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Mar 17 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Grace Gilchrist Knie, Circuit Court Judge

WALLACE DEMERY, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001677

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to explain sentencing consequences to petitioner and in neglecting to advise petitioner regarding all rights waived upon entering a guilty plea in the case.

STATEMENT

Petitioner Wallace Demery, Jr., pled guilty to voluntary manslaughter during the August 2022 term of the Clarendon County General Sessions Court before Judge Kristi F. Curtis and was sentenced to imprisonment for a period of twenty years. App. 1-33. J. David Weeks, Esquire, represented petitioner at the guilty plea proceeding, and Solicitor Ernest A. Finney appeared on behalf of the state. Petitioner did not appeal his guilty plea or sentence.

On June 8, 2023, petitioner filed a PCR application with the Clarendon County Office of the Clerk of Court. App. 35-44. The respondent filed a return dated September 19, 2023. App. 45-56.

A PCR hearing in the case was convened on July 23, 2024, at the Clarendon County Courthouse before Judge Grace Gilchrist Knie. App. 58-96. Petitioner was present at the PCR hearing and represented by Attorney Timothy L. Griffith, and Assistant Attorney General T. Cruise Mitchell appeared on behalf of the state.

On September 12, 2024, Judge Knie issued an Order of Dismissal therein denying PCR relief to petitioner after reviewing the allegations of ineffective assistance of counsel in the case. App. 98-111.

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

ARGUMENT

Trial counsel erred in failing to explain sentencing consequences to petitioner and in neglecting to advise petitioner regarding all rights waived upon entering a guilty plea in the case.

The solicitor apprised the plea judge of the facts in the case at the guilty plea proceeding. Apparently, witnesses saw petitioner arrive at a truck wash facility whereinafter he and Jeffrey Ceasar became engaged in an encounter. Ultimately, Ceasar died from a beating imposed upon him with a metal object said to have been in petitioner's possession. Petitioner claimed that he responded in self-defense after Ceasar began choking him. App. 12, l.15 - p. 19, l.12.

During the PCR hearing held in the case, petitioner testified that counsel informed him that if he pled guilty, then his sentence would end up being "zero to five," which would ultimately end up being a two-year prison term. App. 69, l. 13 – p. 70, l. 7. Petitioner's wife testified at the PCR hearing and confirmed petitioner's recollection that a "zero-to-five-year" prison sentence was the advice counsel gave regarding the penalty outcome in the case. App. 78. l. 7 – p. 79, l. 15. Petitioner was sentenced to imprisonment for a period of twenty years.

Trial counsel testified at the PCR hearing and explained that petitioner was faced with a life sentence on the offense of murder charged against him, and that he advised that less time would result if he pled to the lesser offense of voluntary manslaughter. Counsel added that he did not advise petitioner that a "zero-to-six" prison sentence would be handed down in the case. App. 85, l. 24 – p. 86, l. 14; App. 88, lines 18-21; App. 89, lines 6-9.

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

not given voluntarily because he was unaware of the sentencing consequences in the case. Counsel's error in failing to fully advise petitioner properly regarding sentencing consequences constituted deficient legal representation in petitioner's case in violation of the Sixth Amendment (See Hill v. Lockhart, 474 U.S.52 (1985)), such that but for counsel's ineffectiveness in this regard, petitioner likely would not have pled guilty in the case.

In addition, petitioner testified that counsel did not explain the rights he waived upon entering his guilty plea. App. 73, lines 7-23 A defendant who pleads guilty simultaneously waives several constitutional rights, including the privilege against self-incrimination, the right to a trial by jury, and the right to confront his accusers. State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), citing to Boykin v. Alabama, 395 U.S. 238 (1969). Also, a guilty plea waives one's right to cross-examine the state's accusers in a case. California v. Green, 399 U.S. 149 (1970).

More specifically, in Boykin v. Alabama, 395 U.S. 238 (1969), the Court address the waivers connected to guilty plea as follows:

Several federal constitutional rights are involved in a waiver that takes place when plea of guilty is entered in state criminal trial: first is privilege granted against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to states by reason of Fourteenth, second is right to trial by jury, and third is right to confront one's accusers; [and] a waiver of these three important federal rights cannot be presumed from a silent record. U.S.C.A. Const. Amends. 5, 14.

In the case at bar, the record established that appellant's pleas were not given voluntarily because he was unaware of the right waived upon entering his guilty plea.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of March, 2025.

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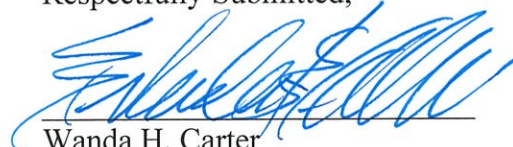
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Wallace Demery 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 Grace Gilchrist Knie, which was held on July 23, 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 Wallace Demery.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of March, 2025.