

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge  
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**RECEIVED**

NOV 19 2014

S.C. Supreme Court

DAVID STEWART,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001138  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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  
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ATTORNEY FOR PETITIONER

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### ISSUE PRESENTED

Trial counsel erred in failing to investigate into a Fourth Amendment violation from petitioner's case where police made contact with petitioner at his hotel room without a warrant and had him to walk from his hotel room to the hotel parking lot where his vehicle, which canines had already sniffed, was parked because under Stoner v. California, 376 U.S. 483 (1964), this constituted an unreasonable search and seizure in the case.

## STATEMENT

Petitioner David Stewart pled guilty to trafficking in cocaine (28-100 grams) during the February 2011 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes II, and was sentenced to imprisonment for a period of seven years. App. 1-17. Albert V. Smith represented petitioner at the plea proceeding and Assistant Solicitor Travis A. Moore appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal of his conviction and sentence.

On December 5, 2011, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court alleging an insufficient evidence claim and subject matter jurisdiction and indictment claims. App. 19-42. The respondent filed a Return and Motion to dismiss on the ground that the respondent failed to state a cognizable PCR claim under S.C. Code Ann. § 17-27-20(a) and moved for dismissal of the PCR action under S.C. Code Ann § 17-27-70(c).

On September 28, 2012, Judge Roger L. Couch issued a Conditional Order of Dismissal echoing the grounds for dismissal outlined in the respondent's return to the extent that there was no genuine issue of material fact to support petitioner's PCR claims. App. 50-53.

On January 29, 2013, petitioner submitted paperwork titled of "Supplemental Amendment for PCR Hearing Relief" in response to the Conditional Order of Dismissal. Supp. App. 37-41.

A PCR hearing was held on September 30, 2013, at the Spartanburg County Courthouse before Judge J. Derham Cole in the case. Petitioner was present at the hearing and represented by Lara P. Harrill and Jordan C. Callaway, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. On February 20, 2014, Judge Cole issued an Order of Dismissal denying PCR relief to petitioner.

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

## ARGUMENT

Trial counsel erred in failing to investigate into a Fourth Amendment violation from petitioner's case where police made contact with petitioner at his hotel room without a warrant and had him to walk from his hotel room to the parking lot where his vehicle, which canines had already sniffed, was parked because under Stoner v. California, 376 U.S. 483 (1964), this constituted an unreasonable search and seizure in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Police Officer Caraway observed the driver of a particular vehicle, which contained petitioner as a passenger, commit certain traffic violations on I-85 in Spartanburg County and followed the vehicle to the Best Western Hotel parking lot nearby. Then, Officer Caraway brought in the canine unit to the hotel parking lot where they sniffed this vehicle. The alert to drugs led the officer to make contact with petitioner at his hotel room. Thereafter, petitioner was led from his hotel room to the hotel parking lot where the vehicle he rode in was searched. Powder cocaine was found inside the vehicle. App. 8, l. 3 – p. 9, l. 3.

During the PCR hearing, petitioner testified in effect that trial counsel failed to investigate into the legality of the officer's warrantless search and seizure of the vehicle and arguably him as well. App. 57, l. 1 – p. 58, l. 1. Petitioner stated that trial counsel "never looked into the Fourth Amendment issue." App. 58, l. 1-2.

Counsel testified at the PCR hearing and explained the case as follows:

Q Did you discuss with Mr. Stewart the circumstances under which the officers searched their hotel room?

A I think it was a pretextual stop and they thought there was drugs in that car. I really do.

App. 76, lines 7-14.

Note that prior to the plea, a pretrial hearing was held requesting the dismissal of the indictment based on the ground that the stop was pretextual in nature. App. 74, lines 1-6.

The PCR judge ruled that petitioner's allegation that counsel did not conduct adequate investigations in the case was without merit as counsel discussed defenses and options available in the case. App. 83.

In Stoner v. California, 376 U.S. 483 (1964), the United States held that the search of a defendant's hotel room without a warrant and without the defendant's consent was unlawful despite the hotel clerk's consent for the police to do so because a guest in a hotel room has a right to be free of unreasonable searches and seizures. In Goins v. State, 726 S.E. 2d 397 S.C. 568 (2012), the Court held that the police officers' warrantless search of the defendant's hotel room upon suspicion that he sold drugs was illegal in violation of the Fourth Amendment, and that trial counsel was ineffective in failing to advise the defendant of the law in this regard before he pled guilty to the state's charges in that case.

In the case at bar, the hotel parking lot represents the curtilage of the hotel where petitioner, who was a registered guest at that time, had a right to be free of unreasonable warrantless searches and seizures. Thus, the seizure of petitioner at the hotel and the search of his vehicle at the hotel parking lot constituted a Fourth Amendment violation in the case. A successful challenge to the drugs found in the vehicle upon this ground would have resulted a suppression of the tainted fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

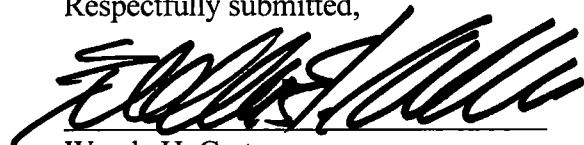
Counsel has a duty to conduct reasonable investigations in criminal cases. Strickland v. Washington, 466 U.S. 668 (1984). Here, counsel's error in failing to investigate into and develop a Fourth Amendment claim in petitioner's case before the plea proceeding constituted legal representation that fell below the standard of competence required of criminal attorneys in violation

of the Sixth Amendment to the United States Constitution. See also Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error, a reasonable probability exists that petitioner would have rejected a plea deal and exercised his right to a trial by jury in the case.

CONCLUSION

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

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 19th day of November, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SPARTANBURG COUNTY  
J. DERHAM COLE, CIRCUIT COURT JUDGE

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DAVID STEWART,

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APPELLATE CASE NO. 2014-001138

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PETITION TO BE RELIEVED AS COUNSEL

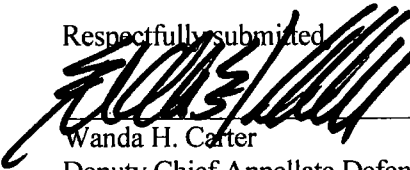
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Counsel for David Anthony Stewart states:

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 September 30, 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 David Anthony Stewart.

Respectfully submitted

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 19th day of November, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

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DAVID STEWART,

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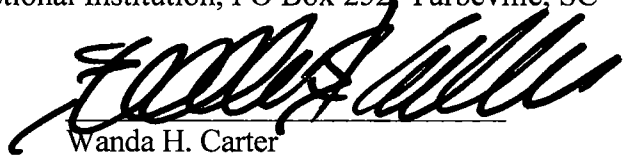
RESPONDENT

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CERTIFICATE OF SERVICE

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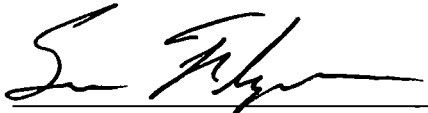
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and David Anthony Stewart, #344762, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 19th day of November, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day  
of November, 2014.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.