

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

Lee S. Alford, Circuit Court Judge

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DEC - 6 2013

**S.C. Supreme Court**

TED COIT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000744

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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 advising petitioner to plead guilty since his co-defendant would have implicated him as a perpetrator in connection with the crimes charged against him in the event of a trial because counsel neglected the duty to investigate into the sufficiency of the state's evidence in its entirety and assess whether petitioner's acceptance the state's plea offer<sup>1</sup> was the better alternative in the case.

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<sup>1</sup> In exchange for petitioner's guilty pleas, the state agreed to a negotiated fifteen-year sentencing cap (with no parole) and the dismissal of the remaining twenty-two offenses charged against him. App. 23, lines 3-20.

## STATEMENT

Petitioner Ted Lester Coit plead guilty to attempted first degree burglary, possession of a stolen vehicle, and two counts of grand larceny, both of which were classified as 3<sup>rd</sup> or subsequent property crimes, on March 25, 2011, at the York County General Sessions Court before Judge John C. Hayes, III. App. 1-19. On March 28, 2011, petitioner was sentenced by Judge Hayes to an aggregate fifteen-year prison term. App. 21-24. Daniel Sample represented petitioner at the plea proceeding and sentencing proceeding. Petitioner did not enjoy the benefit of direct appeal of his convictions and sentences.

On November 14, 2011, petitioner filed a PCR application with the York County Office of the Clerk of Court. App. 26-32. The respondent filed a return dated March 19, 2012, requesting that a hearing be held in the case. A PCR hearing was convened on February 6, 2013, at the York County Courthouse before Judge Lee S. Alford. App 40-78. Petitioner was present at the hearing and represented by Leah Moody. On March 13, 2013, Judge Alford issued an order of dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 80-88.

Petitioner appealed Judge Alford's Order of Dismissal filed in the case. This petition for writ of certiorari follows.

## ARGUMENT

Trial counsel erred in advising petitioner to plead guilty since his co-defendant would have implicated him as a perpetrator in connection with the crimes charged against him in the event of a trial because counsel neglected the duty to investigate into the sufficiency of the state's evidence in its entirety and assess whether petitioner's acceptance of the state's plea offer<sup>2</sup> was the better alternative in the case.

During the PCR hearing, petitioner testified that counsel failed to investigate into his case and that he wanted a trial, but pled guilty after counsel advised that he “would probably lose because John Hurt, who was a co-defendant, would testify against him if he opted for a trial and “make [him] look bad.” App. 46, l. 1; App. 49, l.5-p. 50, l.1; App. 49, l. 5-p. 52, l. 7; App. 53, l. 17-p. 54, l.1; App. 54, l. 15-19; App. 60, l. 2-8; App. 60, l. 20-22. Petitioner explained his position further as follows:

PCR Counsel: I mean – you ended up pleading. What else, if anything, did you discuss that led you to plead?

Petitioner: Okay. My whole intention, I wasn't going to plead, but being that he told me that my co-defendant had done pled to the charges and that it would make me look bad if I went to trial, being that, you know, he's my co-defendant and whatnot, that I would –I would probably lose.

PCR Counsel: Well, why weren't you going to plead?

Petitioner: I was wanting to go to trial. I felt that the charges at the time I was going to trial on – was supposed to go to trial on that I wasn't guilty of. App. 49, l. 16 – p. 50, l.1.

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<sup>2</sup> In exchange for petitioner's guilty pleas, the state agreed to a negotiated fifteen-year sentencing cap (with no parole) and the dismissal of the remaining twenty-two offenses charged against him. App. 23, lines 3-20.

Trial counsel testified at the PCR hearing and admitted that he did not investigate into the case because the co-defendant's testimony would have made petitioner's case impossible to win.

App. 76, lines 3-6. Counsel's testimony regarding this matter follows:

PCR Counsel: Now, as far as the recovery materials, you said it was voluminous. I believe you stated it was about a hundred pages?

Defense Counsel: It was more than that, sure.

