

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 13 2015

S.C. Supreme Court

Certiorari to York County
J. Ernest Kinard, Jr., Circuit Court Judge

LENTAVIS BAXTER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002111

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

I N D E X

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ISSUE PRESENTED

Trial counsel erred in enlisting the aid of petitioner's parents in order to urge petitioner to accept the state's twelve-year plea offer because petitioner would not have pled guilty otherwise as he desired a jury trial, which in turn meant that his guilty pleas were involuntarily entered in the case.

STATEMENT

Petitioner Lentavis Baxter pled guilty to assault and battery in the first degree and second degree criminal sexual conduct during the December 2013 term of the York County General Sessions Court before Judge John C. Hayes, III. Petitioner was sentenced to imprisonment for a period of twelve years. Phillip W. Jamieson represented petitioner at the plea proceeding, and Assistant Solicitor Erin Joyner appeared on behalf of the state. App. 1 – 15. Petitioner’s appeal was dismissed under Rule 203(d)(1)(B)(iv) SCACR.

On November 26, 2013, petitioner filed a PCR application with the York County Office of the Clerk of Court. App. 17-23. The respondent filed a return dated February 5, 2014, requesting that a hearing be held in response to petitioner’s PCR action. App. 24 – 29.

A PCR hearing was convened on August 7, 2014, at the York County Courthouse before Judge J. Ernest Kinard, Junior. App. 30 – 66. On September 3, 2014, Judge Kinard issued an Order of Dismissal therein denying petitioner’s PCR allegations of ineffective assistance of counsel in the case. App. 70 – 77.

Petitioner appealed Judge Kinard’s Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in enlisting the aid of petitioner's parents in order to urge petitioner to accept the state's twelve-year plea offer because petitioner would not have pled guilty otherwise as he desired a jury trial, which in turn meant that his guilty pleas were involuntarily entered in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. The solicitor's version of the case was that on the night of September 22, 2010, petitioner and co-defendant James Page ambushed Mitzi Baker and Jenny McCorkle as they were about to enter into an apartment; and that petitioner held a knife to McCorkle's throat while he had sex with McCorkle. Petitioner was also accused of "poking" Baker with the knife. App. 10, l. 1 – App. 11, l. 22.

During the PCR hearing, petitioner testified that he repeatedly informed trial counsel "several times" that he "wanted to go to trial," but that trial counsel did not want to take the case to trial and ultimately "brought [his] parents back there... to manipulate [him] out of going to trial." App. 37, l. 5 – 13. Petitioner stated that initially he rejected the state's twelve-year plea offer because he wanted a jury trial, and that he was "angry when [he learned that counsel] was discussing plea deals behind [his] back." App. 39, lines 12 – 15. Petitioner stated that after his parents came to court, he accepted the state's offer and pled guilty to the two charges. App. 40, l. 15 – p. 42, l. 3. However, petitioner explained that the sex in question was "consensual" sex in exchange for drugs and that these females yelled raped when no drugs were produced. App. 39, lines 23 – 24; App. 59, l. 1 – 23. Even the solicitor described the case as "a party gone bad...[and that the victims] were angry because they had been cheated out of drugs promised to them," and that the case against co-defendant Page was stronger than the case against petitioner. App. 11, l. 4 – 9; App. 12, l. 10 – 18.

Petitioner's PCR testimony describing how adamantly he desired a jury trial follows:

A. I told him I didn't want to take this plea, three times like I said before, [but] my hands was (sic) forced to take a plea.

Q. But now you're saying you didn't actually plead freely and voluntarily?

A. As far as – then after that my trial came up. I kept telling him, I want to go to trial. I want to go to trial. And after that, he brought my parents back there. One was crying – my mother was crying, and after that, my father came back there. Exact words. Father said he's going to leave it in my hand now. And my mother said, she said "Take the plea." App. 45, l. 12 – p. 46, l. 13.

Petitioner's father, Leonard Baxter, testified at the PCR hearing and verified petitioner's claim to the extent that petitioner made it known that he desired to be tried by a jury in the case. App. 53, l. 22 – p. 54, l. 5.

