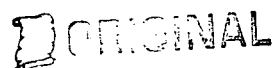


STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

DEC 15 2014

S.C. Supreme Court

PARIS AUSTIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001565

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

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ISSUE PRESENTED

Trial counsels erred in coercing petitioner to plead guilty as charged by enlisting the assistance of his (petitioner's) mother to convince him of the benefit of pleading guilty to the state's charges against him.

STATEMENT

Petitioner Paris S. Austin pled guilty to attempted murder, attempted armed robbery, possession of a firearm during the commission of a violent crime, unlawful possession of a pistol, and criminal conspiracy during the April 9, 2012 term of the Charleston County General Sessions Court before Judge Roger M. Young, Senior. Petitioner was sentenced to imprisonment for an aggregate term of twenty-five years. App. 1-29. Ashley Pennington and Andrew Grimes represented petitioner at the plea proceeding, and Assistant Solicitor Bruce DuRant appeared on behalf of the State. Petitioner did not receive the benefit of a direct appeal in the case.

On December 21, 2012, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 31 – 37. The respondent filed a return dated July 3, 2013, requesting that a hearing be held in response to petitioner’s PCR action. App. 38 – 42.

A PCR hearing was convened on May 20, 2014, at the Charleston County Courthouse before Judge Deadre L. Jefferson. App. 44-80. Petitioner was present at the hearing and represented by William L. Runyon, and Assistant Attorney General Ashleigh R. Wilson appeared on behalf of the state.

On July 10, 2014, Judge Jefferson issued an Order of Dismissal in the case. App. 82 – 92. Petitioner appealed Judge Jefferson’s Order of Dismissal. This petition follows.

ARGUMENT

Trial counsels erred in coercing petitioner to plead guilty by enlisting the assistance of his (petitioner's) mother to convince him of the benefit of pleading guilty to the state's charges against him in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, petitioner pointed a gun at Ms. Sade Williams after she drove up to an ATM machine at the South Carolina Federal Credit Union located in North Charleston. Williams fought petitioner, but was wounded by gunshots before she was able to drive off and call police. Co-defendants Denzel Simmons and Floyd Woods were the look-outs while this event occurred. App. 12, l. 10 – p. 15, l. 10.

During the PCR hearing, petitioner testified that trial counsels talked to his (petitioner's) mother about the case and suggested to her that he plead guilty and that he pled guilty thereafter because he was coerced into doing so per his mom's persuasion after the attorneys' consultation with her. App. 51, l. 23 – p. 52, l. 10.

Trial counsel testified during the PCR hearing and admitted that he and co-counsel did travel to petitioner's house, and that they met and talked with petitioner's mother, and that petitioner pled guilty finally. App. 60, l. 15 – p. 61, l. 2.

The PCR judge ruled that petitioner failed to carry his burden of establishing that he was coerced into pleading guilty when he had a full understanding of the charges filed against him and the consequences of his plea. App. 90 – 91.

Clearly, in order to convince petitioner's mother to encourage her son, i.e., petitioner, to plead guilty to the charges, there was certainly a point during which counsels recited the facts of the case to her. This violated the attorney/client confidentiality privilege. This breach was error.

Consequently, the result of this breach led to the act of parental coaxing in coercing petitioner to plead guilty as charged; and hence the submission of guilty pleas that were involuntary in nature.

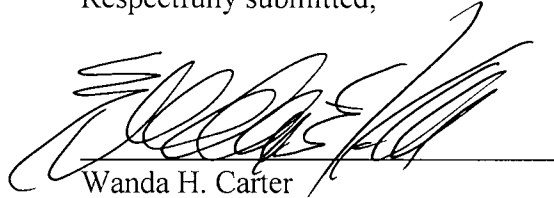
The purpose of the confidentiality of communications between attorney and client is to allow clients to make full disclosures to counsel without fear of revelation to others and to allow counsel to render competent legal advice and representation. Swindler and Berlin v. United States, 525 U.S. 399 (1998). Here, the persuasion of a parent, a mother no less, certainly provided an element of coercion that forced petitioner to plead guilty, all of which emanated as a result of an attorney/client breach wherein this parent was advised of the details and particulars of the case and decided that it would have behooved petitioner to enter guilty pleas and convinced him to do so.

The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E. 2d 210 (1971) citing to Sweet v. State 255 S.C. 293, 178 S.E. 2d 657 (1971). Here, petitioner's pleas were given involuntary because they were entered based on his mother's advice to him after she was approached and given confidential information about the case, which constituted an erroneous breach of the attorney/client privilege, rather than in reliance on the advice of counsel. Counsel's error with regard to this breach and the events that unfolded thereafter, i.e. petitioner's mother's hand in urging petitioner to plead guilty as charged and the subsequent involuntarily given pleas given thereafter, constituted ineffective assistance of counsel in the case in violation of the Sixth Amendment guarantee of competence required of attorneys in a criminal cases. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced because but for the legal representation in this regard, a reasonable probability exists that petitioner would have exercised his right to a trial jury and not pled guilty as charged. This also violated of Boykin v. Alabama, 395 U.S. 238 (1968).

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of December, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

PARIS AUSTIN,

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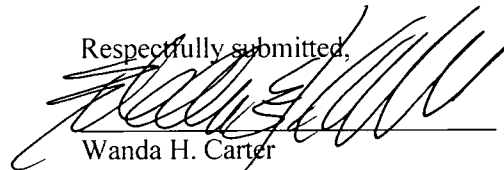
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Paris S. Austin 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 May 20, 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 Paris S. Austin.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of December, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Deadra L. Jefferson, Circuit Court Judge

PARIS AUSTIN,

PETITIONER,

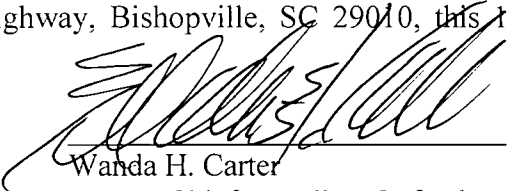
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

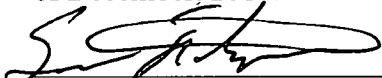
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Paris S. Austin, #350390, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 15th day of December, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.