

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jun 05 2025

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

JOSHUA WINCHESTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000327

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to explain to petitioner that the negotiated sentence reached in exchange for his guilty pleas would operate as a sentence that was separate and distinct from the probation revocation sentence as both legal matters were combined into one proceeding in the case.3

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ISSUE PRESENTED

Trial counsel erred in failing to explain to petitioner that the negotiated sentence reached in exchange for his guilty pleas would operate as a sentence that was separate and distinct from the probation revocation sentence as both legal matters were combined into one proceeding in the case.

STATEMENT

Petitioner Joshua R. Winchester pled guilty to possession of a weapon during the commission of a violent crime, possession of a schedule III drug (Buprenorphine/Naloxine), and two counts of trafficking in methamphetamine (28-100 grams) during the January 2023 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Petitioner was sentenced to imprisonment for an aggregate period of fifteen years. In addition, petitioner's prior probation sentence was revoked¹ by thirty months and the balance terminated. App. 1-36. James Zachary Farr, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Lindsey Heger appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On February 15, 2023, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 38-44. The respondent filed a Return dated June 25, 2024. App. 45-56.

A PCR hearing in the case was convened on September 3, 2024, at the Spartanburg County Courthouse before Judge R. Lawton McIntosh. App. 58-83. Petitioner was present at the PCR hearing and represented by Attorney Susannah C. Ross and Assistant Attorney General Shayla Flores appeared on behalf of the state.

On December 13, 2024, Judge McIntosh issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 86-107.

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

¹ Petitioner was previously convicted of possession with intent to distribute methamphetamine (second offense) during February 2020, and sentenced to ten years, suspended upon the service of two years and five years probation.

ARGUMENT

Trial counsel erred in failing to explain to petitioner that the negotiated sentence reached in exchange for his guilty pleas would operate as a sentence that was separate and distinct from the probation revocation sentence as both legal matters were combined into one proceeding in the case.

A routine home detention police check at petitioner's residence on June 14, 2021, resulted in the discovery of drugs located therein. Also, petitioner was detained per a search warrant executed on September 16, 2021, at a local motel where drugs were found inside the targeted room. Petitioner pled guilty to several charges that arose from these two incidents. App. 21, l. 6 – p. 23, l. 25.

During the PCR hearing held in the case, petitioner testified that he “[made] the plea for ...fifteen years...[and that he] was under the impression that that’s what [he was] going to court for (i.e. a fifteen-year sentence) and...was gonna (sic) get exactly that,” and that this was “exactly why [he] signed that plea.” App. 64, lines 14-25; App. 69, lines 22-24; App 70, l. 13 – p. 71, l. 3.

Petitioner received the negotiated fifteen-year sentence after he pled guilty to the weapon and drug offenses, but subsequently received an additional sentence of thirty months to run consecutively per his probation revocation that immediately followed the plea proceeding. App. 35, l. 23 - p. 36, l.17. Thus, petitioner's aggregate sentence was greater than the fifteen-year agreed upon plea bargain sentence negotiated with respect to the adjudication of his guilty pleas.

Trial counsel testified at the PCR hearing and explained that the plea judge stated that petitioner's sentence would total fifteen-years. App. 78, l. 5 – p.79, l. 7; App. 82, lines 1-15.

Clearly, trial counsel failed to advise petitioner that the fifteen-year agreed upon guilty plea bargain sentence would be a sentence that was independent of the probation violation adjudication sentence; and that as a result, his aggregate sentence might exceed the fifteen-year guilty plea sentencing settlement reached in the case. Here, the agreed upon fifteen-year prison sentence handed down at the guilty plea proceeding was lengthened by the additional 30-month sentence ordered to run consecutively pursuant to the probation revocation that occurred simultaneously in the case.

PCR counsel's summary in the matter follows:

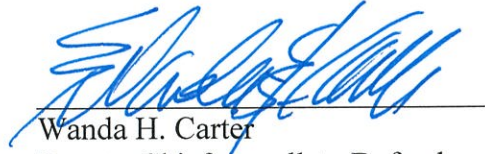
PCR Counsel: Judge, only the—just this situation is, is so hard for someone to go in with a negotiated plea and feel they were gonna (sic) get a negotiated sentence and that was the only reason he pled and that, that failed to occur and, and counsel didn't make any objection to that contemporaneously when it was happening.

App. 83, lines 5-10.

As a rule, a guilty plea is voluntarily and knowingly entered only if the defendant has a 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). Therefore, petitioner's guilty pleas were not given voluntarily because he knew not that the negotiated fifteen-year sentence attached to his guilty pleas might have increased due to the second sentence that would materialize via the probation violation adjudication that occurred simultaneously as an additional action 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 might not have pled guilty as charged 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 5th day of June, 2025.

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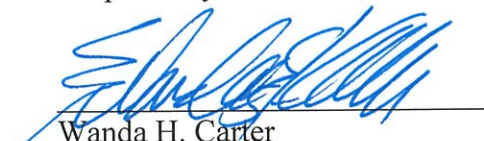
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Winchester 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. Lawton McIntosh, which was held on Sept. 2, 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 Joshua Winchester.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2025.

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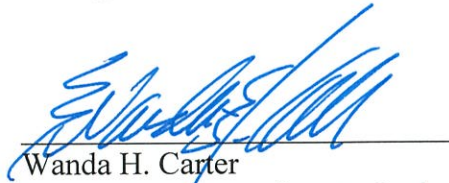
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CERTIFICATE OF COUNSEL

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 5th day of June, 2025.