 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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DEC 15 2014

S.C. Supreme Court

TAMMY TWITTY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001040

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to advise petitioner that the payment of a legal retainer fee would not automatically produce a plea offer from the solicitor in the case.

STATEMENT

Petitioner Tammy Twitty pled guilty to two counts of shoplifting, third offense or greater, during the June 2012 term of the Greenville County General Sessions Court before Judge Edward W. Miller, and was sentenced to imprisonment for an aggregate seven-year term. App. 1 – 18. Fletcher W. Smith represented petitioner at the guilty plea proceeding and Assistant Solicitor Jeff Weston appeared on behalf of the state.

On October 9, 2012, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 20 – 27. The respondent filed a return dated May 2, 2013, requesting that a hearing be held in response to petitioner's PCR action. App. 28 – 31.

A PCR hearing was convened on February 18, 2014, at the Greenville County Courthouse before Judge G. Edward Welmaker. App. 33 – 57. Petitioner was present at the hearing and represented by Caroline Horlbeck, 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. App. 59 – 64. Petitioner appealed Judge Welmaker's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to advise petitioner that payment of a legal retainer fee would not automatically produce a plea offer from the solicitor in the case.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Police officers stopped petitioner's vehicle near Heyward Mall in Greenville, South Carolina, upon receiving a theft report from the Children's Place Store and receipt of the license plate information from the suspect's vehicle. Police stopped the suspect, i.e. petitioner, and after searching her vehicle, they discovered unpaid merchandise stolen from the Children's Place and Babies R Us. App. 12, l. 15 – 13, l. 18.

During the PCR hearing, petitioner stated that trial counsel in effect mislead her into believing that he would obtain a plea "recommendation," i.e. a plea offer, upon her payment of a retainer fee (\$500.00) to him for his legal representation in the case, but that no plea offer ever materialized in the case. Also, petitioner mistakenly believed that the fact that she previously helped Spartanburg police in a prior narcotics investigation would lead to a plea offer also. App. 38, l. 8 – p. 41, l. 22; App. 43, l. 5 – 10; App. 45, l. 25 – p. 47, l. 22.

Trial counsel testified at the PCR hearing and explained that the solicitor made no plea offers or recommendation due to petitioner's "extensive criminal record" and that as a result, he advised her that a guilty plea might "help her." App. 54, l. 1 – p. 55, l. 4; App. 50, l. 16 – p. 51, l. 3.

The PCR judge ruled that petitioner failed to meet her burden of proving that plea counsel was deficient in not obtaining a plea offer because the solicitor was unwilling to negotiate any plea bargain due to her many shoplifting priors. App. 63.

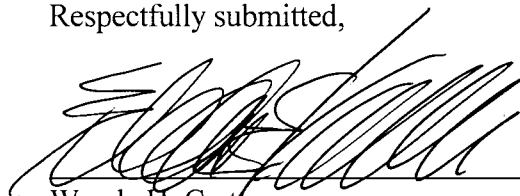
A plea offer is not a guaranteed right. State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994). Trial counsel's error in failing to explain to petitioner that there was no automatic right to

plea bargain in a criminal case regardless of any payment made for legal fees constituted deficient legal representation in violation of the Sixth Amendment (see Hill v. Lockhart, 484 U.S. 52 (1985)); and that the error prejudiced her case because but for counsel's neglect in this regard, a reasonable probability exists that petitioner would have pled not guilty and exercised her right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition for writ of certiorari 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 15th day of December, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

TAMMY TWITTY,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001040

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tammy Twitty 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 Tammy Twitty.

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 Greenville County

G. Edward Welmaker, Circuit Court Judge

TAMMY TWITTY,

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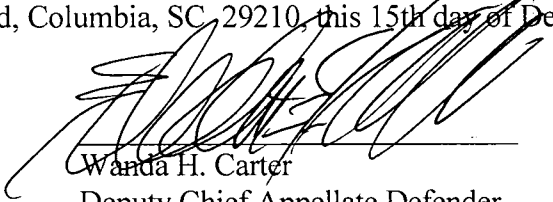
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

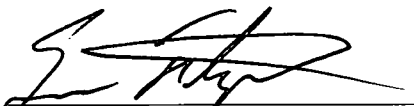
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Tammy Twitty, #174524, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, 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.