PCR Counsel: And did you have the opportunity to go through that discovery yourself before you talked to [petitioner]?

Defense Counsel: Yes.

PCR Counsel: And did you do any other investigation?

Defense Counsel: As far as specifically go out and talk to anybody in the field or anything, no, I did not.

PCR Counsel: And why is that?

Defense Counsel: It wasn't really necessary. In talking to [petitioner] and getting his version of events, there wasn't anybody to go talk to.

App. 76, l. 3 – 16.

The PCR Judge ruled that petitioner failed to meet his burden of proving that trial counsel's performance was deficient and that he was prejudiced as a result because counsel discussed with petitioner the likelihood of losing at trial and went to secure a negotiated sentencing cap of fifteen years in exchange for his guilty pleas in the case.

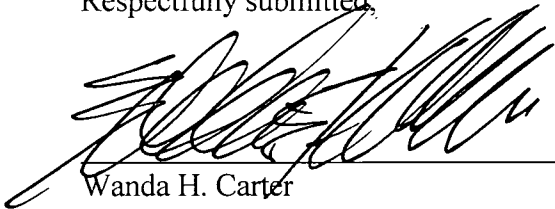
Counsel has a duty to conduct reasonable investigations in criminal cases. Strickland v. Washington, 466 U.S. 668 (1984). Here, trial counsel chose to rely only on one factor in the state's case, which was the co-defendant's damaging testimony, without any concern for the remainder of the state's evidence in its entirety or the strengths of possible defenses available to petitioner. This meant that counsel was unprepared to properly advise petitioner as to whether the acceptance of the

state's plea offer was the better alternative for him. A guilty plea must not only be voluntary in nature under Boykin v. Alabama, 395 U.S. 238 (1968), but be a voluntary and intelligent choice among alternative courses of actions. See Hill v. Lockhart 474 U.S. 521 (1985). Advising petitioner to accept the state's plea offer solely on the basis of what the co-defendant's testimony would have been without any assessment of the totality of the state's evidence constituted deficient legal representation because petitioner was deprived of making an informed decision on all options available to him in the case and pled guilty unintelligently because he was uninformed. Therefore, trial counsel's representation in this case was well below the standard of competence required of criminal attorneys, which in turn violated the Sixth Amendment's guarantee to effective legal representation in criminal cases. But for counsel's error in this regard, a reasonable probability exists that petitioner would not have pled guilty, but rather exercised his right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, counsel requests that this Court grant the petition and allow full briefing on the issue raised in the case.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6<sup>th</sup> day of December, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY  
LEE S. ALFORD, CIRCUIT COURT JUDGE

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TED COIT,

PETITIONER,

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PETITION TO BE RELIEVED AS COUNSEL

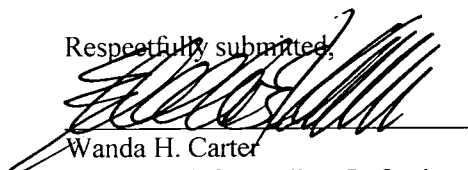
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Counsel for Ted Coit states:

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 records and transcript of petitioner's post-conviction relief hearing which was held on February 6, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Ted Coit.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of December, 2013

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IN THE SUPREME COURT

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Certiorari to York County  
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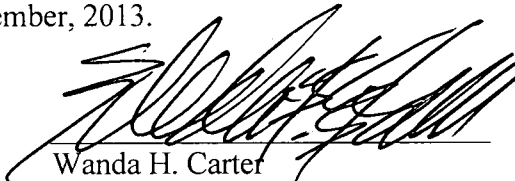
APPELLATE CASE NO. 2013-000744

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CERTIFICATE OF SERVICE

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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ted Coit, #297345, at Broad River Correctional Institution this 6th day of December, 2013.

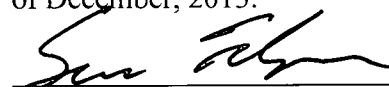


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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of December, 2013.



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(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.