Trial counsel testified at the PCR hearing and explained that petitioner's co-defendant went to trial and was convicted on identical charges and sentenced to imprisonment for a period of thirty years, and that he explained to petitioner that he (petitioner) faced a similar risk and that he advised his parents of the same information. App. 11, lines 13 – p. 12, l. 6; App. 57, l. 23 – p. 58, l. 20. Nonetheless, trial counsel stated that he did not force or threatened petitioner to plead guilty to the state's charges against him. App. 58, l. 6 – 9. Trial counsel added that the trial "risk was too great" and that "it was relatively certain he would be convicted," and that his sentencing exposure was "almost 100 years." App. 60, l. 11 – p. 61, l. 12; App. 64, lines 16 – 21. Note that counsel admitted that there was a witness whom the solicitor knew of who would testify that she overheard the conversation regarding the "sex for drug" exchange, which explained the weakness of the state's case against petitioner and why the solicitor kept the twelve-year plea offer available to petitioner. App. 59, l. 4; App. 63, lines 11 – 19. Trial counsel added that consensual sex was the available

defense in the case and that there was a doctor available who would have testified that the “extensive injuries to the females’ genitals” could have come about via consensual sex. App. 64, lines 3 – 10.

The PCR judge ruled that petitioner made the decision to plead guilty “on his own accord with the help of learned counsel,” and that his decision to plead guilty was made “freely and voluntarily without any threats or promises from anyone else.” App. 75-76.

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 pleas were 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). In the case at bar, it was trial counsel who continued to push for petitioner’s acceptance of a plea deal and enlisted the aid of his parents to reiterate this as the better course of action because of the risk of petitioner being convicted like his co-defendant, notwithstanding the fact that this was a case of consensual sex for drugs agreement “gone bad,” which could have been developed as a defense, especially since a witness who overheard this exchange deal was available to testify to the same. Hence the reason why the solicitor kept the twelve-year plea alive up until the day of the plea in the case.

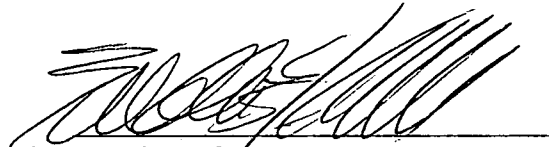
Had counsel not ruminated excessively over the co-defendant’s case and brought in petitioner’s parents to influence him to take the plea offer, but rather developed a defense in petitioner’s case instead, petitioner would have been able to exercise his right to a jury trial as he truly desired, and not entered the involuntary guilty pleas in the case. It’s well established that due process forbids convicting a defendant on the basis of a coerced guilty plea. Commonwealth of Pennsylvania ex. Steven J. Rel Herman v. Claudy, 350 U.S. 116 (1956). A plea must be voluntarily and intelligently given. Boykin v. Alabama, 395 U.S. 238 (1969). Clearly, petitioner was coerced

into pleading guilty to the state's charges in the case and as a result, his pleas were involuntarily given.

CONCLUSION

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

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 13th day of July, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

LENTAVIS BAXTER,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002111

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lentavis Baxter states:

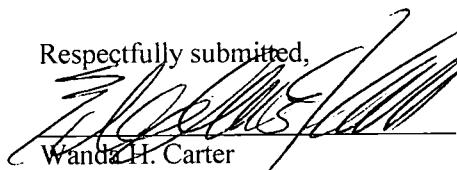
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on August 7, 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 Lentavis Baxter.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of July, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

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LENTAVIS BAXTER,

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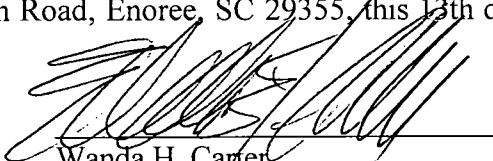
V.

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 J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Lentavis Baxter, #353613, at Tyger River Correctional Institution, 200 Prison Road, Enoree, SC 29355, this 13th day of July, 2015.



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of July, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.