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Aug 08 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable J. Derham Cole, Circuit Court Judge

BEN REED, IV,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000045

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Interim 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 failing to advise petitioner on the state's plea offer in the case because said offer would have resulted in the receipt of a lesser sentence of seven years rather than the seventeen-year sentence handed down to him per the jury trial held in the case.

STATEMENT OF FACTS

Petitioner Ben Reed IV was convicted of first degree burglary and second degree burglary pursuant to a jury trial held at the February 2019 term of the Beaufort County General Sessions Court before Judge Robert E. Hood. App. 1-426. Petitioner received an aggregate prison sentence of seventeen years on his burglary convictions. Attorney Jeffrey Stephens represented petitioner at trial and Assistant Solicitors Leigh Staggs and Jacob McFadden prosecuted the case.

Petitioner appealed and was represented on appeal by former Appellate Defender Adam Sincliar Ruffin of the South Carolina Commission on Indigent Defense (Appellate Division). On September 15, 2021, the South Carolina Court of Appeals dismissed the case. See State v. Reed, Unpublished Op. No. 2021-UP-327 (S.C.Ct. App. Filed September 15, 2021).

On November 12 2021, petitioner filed a PCR application with the Beaufort County Office of the Clerk of Court. App.428-442. The respondent filed a Return on October 18, 2022. App.443-456. An Amended PCR application was filed on January 5, 2023. App. 457-459.

A PCR hearing into the matter was convened on May 8, 2024, at the Beaufort County Courthouse before Judge J.D. Cole. App. 460-488. Petitioner was present at the PCR hearing and represented by Michael Lifsey, Esquire, and Assistant Attorney General Daniel Dixon appeared on behalf of the state.

On December 31, 2024, Judge Cole filed an Order of Dismissal in the case denying petitioner's allegations of ineffective assistance of trial counsel. App. 490-499. Petitioner appealed Judge Cole's Order. This petition follows.

ARGUMENT

Trial counsel erred in failing to advise petitioner on the state's plea offer in the case because said offer would have resulted in the receipt of a lesser sentence of seven years rather than the seventeen-year sentence handed down to him per the jury trial held in the case.

At trial, Officer Joel Blackwell testified that he was dispatched to a reported burglary in progress at a residence in Beaufort County on November 17, 2017, and that petitioner was found inside the home upon his arrival at the scene. Petitioner was arrested at that time and later confessed. App. 128, 1.3-p. 142, 1.23; App. 101, 1.8-p. 185, 1.15. Also, petitioner was charged with burglary at the same residence that occurred on an earlier date (November 7, 2017). Petitioner went to trial on two first degree burglary charges and was found guilty on one count of first degree burglary and one count of second degree burglary. An aggregate seventeen-year sentence was handed down in the case.

During the PCR hearing held in the case, petitioner testified that the solicitor presented a seven-year plea offer, suspended to a YOA sentence, which he (petitioner) agreed to accept, but was not properly advised by counsel regarding that offer. Said offer was later withdrawn. Apparently, counsel was not apprised of the particulars of the case when the first offer was made, and later when there was a change in prosecutors on the case, the offer was never resurrected. Ultimately, the original prosecutor returned to the case, but by then the first offer in question had long been tabled. App. 464, lines 15-22. Petitioner explained that he wanted to accept the original plea offer. App.469, lines 7-9. Petitioner added that a second offer of twelve years was presented to him, which he refused; and that the third offer of fifteen years was presented to him, which he refused also. App. PCR 468, 1.11 - p. 469, 1.6. In the end, petitioner opted for a jury

trial and received an aggregate seventeen-year sentence after he was convicted on the burglary charges.

Trial counsel testified at the hearing and stated that he did not have the discovery materials in the case when the first seven-year plea offer was presented, which in effect reduced his ability to advise petitioner on whether to accept or reject the seven-year plea offer presented by the state in the case. App. 475, 1.4 - p.476, 1.18; App. 479, 1.20 - p. 480, 1.4 - 482. 23, 1.9 - p. 483, 1.21. Counsel explained as follows:

Q: The first offer you...said it was revoked before you had an opportunity to accept it; is that correct?

