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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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**RECEIVED**

OCT 20 2014

**S.C. Supreme Court**

ANTONIO CALLOWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000353

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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WANDA H. CARTER  
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ATTORNEY FOR PETITIONER

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 4

CONCLUSION ..... 6

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

### ISSUE PRESENTED

Petitioner's pleas were entered involuntarily based on a misunderstanding of sentencing consequences in the case because trial counsel erred in failing to explain to petitioner that his request for a ten-year sentence did not automatically result in a confirmed plea bargain where a negotiated ten-year sentence was guaranteed in exchange for his guilty pleas.

## STATEMENT

Petitioner Antonio Calloway pled guilty to attempted murder, kidnapping, attempted armed robbery, two counts of possession of a weapon during the commission of a violent crime, and three counts of armed robbery during the May 2012 term of the Greenville County General Sessions Court before Judge C. Victor Pyle. Petitioner was sentenced to imprisonment for an aggregate period of twenty-five years. App. 1 – 21. Scott Robinson represented petitioner at the plea proceeding and Assistant Solicitor Mark Moyer appeared on behalf of the state. App. 1 – 21. Petitioner did not appeal his trial court convictions and sentences.

On September 25, 2012, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 23 – 30.

The respondent filed a return dated January 31, 2013, requesting that a PCR hearing be held in response to petitioner's PCR action filed in the case. App. 31 – 34.

A PCR hearing was convened on December 18, 2013, at the Greenville County Courthouse before Judge G. Edward Welmaker. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney General Karen Ratigan appeared on behalf of the state. App. 36 – 56. On January 30, 2014, Judge Welmaker issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case.

Petitioner appealed Judge Welmaker's Order Of Dismissal. This petition follows.

## ARGUMENT

Petitioner's pleas were given involuntarily based on a misunderstanding of sentencing consequences in the case because trial counsel erred in failing to explain to petitioner that his request for a ten-year sentence did not automatically result in a confirmed plea bargain where a negotiated ten-year sentence was guaranteed in exchange for his guilty pleas.

At the plea proceeding, the solicitor apprised the plea judge of the incidents that occurred in Greenville County that gave rise to the state's charges lodged against petitioner. On July 25, 2010, petitioner, who held a pistol, and his co-defendant approached two people outside an apartment complex and asked them to identify the apartment where a particular group had gathered; and then upon entering that apartment, petitioner and his co-defendant instructed the people inside to lie on the floor and surrender their possessions. On that same night, petitioner and his co-defendant approached Jose Massa and Francisco Cruz at the front door of their mobile home and took their cash and a cell phone, and then petitioner fired a shot at Mesa's leg before they fled. Also, petitioner went into a Citgo Store on that same night and ordered the store cashier to surrender the money from the cash register while his do-defendant stayed outside as a look-out. App. 9, l. 11 – p. 12, l. 10.

During the PCR hearing, petitioner testified that he pled guilty because trial counsel advised that per plea negotiations in the case, he was supposed to have received a ten-year sentence in exchange for his pleas. App. 47, lines 2 – 17. App. 42, l. 9 – p. 45, l. 23. Petitioner explained that “[counsel] said [he] was going to get ten years and [that] there was a possibility that [he] could receive ten years.” App. 45, lines 22 – 23.

Trial counsel testified at the PCR hearing and explained that there was never a ten-year plea offer or bargain in existence in the case. Counsel added that he promised to request a ten year

minimum sentence, but never advised that an automatic ten-year plea bargain would be the confirmed result in the case. App. 50, l. 10 – p. 51, l. 1. Counsel testified as follows:

Q. Do you know whether there was any discussion about ten years during that meeting?

A. I think at some point in time [petitioner] he asked [the solicitor] could he get ten and [solicitor] told him he was not making any recommendation; what he got would be up to the judge. He would not argue for a particular sentence in the transcript. And we did ask for the minimum sentence, which, you know, Judge Pyle then made the decision to impose the sentence he did. App. 53, lines 11-20.

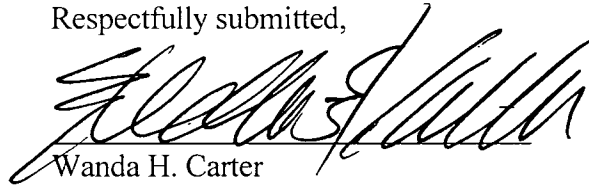
The PCR judge ruled that trial counsel was not ineffective with respect to his representation regarding sentencing consequences because counsel advised petitioner of the sentencing ranges and that he only requested a ten-year deal, but that no recommendations were agreed upon. App. 64-65.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain to petitioner that his request for a ten-year sentence did not translate into an automatic confirmed plea bargain for a ten-year sentence violated petitioner's right to competent legal representation by counsel at his plea proceeding because petitioner plead guilty without an understanding of the sentencing consequences in his case. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner could have pled not guilty and exercised his right to a trial by jury in the case.

CONCLUSION

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

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 21st day of October, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

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ANTONIO CALLOWAY,

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PETITION TO BE RELIEVED AS COUNSEL

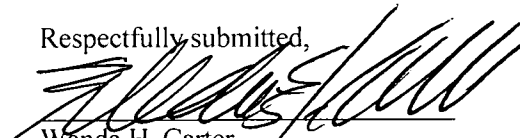
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Counsel for Antonio Calloway states:

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 December 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 Antonio Calloway.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 21st day of October, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

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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 Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Antonio Calloway, #343102, at Lee Correctional Institutionm, 990 Wisacky Highway, Bishopville, SC 29010, this 20th day of October, 2014.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.