesting that a hearing be held in response to petitioner's PCR action. App. 38-48.

A PCR hearing was convened on January 17, 2024, at the Greenville County Courthouse before Judge R. Scott Sprouse. App. 50-91. Attorney William Yarborough represented petitioner at the PCR hearing, and Assistant Attorney General W. Joseph Maye appeared on behalf of the state.

On March 20, 2024, Judge Sprouse signed an Order of Dismissal in the case therein denying PCR relief to petitioner. App. 93-104.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to fully advise petitioner regarding sentencing consequences in the case.

At the plea proceeding, the solicitor apprised the plea judge of the facts from the case. Apparently, there was a gun sale scheduled to take place between petitioner and the deceased wherein petitioner was the seller. When the two men met, an argument ensued over the price, and the deceased refused to buy the gun. At some point during the disagreement, petitioner fired his gun upon the belief that he was in danger of being shot by gunfire. A bullet from petitioner's gun struck the deceased during the incident. App. 8, l. 11 – p. 9, l. 13; App. 65, l. 14 – p. 57, l. 5.

During the PCR hearing held in the case, petitioner testified that his understanding of counsel's sentencing advice was that he would have received a sentence twelve or fifteen years, or "no more than twenty" years, but certainly less than 30 years. App. 59, l. 17 – p. 60, l. 17; App. 72, l. 24 – p. 73, l. 3.

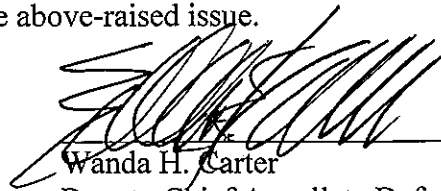
Trial counsel testified at the PCR hearing and explained that he believed that the plea judge would have issued a 15-year sentence based on mitigating factors, particularly in light of petitioner's medical health problems that were presented to the plea judge. App. 78, lines 15-18.

As a rule, a guilty plea is voluntarily and knowingly entered only if the defendant has full understanding of the sentencing consequences of his plea(s). See Dalton v. State, 376 S.C. 130, 654, S.E.2d 870 (2007), and Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), citing to Boykin v. Alabama, 395 U.S. 238 (2000). Clearly, in the case at bar, petitioner's guilty plea was given involuntarily because of his belief that he was set to receive a prison term of much less than the thirty-year sentence imposed upon him in the case. Counsel's error in failing to fully advise petitioner properly regarding sentencing consequences (to the extent that receipt of a

prison term was likely) constituted deficient legal representation in violation of the Sixth Amendment (See Hill v. Lockhart, 474 U.S.52 (1985), which meant that petitioner would have exercised his right to a jury trial but for counsel's error in the case.

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.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of November, 2024.

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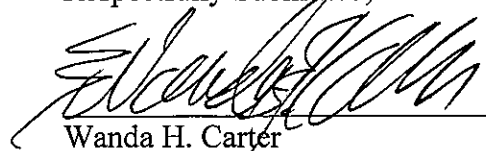
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyquez Gytrell Brisbane 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 record of petitioner’s post-conviction relief hearing before Judge R. Scott Sprouse, which was held on Jan. 17, 2024, 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 Tyquez Gytrell Brisbane.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of November, 2024.

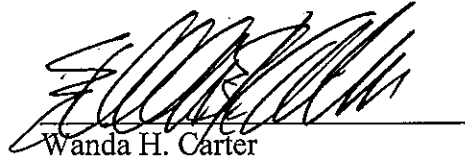
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CERTIFICATE OF COUNSEL

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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