

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV 17 2014

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge **S.C. Supreme Court**

BRANDON CROFT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000838

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.....	5
PETITION TO BE RELIEVED AS COUNSEL.....	5

ISSUE PRESENTED

Trial counsel erred in failing to advise petitioner that the plea offer submitted to his first attorney expired before the case was reassigned for new representation.

STATEMENT OF CASE

Petitioner Brandon Cornelius Croft pled guilty to attempted armed robbery, three counts of assault and battery of a high and aggravated nature, three counts of armed robbery, and five counts of possession of a weapon during the commission of a violent crime during the March 2012 term of the Greenville County General Sessions Court before Judge C. Victor Pyle, Junior. Petitioner was sentenced to imprisonment for an aggregate term of twenty-five years. App. 1-17. Scott Robinson represented petitioner at the plea proceeding and Assistant Solicitor Howard Steinberg appeared on behalf of the State. Petitioner did not enjoy the benefit of a direct appeal in the case.

On October 9, 2012, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 19-25. The respondent filed a return dated May 2, 2013, requesting that a hearing be held in response to petitioner's PCR application. App. 26-29.

A PCR hearing was convened on February 18, 2014, at the Greenville County Courthouse before Judge G. Edward Welmaker. App. 31 – 60. Petitioner was present at the hearing and represented by Mills Arial, and Assistant Attorney General Karen Ratigan appeared on behalf of the state. On March 31, 2014, Judge Welmaker issued an Order of Dismissal in the case denying petitioner's allegations of ineffective assistance of counsel in his case. App. 62 - 68.

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

ARGUMENT

Trial counsel erred in failing to advise petitioner that the plea offer submitted to his first attorney expired long before the case was assigned for new representation.

During the plea proceeding, the solicitor apprised the plea judge of the events that led to the offenses charged against petitioner in the case. Apparently, on the early morning hours of February 25, 2009, petitioner and four other co-defendants assaulted, robbed and attempted to rob five individuals in an area of Greenville, South Carolina, where Hot Spot, Texaco, and Spinx gas stations are located. App. 7, l. 8 – p. 10, l. 12.

During the PCR hearing, petitioner testified that he did not know that the ten-to-fifteen year plea offer that was offered by the state to his first attorney expired by the time the case was reassigned to trial counsel. Petitioner stated that it was not until the day of the plea proceeding that trial counsel advised him that the prior plea offer had expired when he (trial counsel) took over the case. App. 12, l. 25 - p. 14, l. 6; App. 16, l. 19 – p. 18, l. 5.

Trial counsel testified that he was appointed to represent petitioner on May 16, 2011, and that no active plea offer was in existence at that time, and that the only plea offer presented in the case expired on December 27, 2009. App. 19, l. 10 – p. 20, l. 21.

The PCR judge ruled that petitioner did not establish that plea counsel was deficient because the plea offered before trial counsel's appointment on the case. App. 66-67.

Petitioner was indicted and charged during November 2009. In the case at bar, petitioner's first attorney who represented him in November 2009, was no longer counsel of record in 2011 when trial counsel began representing petitioner. Petitioner pled guilty on March 13, 2012. App. 7, l. 4-18. It is clear that the state's plea offer, which was presented to petitioner's first attorney, ended at the close of the year 2009. In other words, trial counsel should have advised petitioner that the

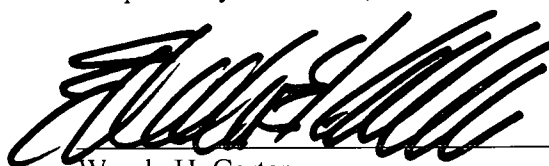
plea offer in the case was not in existence during his representation during the year 2011. Apparently, counsel failed to advise petitioner of the expiration date of the state's plea offer presented in the case.

The Sixth Amendment right to effective assistance of counsel extends to cases involving plea offers. Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1996), 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 performance at the plea bargaining process can satisfy the prejudicial prong of the two-pronged test to be met in ineffective assistance of counsel cases. See also Missouri v. Frye, 132 S.Ct. 1399 (2012) and Laffler v. Cooper, 132 S.Ct.1376 (2012). Here, counsel's error regarding the failure to advise petitioner that the ten-to-fifteen year plea offer expired approximately two years before he pled guilty violated petitioner's right to receive effective legal assistance in a guilty plea case via the Sixth Amendment. See also Hill v. Lockhart, 474 U.S. 52 (1985). But for counsel's error in this regard, petitioner might have elected a trial by jury and not entered guilty pleas in the case.

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

BRANDON CROFT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

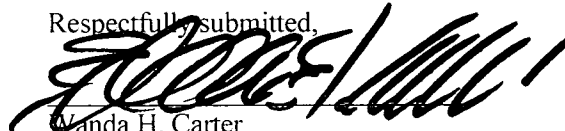
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon Croft 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 February 18, 2014. 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 Brandon Croft.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of November, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

BRANDON CROFT,

PETITIONER,

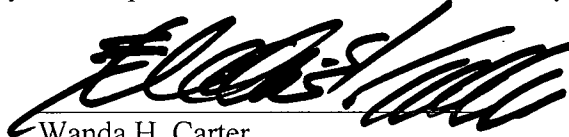
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

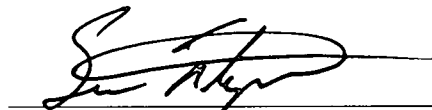
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Brandon Croft, #350090, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 2901, this 17th day of November, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of November, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.