

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

R. Knox McMahon, Circuit Court Judge  
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**RECEIVED**

DEC 12 2013

**S.C. Supreme Court**

WILLIAM H. WARNER, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in ruling on petitioner's allegation that trial counsel erred in failing to advise him that a drug conviction would result in a suspended driver's license as the issue was not completely addressed because trial counsel, who was not present at the PCR hearing, did not testify in reference to this issue; and therefore, another PCR hearing must be held per Sharper v. State<sup>1</sup> in order to resolve this question in the case.

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<sup>1</sup> Sharper v. State, 279 S.C. 264, 305 S.E. 2<sup>nd</sup> 626 (1977)

## STATEMENT

Petitioner William H. Warner, Jr. pled guilty to possession of marijuana (over one ounce) on April 28, 2011, at a Richland County Magistrate's Court before Judge Benjamin Byrd. Petitioner was sentenced to six months imprisonment/fined \$300.00. Mark Sawyer represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

On August 23, 2011, petitioner filed a PCR application in the Richland County Office of the Clerk of Court. App. 1-7. The respondent filed a return on July 2, 2013, requesting that a PCR hearing be held in the case. App. 9-15.

A PCR hearing was convened on August 17, 2012, at the Richland County Courthouse before Judge R. Knox McMahon. App. 18-32. Petitioner was present at the hearing and represented by Patrick Martin. Petitioner testified at the PCR hearing, but Mark Sawyer, who was his trial counsel, was not present at the PCR hearing. The respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

On April 17, 2013, Judge McMahon issued an Order of Dismissal denying petitioner's allegation that trial counsel erred in failing to advise that a drug conviction would result in a suspended driver's license, and his allegation that the suspended license was invalid because the statute authorizing such a suspension (S.C. Code Ann. 56-1-745) had been repealed prior to his drug conviction date. App. 34-41.

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

## ARGUMENT

The PCR judge erred in ruling on petitioner's allegation that trial counsel erred in failing to advise him that a drug conviction would result in a suspended driver's license as the issue was not fully addressed because trial counsel, who was not present at the PCR hearing, did not testify in reference to this issue; and therefore, another PCR hearing must be held per Sharper v. State,<sup>2</sup> in order to resolve this question in the case.

Petitioner attacked the legality of his drug conviction by way of a challenge to the suspension of his driver's license that followed thereafter. App.3. Petitioner was arrested on this drug charge on March 15, 2011, and pled guilty on April 28, 2011. App. 21, l. 14-21. Petitioner testified at the PCR hearing explaining that his license was suspended per S.C. Code Ann. §56-1-745 subsequent to his drug conviction; and that as a result, he has been denied employment opportunities. Petitioner added in effect that trial counsel erred in not advising him of this consequence prior to pleading guilty. App. 22, l. 10-16; App. 27, l. 11-p. 28, l. 11; App. 30, l. 20-25.

The PCR judge ruled that the suspended driver's license matter was a collateral consequence and that an omission of advice by counsel regarding this issue did not render counsel's assistance ineffective in the case. App. 39-40.

The rule that a guilty plea cannot be deemed involuntarily given if a defendant is not informed of all collateral consequences<sup>3</sup> apparently has exceptions, particularly in drug cases. For example, in Padilla v. Kentucky, 130 S. Ct. 1473 (2010), the United States Supreme Court held that the Sixth Amendment requires attorneys to advise non-citizens of the risk of deportation associated with a drug conviction.

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<sup>2</sup> Sharper v. State, 279 S.C. 264, 305 S.E. 2<sup>nd</sup> 626 (1977)

<sup>3</sup> Smith v. State, 329 S.C. 280, 494 S.E.2<sup>nd</sup> 626 (1997)

Therefore, petitioner's question regarding whether counsel's failure to advise him of a suspended driver's license as a consequence of his drug conviction has not yet been fully addressed because counsel's testimony in this matter has not been submitted for consideration by the PCR judge, and thus another hearing into the matter is required per Sharper v. State, 279 S.C. 264, 305 S.E2d 247 (1983). In Sharper, that Court held that:

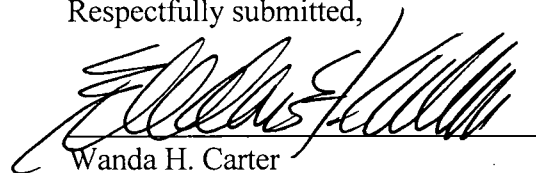
where the application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.

Therefore, the PCR judge erred in ruling on petitioner's allegation that trial counsel erred in failing to advise petitioner that his drug conviction would result in a suspended driver's license where trial counsel, who was not present at the PCR hearing, did not testify in reference to this issue, which in turn meant that another PCR hearing must be held per Sharper to resolve the matter.

#### CONCLUSION

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

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of December, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
R. KNOX MCMAHON, CIRCUIT COURT JUDGE

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WILLIAM H. WARNER, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

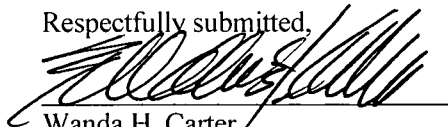
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Counsel for William H. Warner, Jr. states:

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 August 17, 2012. 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 William H. Warner, Jr..

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of December, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

R. Knox McMahon, Circuit Court Judge  
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WILLIAM H. WARNER, JR.,

PETITIONER,

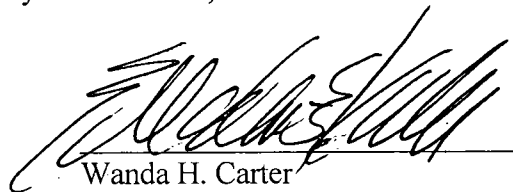
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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CERTIFICATE OF SERVICE  
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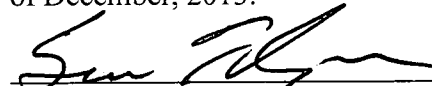
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and William H. Warner, Jr., , at 305 Greenlakes, Hopkins, SC 29061, this 12th day of December, 2013.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day  
of December, 2013.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.