

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Aiken County

James R. Barber, III, Circuit Court Judge

ALBERT ROMERO LOPEZ,

, PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 6

ISSUE PRESENTED

Trial counsel erred in failing to secure the presence of an interpreter present during his consultations with petitioner, who speaks Spanish, in preparation of a defense in the case because their meetings could not have been productive or meaningful sans the aid of an interpreter.

STATEMENT

Petitioner Albert Romero Lopez pled guilty to resisting arrest with a deadly weapon, possession of a firearm during the commission of a violent crime, assault and battery with intent to kill and two counts of kidnapping during the March 2009 term of the Aiken County General Sessions Court before Judge Thomas A. Russo. Petitioner was sentenced to imprisonment for a period of forty years. Everett K. Chandler represented petitioner at the guilty plea proceeding. App. 1-31. Subsequently, petitioner filed a motion to reconsider and/or reduce or alter his sentences, but the same was denied by Judge Russo.

On April 22, 2010, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 33-50. The respondent filed a return dated August 10, 2010, requesting that a hearing be held in the case. App. 51-54.

A hearing was convened on July 12, 2011, at the Aiken County Courthouse before Judge James R. Barber. App. 56-88. Petitioner was represented at the hearing by Paige Tiffany. On August 2, 2011, Judge Barber issued an order of dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 90-97.

Petitioner appealed Judge Barber's order of dismissal in the case. This petition follows.

ARGUMENT

Trial counsel erred in failing to secure the presence of an interpreter during his consultations with petitioner, who speaks Spanish, in preparation of a defense in the case because their meetings could not have been productive or meaningful sans an interpreter.

The state alleged that petitioner entered the home of Alejandro Morales on the morning of May 2, 2006, thinking that a particular female and two males were inside. Petitioner in effect held Morales and his family members inside the residence. At some point, petitioner shot Morales, who did not die, before fleeing the scene. Petitioner was stopped by police who had to fight petitioner in order to subdue him. App. 22, l. 12 – p. 24, l. 23.

During the PCR hearing, petitioner, who speaks Spanish, testified that he met with trial counsel three to five times, but that an interpreter was present at only one of their meetings. Petitioner stated that he tried to understand his lawyer's conversation, advice, and legal rights, theories, and concepts, but admitted that he could not understand the same. For example, petitioner stated that he thought trial counsel advised that he would get ten years and then be deported after serving the ten-year prison term. Petitioner stated that he never thought he would get a prison term as lengthy as forty years for his convictions in the case. App. 61, l. 18 – p. 68, l. 22.

Trial counsel testified during the PCR hearing and explained that there was an interpreter present during his initial consultation with petitioner, but that petitioner had no problems speaking English and that they had no problems communicating, which meant that there was no need for an interpreter to be present at their meetings. Also, counsel stated he did inform petitioner that a ten-year sentence was possible in the case. App. 76, l. 21 – p. 84, l. 10.

The PCR judge ruled that trial counsel was not ineffective in failing to provide for a Spanish interpreter during their meetings held prior to the plea proceeding. App. 94-96. Note that a Spanish interpreter was present at petitioner's plea proceeding and his PCR proceeding.

Many courts have recognized the constitutional right to an interpreter where one's fluency in English is so impaired that it interferes with his right to confrontation (sixth amendment) and the right to testify (Fifth Amendment) and renders the trial fundamentally unfair. United States v. Mayans, 17 F.3d 1174 (9th Cir. 1994); Valladares v. United States, 871 F.2d 1564 (11th Cir. 1989); Giraldo Rincon v. Dugger, 707 F. Supp. 504 (1989); United States v. Johnson, 248 F.3d 655 (2001). See also Court Interpreters Act under 28 U.S.C.A. §1827(d). South Carolina provides for interpreters to translate for defendants who are not fluent in English. See S.C. Code Ann. §17-1-50 and §15-27-155 (Supp. 1998). S.C. Code Ann. §17-1-50(B)(1) mandates that whenever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness.

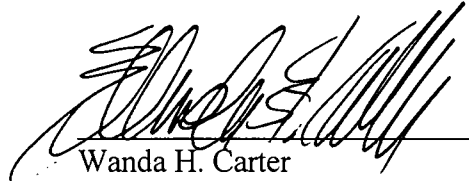
Inasmuch as interpreters are made available in courtroom proceedings, it follows that interpreters are needed also during attorneys' meetings with his clients as well. See EEOC v. Federal Express Corporation, 513 F.3d 360 (4th Cir. 2008), where interpreters for a deaf litigant were made available during company meetings and workshops. Counsel's failure to have an interpreter present during his consultations with petitioner to prepare for the case constituted deficient representation. Petitioner was prejudiced due to this omission because without an interpreter, petitioner did not understand the consequences of his plea and rights waived at the plea

proceeding. Thus, petitioner's pleas were not given voluntarily per the requirements under Boykin v Alabama. Counsel's error in this regard violated petitioner's Sixth Amendment right to effective assistance of counsel in the case. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2012.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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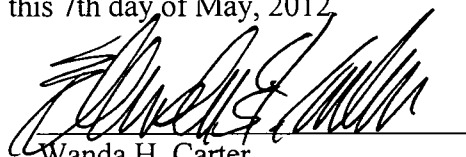
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE


I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of May, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of May, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.