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**Jan 28 2026**

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

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TELLY MCCLAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001993

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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 object to LWOP sentencing in the case because there was insufficient proof that actual LWOP notice was properly issued prior to trial, and where there was prejudice as the notice matter negatively impacted decisions regarding plea negotiations.

## STATEMENT

Petitioner Telly Darnell McClam was convicted of first degree burglary, possession of a firearm during the commission of a violent crime, unlawful possession of a firearm by a felon, two counts of kidnapping, and two counts first degree criminal sexual conduct during the February 2016 term of the Berkeley County General Sessions Court before Judge Deadra Jefferson. Attorneys David Schwacke and Deborah Littlejohn represented petitioner at trial, and Assistant Solicitors Anne Williams and Daniel Poulos prosecuted the case. App. 1-716. Petitioner was sentenced to imprisonment for a period of life without parole. Petitioner appealed, but his case was affirmed. See State v. McClam, Unpublished Op. No. 2019-UP-088 (S.C. filed February 20, 2019).

On February 20, 2020, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 718-726. The respondent filed a Return on February 21, 2022. App. 727-732. On March 9, 2022, petitioner filed an Amended PCR Application. App. 733-736.

A PCR hearing was convened on March 10, 2022, at the Berkeley County Courthouse before Judge R. Markley Dennis, Junior. Attorney William G. Yarborough represented petitioner at the PCR hearing, and Assistant Attorney General Samantha J. Weidauer appeared on behalf of the state. App. 737-798. No disposition followed from that hearing.

On September 9, 2024, a PCR hearing was convened in the case at the Berkeley County Courthouse before Judge Michael G. Nettles. Attorney William G. Yarborough represented petitioner at the hearing, and Assistant Attorney General Danielle Dixon appeared on behalf of the state. App. 799-835.

On October 14, 2024, Judge Nettles issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 841-855. Petitioner filed a Rule

59(e) Motion on October 29, 2024, which was denied on November 20, 2024, per Order issued by Judge Nettles. App. 856-860. Petitioner appealed. This petition follows.

**ARGUMENT**

Trial counsel erred in failing to object to LWOP sentencing in the case because there was insufficient proof that actual LWOP notice was properly issued prior to trial, and where there was prejudice as the notice matter negatively impacted decisions regarding plea negotiations.

Petitioner challenged the legality of his LWOP sentence due to improper notice. The LWOP rule as interpreted under S.C. Code Ann. 17-25-45 (H) is that there must be a ten-day notice requirement regarding an intent to seek LWOP sentencing. Hanis v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), citing to James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007). In James, the Court rejected the argument that the client’s non-receipt of written LWOP notice resulted in non-compliance under the statute because counsel and client were aware of the pending intent to seek LWOP sentencing prior to trial since counsel received written receipt of LWOP in satisfaction of the actual notice requirement. In James, the state provided counsel with LWOP notice six months prior to trial and counsel indicated that the defense “had notice” before trial. The recidivist statute notice provision under S.C. Ann. 17-25-45(H) follows:

Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and the defendant’s counsel not less than ten days before trial.

In the case at bar, trial counsel received service of the state’s LWOP notice on January 5, 2016. Petitioner’s trial began on February 29, 2016. However, during the PCR hearing held in the case, it became clear that there was no definitive date establishing a timeline as to when trial counsel actually received a communication regarding the state’s LWOP sentencing intent in the case. App. 832, l. 2 – p. 834, l. 10.

Trial counsel testified at the hearing and stated that he received service of LWOP upon him, and that he (trial counsel) signed off on it, and informed petitioner that he was subject to LWOP sentencing in his case. App. 828, l. 19 – p. 831, l. 12.

Petitioner testified at the hearing and stated that he neither signed nor witnessed any LWOP notice, and that he was unaware at the time of trial whether the state was seeking LWOP sentencing against him. App. 807, l. 22 – p. 811, l. 5; App. 811, l. 20 – p. 812, l. 10; App. 814, lines 4-7. In addition, petitioner testified that he was unaware of the 15-to-25-year plea offer directly from trial counsel, and that it was not until the end of the trial that he became aware of any offer, which he could neither accept nor reject under the circumstances. App. 811, lines 8-19; App. 812, lines 20-25; App. 814, l. 8 – p. 815, l. 2; App. 816, lines 3-10.

In the case at bar, there is no record or evidence otherwise proving that petitioner received actual notice of LWOP in a timely and proper manner prior to trial. Also, there is no evidence with respect to the point in time in which counsel advised petitioner of LWOP. The record loosely reflects that petitioner was informed regarding LWOP, but note that petitioner testified that he was not aware of the fact that he faced LWOP sentencing when he appeared at the courthouse for trial. App. 812, lines 1-3.

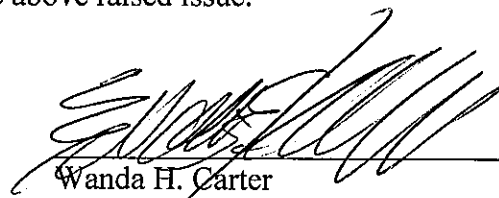
Therefore, there was no compliance with the LWOP statute as analyzed per James in petitioner's case as there was no evidentiary proof or showing that actual LWOP notice was given to counsel as required or proof that petitioner received actual LWOP notice.

Additionally, prejudice resulted because had petitioner received actual LWOP notice, then the matter of the plea offer in case would have taken on new meanings, particularly since it presented significant lesser sentencing exposure. Thus, but for trial counsel's error in the mishandling the LWOP notice matter, a reasonable likelihood exists that the sentencing aspect of

petitioner's case would have ended differently. Trial counsel's error in this regard constituted deficient representation in violation of the Sixth Amendment. See Strickland v. Washington, 466 U.S.668 (1984).

**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  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of January, 2026.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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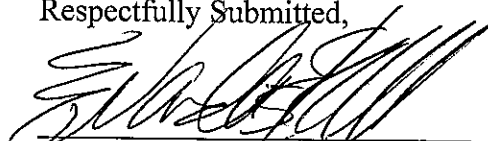
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Counsel for Telly Darnell McClam states:

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 Michael G. Nettles, which was held on MARCH 10, 2022 & Sept. 9, 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 Telly Darnell McClam.

Respectfully Submitted,



Wanda H. Carter  
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of January, 2026.

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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 28th day of January, 2026.