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Sep 26 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Daniel D. Hall, Circuit Court Judge

PHILIP WESLEY WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000328

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Interim 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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ISSUE PRESENTED

Trial counsel erred in advising petitioner to reject a plea offer on the expectation that the state would reduce the armed robbery charge to the lesser offense of robbery because the case ended with a greater sentence handed down by the trial judge.

STATEMENT

Petitioner Philip Wesley Walker was convicted of armed robbery and possession of a weapon during the commission of a violent crime during the December 2016 term of the Anderson County General Sessions Court before Judge Lawton McIntosh and was sentenced to an aggregate twenty-year term of imprisonment. App. 1-199. William G. Yarborough, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitors Catherine T. Huey and William E. Stolarski appeared on behalf of the state. Petitioner appealed his convictions and sentences, but his case was affirmed on appeal. See State v. Walker, Op. No. 2020-UP-2906 (S.C. Ct. App. Filed Oct. 14, 2020).

On October 4, 2021, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court. App.200 - 207. The respondent filed a Return on November 13, 2022. App. 208-220.

A PCR hearing in the case was convened on August 21, 2023, at the Anderson County Courthouse before Judge Daniel D. Hall. App. 221-304. Petitioner was present and represented by Attorney Sussanah Ross, and Assistant Attorney General Donald Zelenka appeared on behalf of the state.

On February 13, 2025, Judge Hall issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 313-345. Petitioner appealed Judge Hall's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in advising petitioner to reject a plea offer on the expectation that the state would reduce the armed robbery charge to the lesser offense of robbery because the case ended with a greater sentence handed down by the trial judge.

At trial, Natasha Oliver testified that she was working as a cashier at a Family Dollar store in Anderson, South Carolina, when a male approached her at the register, asked about cigarettes, and then pointed a gun and ordered her to give him money from her register. The man (petitioner) fled with the money and was arrested shortly thereafter. App. 37, 4 – p. 44, l. 25.

During the PCR hearing held in the case, petitioner testified that he received a ten-year plea offer from the state in his case, but that the offer was not accepted because trial counsel advised of a strategy to negotiate and have the armed robbery charge lowered to a robbery charge in the case. App. 259, l. 2 – p. 261, l.1. Petitioner added that the gun used during the incident was not operable. App. 261, lines 6-20. Petitioner’s father (Philip Walker, Sr.) testified at the PCR hearing and explained that the ten-year offer was communicated to petitioner, but that trial counsel advised him to “wait” and “not take that [offer]” because the charge would be reduced in the case. App. 265, l.6 – p. 266, l.10.

Assistant Solicitor Catherine Huey, who prosecuted the case, testified at the PCR hearing and recalled that the plea offer extended was a fifteen-year plea bargain along with a rejection on the request to reduce the charge to robbery as a lesser offense of armed robbery. App. 281, l. 17 – p. 283, l. 14. Trial counsel testified at the PCR hearing and stated that the gun used was old, and that he tried to get the solicitor to agree to the lesser offense of robbery even though the “facts fit” the offense of armed robbery. Trial counsel added that petitioner did not want to

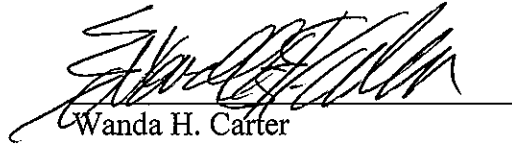
accept the plea offer because he (petitioner) believed that this was not an armed robbery case. App. 295, l. 2 – p. 296, l.12.

When a person perpetrates a robbery by brandishing an instrument which appears to be a firearm, then the law will presume the instrument to be (absent evidence to the contrary) what his conduct represented it to be, i.e., a firearm. State v. Tasco, 292 S.C. 270, 356 S.E.2d 117 (1987). In State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996), the Court held that a BB gun used in a robbery was considered to produce great bodily harm. S.C. Code Ann. §16-11-330 states that one who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor or other deadly weapon or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of armed robbery. Therefore, no matter how old and inoperable the gun used by petitioner was or appeared to be, nonetheless, the case qualified factually as an armed robbery case, which meant that counsel erred in failing to advise petitioner to accept a ten year (or fifteen year) plea offer when the facts in the case suggested considerable strength in favor of the state's case.

Here, counsel's representation was deficient because he failed to advise petitioner on the benefit of accepting the plea offer in order to receive a more favorable, i.e., lesser sentencing outcome, as opposed to gambling on sentencing results via the outcome of a trial and the promise of a conviction on a lesser charge. This was ineffective assistance of counsel in violation of the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985). Petitioner was prejudiced to the extent that he received a greater prison term at sentencing via the result of a trial as opposed to what would have been a lesser sentence had he accepted the 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.

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

Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of September, 2025.

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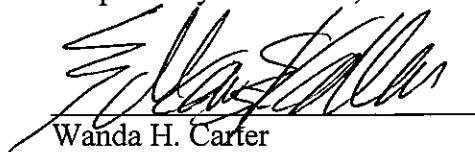
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Philip Wesley Walker 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 Daniel D. Hall, which was held on August 21, 2023, 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 Philip Wesley Walker.

Respectfully Submitted,



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of September, 2025.

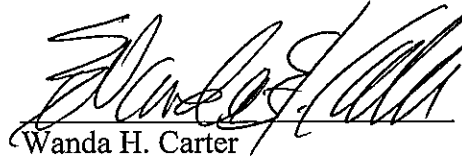
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CERTIFICATE OF COUNSEL

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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This 26th day of September, 2025.