

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Bamberg County

R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

RECEIVED

MAY - 5 2014

S.C. Supreme Court

JOHNNIE L. JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001888  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 4

CONCLUSION ..... 6

PETITION TO BE RELIEVED AS COUNSEL ..... 7

ISSUE PRESENTED

Trial counsel erred in failing to communicate the state's plea offer presented in the case because but for this omission, petitioner would have accepted the plea offer and received a sentence that was more lenient than the sentence he received at trial.

## STATEMENT

Petitioner Johnnie L. Jones was convicted of attempted kidnapping and assault and battery of a high and aggravated nature during the April 2010 term of the Bamberg County General Sessions Court before Judge Doyet A. Early. Petitioner was sentenced to imprisonment for an aggregate period of eighteen years. Dan Luginbill and Kent Kirkland represented appellant at trial, and Assistant Solicitors Lauren Maurice and Kip McCallister appeared on behalf of the state. App. 1-293. Petitioner appealed, but his convictions and sentences were affirmed. App. 295-306. See State v. Jones, Unpublished Opinion No. 2012-UP-034 (filed January 25, 2012). App. 307-308. The undersigned counsel represented petitioner on direct appeal.

On April 30, 2012, petitioner filed a PCR application with the Bamberg County Office of the Clerk of Court. App. 309-327. The respondent filed a return dated August 6, 2012, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 328 – 331. Petitioner filed an amended PCR application with the Clerk's Office on September 5, 2012. App. 332 – 359.

A PCR hearing was convened on July 8, 2013, at the Bamberg County General Sessions Court before Judge R. Ferrell Cothran. App. 360 – 400. Petitioner was present at the hearing and represented by Charles T. Brooks. Assistant Attorney General Daniel Gourley appeared on behalf of the state. On August 19, 2013, Judge Cothran issued an order of dismissal denying petitioner's allegations of ineffective assistance of trial and appellate counsels in the case. App. 401 – 409.

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

## ARGUMENT

Trial counsel erred in failing to communicate the state's plea offer presented in the case because but for this omission, petitioner would have accepted the plea offer and received a sentence that was more lenient than the sentence he received at trial.

At trial, Donald Hiers testified that he was exiting his parked car after he arrived home on the night of January 9, 2007, when he was accosted by a male who hit him on his (Hier's) head with an object and tried to get him inside his car to "take a ride." The male, whom Hiers later identified as petitioner after being shown a photograph of him, fled when Mrs. Hiers turned on the porch light in response to the commotion outside the house. Shortly thereafter, petitioner was arrested and charged in connection with the incident. App. 55, l. 1 – p. 62, l. 25; App. 85, l. 18 – p. 89, l. 2; App. 103, lines 1 – 5; App. 104, lines 7 – 12.

During the PCR hearing, petitioner testified in effect that there was a three-year plea offer presented by the state which counsel did not communicate to him prior to trial, and that had this plea offer been presented to him, then he would have accepted the plea offer. App. 371, l. 3 – 13.

Trial counsel testified during the PCR hearing and explained that the state never agreed to a possible three-year offer by the defense, and that there was a ten-year sentencing option presented on the assault charge, but unfortunately petitioner chose not to accept that option. App. 382, l. 6 – p. 383, l. 2.

The PCR judge ruled that petitioner failed to establish that counsel's performance fell below professional norms at the plea bargaining stage because the "solicitor never offered a plea deal in [the] case." App. 407 – 408.

A defendant has a right to effective assistance of counsel during the plea bargaining process. See Missouri v. Frye, 132 S.Ct. 1399 (2012), where counsel was found ineffective in failing to

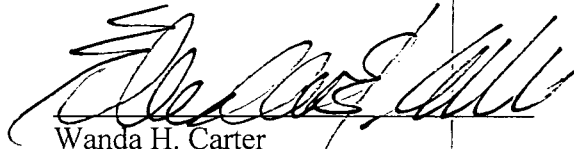
convey to the defendant the plea offer before it expired. See also Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), where the Court held that counsel was ineffective in failing to communicate a plea offer to the defendant. In Davie, the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (due to counsel's error) until after the plea offer had expired, and that he would have accepted the plea offer had it been communicated to him. Compare also, Lafler v. Cooper, 132 S. Ct. 1376 (2012), and Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196). In Lafler, the Supreme Court held that petitioner was prejudiced by counsel's deficient performance in advising petitioner to reject a plea offer and go to trial. In Judge the Court held that the Sixth Amendment regarding effective assistance of counsel applied to the plea bargaining process also. Judge was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases.

A guilty plea must represent a voluntary and intelligent choice among alternative courses of action open to the defendant. Hill v. Lockhart, 474 U.S. 52 (1985). Here, counsel's error regarding the failure to communicate to petitioner the state's three-year plea offer prior to trial violated petitioner's right to receive effective legal assistance in his case by guarantee of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, supra. Petitioner was prejudiced because he would have accepted the three-year plea offer and received a more lenient sentence than what he received at trial.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue raised above.

Respectfully submitted,

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

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of May, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO BAMBERG COUNTY  
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

---

JOHNNIE L. JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001888

---

PETITION TO BE RELIEVED AS COUNSEL

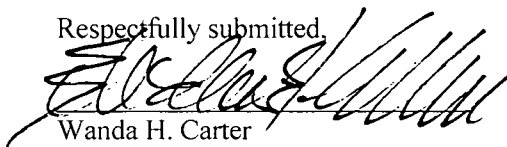
---

Counsel for Johnnie L. Jones 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 July 8, 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 Johnnie L. Jones.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 5th day of May, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Bamberg County

R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

JOHNNIE L. JONES,

PETITIONER,

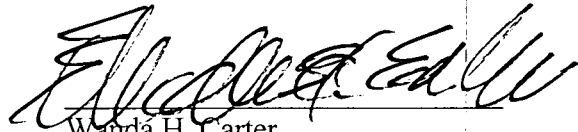
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

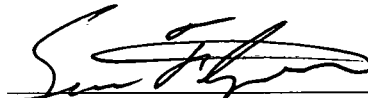
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Johnnie L. Jones, #340271, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of May, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day  
of May, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.