

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
D. Garrison Hill, Circuit Court Judge  
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**RECEIVED**

MAY 21 2014

**S.C. Supreme Court**

MARION JAMES DODD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001866  
\_\_\_\_\_

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

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR court erred in dismissing petitioner's claim that he did not voluntarily and intelligently waive the right to a direct appeal of his case.

## STATEMENT

Petitioner Marion James Dodd pled guilty to possession with intent to distribute cocaine base, second offense, and trafficking in cocaine (10-28 grams), second offense, during the May 2011 term of the Greenville County General Sessions Court before Judge G. Edward Welmaker. Petitioner received an eight-year sentence on each charge (both to run concurrently). Petitioner did not enjoy the benefit of a direct appeal in the case. App. 37, l. 5 – p. 58, l. 2<sup>1</sup>. Larry Cooke represented petitioner at the guilty plea proceeding and Howard Steinberg appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On August 1, 2011, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 1 – 7. The respondent filed a return dated December 30, 2011, requesting that a hearing be held in the case. App. 8 – 11. A hearing was convened on June 18, 2013, at the Greenville County Courthouse before Judge D. Garrison Hill. App. 15 – 36. Petitioner was present at the PCR hearing and represented by Caroline M. Horlbeck, and Assistant Attorney Karen C. Ratigan appeared on behalf of the state.

On August 1, 2013, Judge Hill issued an order denying petitioner's allegations of ineffective assistance of counsel in the case. App. 70-75.

Petitioner appealed. This petition follows.

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<sup>1</sup> Due to an equipment malfunction, the court reporter was unable to transcribe petitioner's guilty plea proceeding; however, a guilty plea reconstruction hearing was held at the close of the PCR hearing in order to reconstruct the guilty plea record. App. 62; App. 37, l. 7 – p. 58, l. 2.

## ARGUMENT

The PCR court erred in dismissing petitioner's claim that he did not voluntarily and intelligently waive the right to a direct appeal of his case.

At the plea proceeding, the trial judge was advised that a search of a certain residence where petitioner was present uncovered the existence of cocaine and crack. App. 42, l. 24 – p. 43, l. 6.

Petitioner did not enjoy the benefit of a direct appeal of his guilty pleas and sentences.

During the PCR hearing, trial counsel addressed the matter of the direct appeal as follows:

Trial Counsel: [Petitioner] says I never told him about an appeal. I probably didn't. But, I mean, he understood what he was pleading guilty to. And he knew what the situation was. App. 33, lines 11-13

The PCR judge ruled that petitioner failed to meet his burden of proof on all of his claims of ineffective assistance of counsel raised in the case. App. 72 – 74.

Petitioner desired an appeal because trial counsel stated that “[petitioner] says he never [advised] about an appeal.” Furthermore, counsel admitted he did not advise petitioner of his right to appeal his convictions and sentences. App. 33, lines 11 – 13.

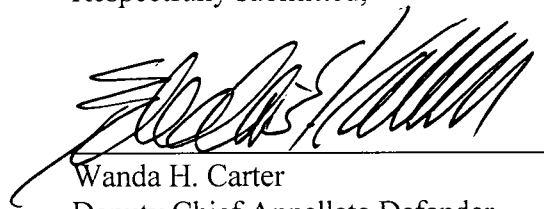
Apparently, petitioner desired a direct appeal in the case. See In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991), where the Court held that if upon advising an indigent client regarding an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. After a client is convicted, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal, and counsel should ascertain whether the client wishes to appeal. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). See Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure on his behalf an appeal with state appellate counsel via his indigent status.

The PCR court erred in dismissing petitioner's claim that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

CONCLUSION

Based on the foregoing argument, petitioner's petition should be granted in order to allow full briefing 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. The signature is stylized and cursive.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of May, 2014.

STATEMENT OF ISSUE ON DIRECT APPEAL

Appellant's pleas were given involuntarily because the trial judge failed to advise that he was not bound to accept the state's recommendations in the case.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
D. GARRISON HILL, CIRCUIT COURT JUDGE

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MARION JAMES DODD,

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V.

STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

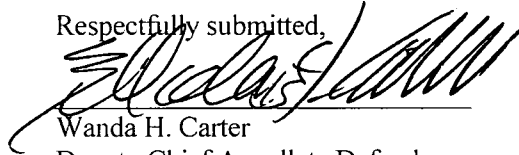
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Counsel for Marion James Dodd states:

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 June 18, 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 Marion James Dodd.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 21st day of May, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

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MARION JAMES DODD,

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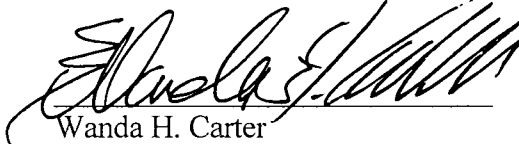
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

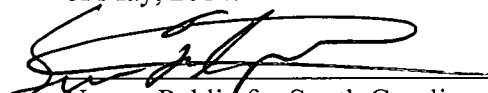
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on , Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Marion James Dodd, #236658, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128, this 21<sup>st</sup> day of May, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day  
of May, 2014.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.