


STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

 ORIGINAL

RECEIVED

DEC 8 2014

S.C. Supreme Court

DARRIN BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001429

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 6

ISSUE PRESENTED

Trial counsel erred in failing to request that time served credit be given to petitioner at the sentencing phase of his guilty plea proceeding.

STATEMENT OF CASE

Petitioner Darrin Bryant pled guilty to distribution of cocaine, second offense, during the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to imprisonment for a period of five years. Dorothy Manigault represented petitioner at the plea proceeding and Assistant Solicitor Allen Fretwell appeared on behalf of the state. App. 7-9. Petitioner did not appeal his conviction or sentence.

On March 12, 2013, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 11-23. The respondent filed a return dated July 12, 2013, requesting that a hearing be held in response to petitioner's PCR action. App. 24-27.

A PCR hearing was held on April 22, 2014, at the Greenville County Courthouse before Judge D. Garrison Hill. App. 29-50. Petitioner was present at the PCR hearing and represented by Caroline M. Horlbeck, and Assistant Attorney General Karen C. Ratigan appeared on behalf of the state.

On May 23, 2014, Judge Hill issued an Order of Dismissal denying petitioner's claims of ineffective assistance of trial counsel in the case. App. 52-57.

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

ARGUMENT

Trial counsel erred in failing to request that time served credit to be given to petitioner at the sentencing phase of his guilty plea proceeding.

In the case at bar, a telephone conversation was recorded between petitioner and his mother and another relative regarding how to get cocaine into Perry Correctional Institution where petitioner was housed then; and shortly thereafter, an indictment dated July 20, 2011, was issued charging petitioner with cocaine distribution in connection with this conduct. Petitioner pled guilty and was sentenced to five years concurrent to the twenty-two-year sentence he was already serving on a prior drug conviction that began on April 21, 2003. App. 6, l. 16 – p. 7, l. 23; App 8, l. 17-25; App. 46, l. 21.

During the PCR hearing, petitioner complained that his present five-year concurrent sentence on the instant cocaine distribution conviction had not been “backdated.” App. 35, l. 16-25. Petitioner added that counsel’s failure to make this backdated request resulted in a sentence that extended his overall max out date. App. 36, l. 12-28, l. 5. Petitioner’s PCR testimony follows:

Q: Did [trial counsel] request that your sentence be backdated?

A: She never requested nothing (sic). App. 38, lines 2-5.

Trial counsel testified at the PCR hearing regarding the matter and explained as follows:

Q: Do you recall discussing with [petitioner] the possibility of having the sentence backdated to the date he was charged?

A: I don’t recall that. App. 46, lines 19-22.

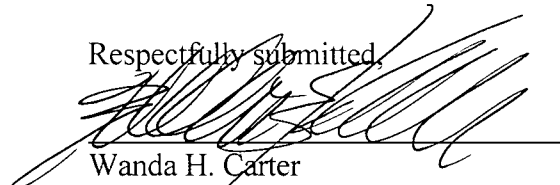
The PCR judge ruled that petitioner failed to meet his burden of proving that plea counsel was ineffective in failing to request that the plea judge backdate the instant sentence. App. 55.

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. S.C. Code §24-13-40 (2005). See also State v. McCord, 349 S.C. 477, 562 S.E.2d 689 (2002.) Since the word “shall” means that time served credit is mandatory, then trial counsel erred in failing to request that the plea judge recognize that petitioner’s most recent sentence must reflect credit for time served. Counsel’s failure to ensure that petitioner receive time served credit at sentencing during the instant guilty plea proceeding constituted deficient representation of petitioner at his plea proceeding in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985.)

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of December, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

DARRIN BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

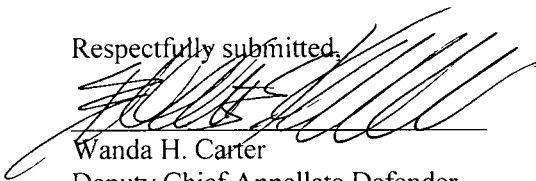
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darrin Bryant 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 April 22, 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 Darrin Bryant.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of December, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

DARRIN BRYANT,

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 Darrin Bryant, #292565, at Lower Savannah Pre-Release Center, 361 Wire Road, Aiken, SC 29801, this 8th day of December, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of December, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.