A: It was withdrawn. App. 484, lines 2-7.

Here, counsel's inability to offer guidance to petitioner on accepting the first plea offer because he was not well versed on the details of the case at that time constituted ineffective assistance of counsel in violation of the Sixth Amendment (See Hill v. Lockhart, 466 U.S. 668 (1984)), because petitioner had a right to effective assistance of counsel during the plea bargaining process.

In Lafler v. Cooper, 132 S.Ct. 1376 (2012). In Lafler v. Cooper, *supra*, the Supreme Court held that counsel was ineffective in advising the defendant to reject a plea offer. Lafler was charged under Michigan law with assault with intent to murder and three other offenses and the prosecution offered to dismiss two of the charges, and to recommend a 51-to-85-month sentence on the other two in exchange for a guilty plea; and Lafler expressed a willingness to accept the offer, but rejected the offer per his attorney's advice on the ground that the prosecution would be unable to establish intent to murder because the victim had been shot below the waist. Ultimately, Lafler was convicted on all counts at trial and received a mandatory minimum 185-to-360-month sentence. The rule regarding competent counsel during the plea bargaining process

applies in South Carolina as well. See Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), where the Court held that the Sixth Amendment protects defendants against ineffective assistance of counsel during the plea bargaining process. State v. Judge, supra, was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Judge, the issue was whether counsel was ineffective in advising the defendant to reject a plea offer and opt for a trial by jury. In Jackson, supra, the Court held that counsel was ineffective in failing to advise the defendant that the crime he was pleading to was a felony and that but for that omission, the defendant would not have plead guilty in his case.

An appellate court can review issues of ineffective assistance of counsel in cases where counsel offers advice regarding what action to take on plea offers. Hyman v. State, 397 S.C. 35, 723 S.E.2d 375 (2012). In Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010), the Court found trial counsel ineffective in advising the defendant to reject the state's initial plea offer of a 10-year sentence suspended upon five years and three years probation where the defendant faced 7 to 25 years. Compare Stalk v. State¹ where the issue was whether counsel was effective in advising a defendant to accept the state's plea deal without doing any investigation or preparation into matters of defense in the case. However, ultimately, the Stalk Court found that counsel's advice would have remained the same even if he had conducted proper pre-trial investigations in the case.

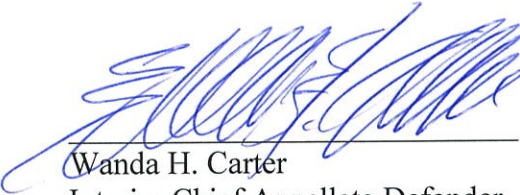
Here, counsel's representation was deficient because he was unprepared and unable to advise petitioner on the benefit of accepting the first plea offer in order to receive a more favorable

¹ Stalk v. State, 375 S.C. 289, 652 S.E.2d 402 (2007); affirmed as modified at 383 S.C. 559, 681 S.E.2d 592 (2009).

sentencing outcome as opposed to gambling on sentencing results via the outcome of a trial. This was ineffective assistance of counsel in violation of the Sixth Amendment and Hill v. Lockhart, supra. Petitioner was prejudiced per his receipt of a greater prison term at sentencing via the result of a trial as opposed to the receipt of lesser sentence per acceptance of the first plea offer 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
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of August, 2025.

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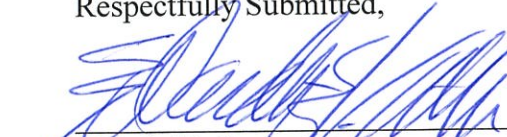
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ben Reed, IV states that:

1. She is Interim 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 J. Derham Cole, which was held on May 8, 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 Ben Reed, IV.

Respectfully Submitted,



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of August, 2025.

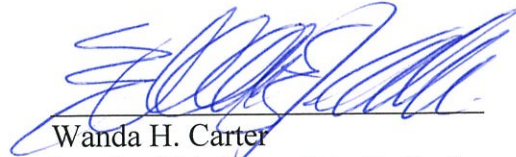
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CERTIFICATE OF COUNSEL

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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