

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV - 7 2014

Certiorari to Spartanburg County
Robin B. Stilwell, Circuit Court Judge

S.C. Supreme Court

ANDREA WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000788

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 explain to petitioner that the status of her criminal record, which contained minimal convictions, would not automatically guarantee that the plea judge would issue the minimum ten-year prison sentence in exchange for her guilty plea on the armed robbery charge lodged against her.

STATEMENT

Petitioner Andrea Waylisha White pled guilty to armed robbery during the August 2011 term of Spartanburg County General Sessions Court before Judge J. Derham Cole. Petitioner was sentenced to imprisonment for a period of twenty years. App. 1 – 45. Richard H. Whelchel represented petitioner at the plea proceeding, and Assistant Solicitor Zachary David Ellis appeared on behalf of the state. An appeal was filed and perfected, but later dismissed on October 22, 2011.

On July 6, 2012, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 48 – 54. The respondent filed a return dated July 25, 2013, requesting that a hearing be held in response to petitioner PCR action filed in the case. App. 56-58.

A PCR hearing was convened on November 4, 2013, at the Spartanburg County Courthouse before Judge Robin B. Stilwell. Petitioner was present at the hearing and represented by J. Brandt Rucker, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. App. 60 – 80.

On March 5, 2014, Judge Stilwell signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel raised in the case. App. 82 – 88.

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

ARGUMENT

Trial counsel erred in failing to explain to petitioner that the status of her criminal record, which contained minimal convictions, would not automatically guarantee that the plea judge would issue the minimum ten-year prison sentence in exchange for her guilty plea on the armed robbery charge lodged against her.

During the plea proceeding, the solicitor summarized the case for the benefit of the plea judge. On May 27, 2010, petitioner and her co-defendant Delonte B. Carroll approached Teriza Mayes and Jasman Pearson while they sat in Mayes' vehicle in the parking lot of her residence at Crown Point Apartments in Spartanburg, South Carolina. Mayes was the driver of the vehicle and Pearson was the passenger. Petitioner held and pointed a gun at Mayes' head while co-defendant Carroll took items from Mayes and Pearson. After they fled, police were called to the scene. Petitioner and co-defendant Carroll were apprehended shortly thereafter. App. 23, l. 7 – p. 26, l. 11.

During the PCR hearing, petitioner stated that she pled guilty to armed robbery based on counsel's advice that she would likely receive favorable sentencing treatment, i.e., the minimum ten-year sentence, because her prior record contained only a few convictions. Petitioner added, however, that she was displeased to find that her proceeding was an "open plea" without any special sentencing treatment. App. 64, l. 2 – 5; App. 67, l. 7; App. 68, l. 11 – 13.

Trial counsel testified at the PCR hearing and admitted that he advised petitioner that it was helpful that her criminal history was "minor," but that he did not promise that a plea negotiation or recommendation for a ten-year sentence was in existence in the case. App. 75, l. 5 – p. 76, l. 17.

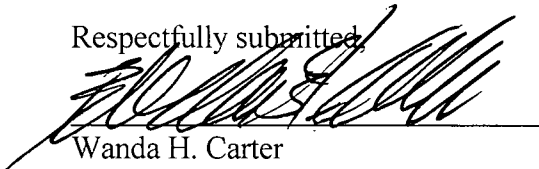
The PCR judge ruled that counsel was competent in his representation of petitioner and that no specific or compelling evidence was submitted to prove that he committed errors or omissions in his representation of petitioner. App. 85 – 86.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain to petitioner that her belief that a ten-year minimum sentence would automatically occur because her prior record contained only a few convictions resulted in a misunderstanding that rendered her armed robbery guilty plea in ignorance of sentencing consequences and therefore involuntary in nature. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury instead.

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

ANDREA WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

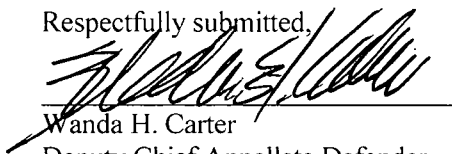
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andrea Waylisha White 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 November 14, 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 Andrea Waylisha White.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of November, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Robin B. Stilwell, Circuit Court Judge

ANDREA WHITE,

PETITIONER,

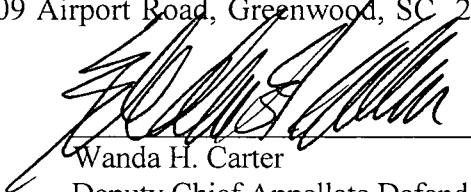
V.

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 Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Andrea Waylisha White, #328460, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 7th day of November, 2014.

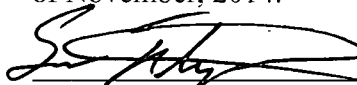


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of November, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.