 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Alison Renee Lee, Circuit Court Judge

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MAR 20 2014

S.C. Supreme Court

MAURICE A. KELLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2011-192810

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

WANDA H. CARTER
Deputy 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 fully explain to petitioner the sentencing consequences attached to his guilty pleas.

STATEMENT

Petitioner Maurice A. Kelley pled guilty to murder, armed robbery and grand larceny during the December 2003 term of the Richland County General Sessions Court before Judge G. Thomas Cooper. Samuel Mokeba represented petitioner at the plea proceeding and Assistant Solicitor Donald Sorenson appeared on behalf of the state. Petitioner was sentenced to imprisonment for a period of forty years. App. 1-37. Petitioner did not enjoy the benefit of a direct appeal of his trial court convictions and sentences in the case.

On October 21, 2004, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 39-49. The respondent filed a return dated September 9, 2012, requesting that a hearing be held in response to petitioner's PCR action. App. 50-55. A PCR hearing was convened on May 19, 2006, at the Richland County Courthouse before Judge L. Casey Manning.¹ Petitioner was present at the PCR hearing and represented by Charlie J. Johnson. The reconstructed PCR transcript of the May 19, 2006 PCR hearing can be found at App. 119-177. On July 16, 2007, Judge Manning issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 57-64.

On August 12, 2009, petitioner filed a second PCR application with the Richland County Office of the Clerk of Court requesting a belated direct appeal and a belated PCR appeal. App. 65-76. A Conditional Order of Dismissal was filed on October 15, 2010 by Judge Alison Renee Lee, who denied petitioner's request for a belated direct appeal. On November 9, 2010, petitioner filed a Motion to Object/Reconsider. See Supplemental Appendix. Judge Lee issued a Final Order dated April 20, 2011, therein granting petitioner's request for a belated PCR appeal. App. 77-89; App. 90-95. This petition follows per petitioner's appeal of Judge Lee's Orders.

¹ The May 19, 2006 PCR hearing was reconstructed on July 16, 2013, per Court Order. App. 106-107.

ARGUMENT

Trial counsel erred in failing to explain adequately to petitioner the sentencing consequences of his guilty pleas.

At the plea proceeding, the facts of the case were summarized by the solicitor for the benefit of the trial judge. On August 12, 2002, around 9:30 pm, a male entered a Sandy's restaurant while holding a handgun and removed money from the cash register. The male was recognized by one Sandy's employee, who was working at that time, as a petitioner. Petitioner was a fellow employee at one point in time. App. 13, l. 20 – p. 14, l. 18. Also, petitioner and two other individuals (one of whom was Myron Kelley) were present at a particular residence in Richland County on September 11, 2002, when a plumber, who was there to repair a bathtub, died after he was put in a chokehold and hit about the head with a crowbar by those three individuals who were charged via accomplice liability. The dead man's body was placed in the trunk of his own vehicle and then deposited in a river nearby. App. 14, l. 16 – p. 22 l. 18.

Petitioner filed a PCR action thereafter. In the order of dismissal issued after petitioner's first PCR hearing, Judge Manning denied and dismissed petitioner's claim that counsel did not adequately advise him of the sentencing consequences attached to his plea. App. 57 – 64.

During the reconstructed PCR hearing, petitioner testified that trial counsel was ineffective in failing to advise that his convictions required him to serve 85% of the actual term of his imprisonment. App. 136, l. 21 – p.138, l. 1; App. 139, l. 8 - p. 140, l. 7. Petitioner's convictions were 85% service time crimes. See S.C. Code Ann. §24-13-100 and 150; and S.C. Code Ann. §16-1-90.

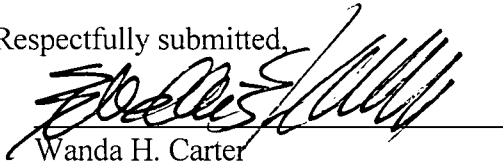
Trial counsel testified at the reconstruction hearing and stated that it was his usual course of habit to review with his clients the charges and “consequences of the charges.” App. 150, l. 12 – p. 151, l. 2.

It is apparent that petitioner was not fully advised of sentencing consequences of his pleas at the time of his plea proceeding. A plea can only be accepted as voluntarily given if the defendant understood the nature and crucial elements of the charges, the consequences (sentencing) of the plea, and the constitutional rights waived when a plea is entered. Anderson v. State, 342 S.C.54, 585 S.E. 2nd 649 (2000). Counsel’s failure to advise petitioner of sentencing consequences constituted deficient legal representation during a plea proceeding in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1984). But for the error, petitioner would probably have exercised his option of a trial by jury rather than enter guilty pleas in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that his petition be granted and full briefing allowed on the issue raised above.

Respectfully submitted,

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
ALISON RENEE LEE, CIRCUIT COURT JUDGE

MAURICE A. KELLEY,

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APPELLATE CASE NO. 2011-192810

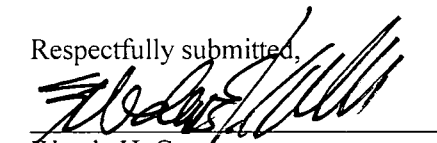
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Maurice A. Kelley 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 May 19, 2006. 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 Maurice A. Kelley.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of March, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Alison Renee Lee, Circuit Court Judge

MAURICE A. KELLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

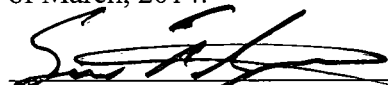
I certify that a true copy of the Johnson Austin petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Maurice A. Kelley, #288629, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 20th day of March, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of March, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.