

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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LENTAVIS BAXTER,

**RECEIVED**

SEP 15 2015

PETITIONER  
S.C. Supreme Court

STATE OF SOUTH CAROLINA, v.

APPELLATE CASE No. 2014-002111

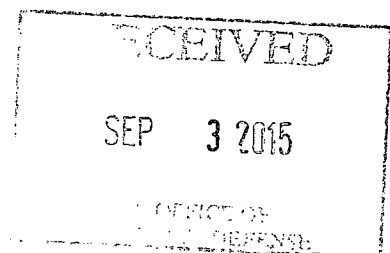
RESPONDENT

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Motion of Memorandum for Petitioner

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LENTAVIS D. BAXTER  
Petitioner  
Tyger River Correctional Institution  
200 Prison Road  
Enoree, SC 29335-9308



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## INDEX

INDEX . . . . .	1
ISSUE PRESENTED . . . . .	2
STATEMENT . . . . .	3
ARGUMENT . . . . .	4
CONCLUSION . . . . .	

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## ISSUE PRESENTED

Trial Counsel was ineffective, due to the lack of defense. 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.

Petitioner Lantavis Baxter pled guilty to assault and battery in the first degree and second degree criminal sexual conduct during the December 2012 term of the York County General Sessions Court before Judge John C. Hejjes, 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) SCAER.

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 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 was ineffective, due to the lack of defense. 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.

Come now the plaintiff, Lentavis Baxter pro se, respectfully requests this Honorable Court to grant relief in this case as follows:

Due to the Solicitor facts of the case. That was apprised during the plea proceeding. The solicitor's fact of the case, was the night of September 22, 2010. Ms. McCorkle was sexually assaulted - and Ms. Baker was assaulted in this matter. app. 10, 1.1 - app. 11, 1.22,

During the plea proceeding the fact remains the same. That the petitioner was giving the plea for Assault and Battery in the first degree on Mitzzi Baker. [victim] app. 6, 21-25 - app. 7, 1-9 and was giving a plea for CSC in the 2nd Degree on Ms. McCorkle. [victim] app. 7, 13-25 - app. 8, 1-13

During the PCR Hearing trial counsel testified after answering petitioner PCR counsel question. On how the plea offer came about when talking to the solicitor, for the assault and battery - and the criminal sexual conduct? Trial Counsel explained, that she obviously perceived that her case wasn't as strong as she thought it was and she renewed her offer. app. 63, 11-19  
[What was her first offer to make her renew the 2nd offer?]

Question was also given to trial counsel. About taking the CSC off the table? Trial Counsel explained, that she was not willing to do that. Yeah, there was extensive discussion about that. app. 63, 20-23

Now here alone trial counsel speak about one party claims of CSC. Trial counsel explained that the victim had substantial physical injuries that substantiated an assault had occurred. Even if you believed that the consensual nature of the sex, there was no way to explain the fact that she had a busted lip that required stitches and stab wounds. app. 60, lines 19-23.

However during the trial counsel and Solicitor discussion, whether or whether not the CSC should be lifted off the table. An referring to one party claims of CSC - [victim Ms. Baker]. However when the trial counsel explain the solicitor's theory of the case. It was not consensual because of those injuries. App. 64, lines 5-6

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Then the trial counsel explain that petitioner would almost certain to be convicted of assault and battery first degree. App. 60, lines 23-25. An also explain that it was going to be — — certainly going to be difficult. To explain consensual sex and stab wounds. App. 64, lines 9-10

However during the plea proceeding, CSC was ~~not~~ dismiss on [Ms. Baker]. app. 5, lines 3-5, app. 6, 21-25 — 7, 1-9. The party that trial counsel testified the solicitor was referring the injuries to. app. 64, lines 5-6

So it was and most like show's ineffectiveness. Due to the lack of defense from the team counsel. Toward the state theory of the case, and let the petitioner accept the involuntary plea. An instead establishing a defense for the defendant. So, he could exercise his right for a jury trial. Trial Counsel also testified, he thought it was extremely reasonable. Cause the risk was too great for petitioner to take. app. 64, lines 13-14. Even the petitioner initially wanted to go to trial, whether the fact his Co-defendant receive 30 years. For the same charges and with the same witnesses. However trial counsel had know interest to stick by petitioner decision and proceed to trial. An however — cooperation was not in trial counsel interest, instead trial counsel felt like he was running a pretty large risk. App. 58, 13-15 Beaver v. State, 271 s.c. 381, 247 s.e. 2d 448, s.c. September 13, (1978).

Now however in the petitioner case, trial counsel was aware. That petitioner was incompetent on how large the risk was it. Due to the fact trial counsel testified, that — he pled guilty to, the assault and battery first, would have carried up to ten years, and it was almost certain he'd be convicted of that. app. 60, lines 16-19

Now the fact was over look, ~~that~~ that trial counsel did admitted — that petitioner stated he wanted to be taking to trial on several occasions. App. 60, lines 11-14

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But that was not ~~his~~ knowledge. Just as well the fact, the petitioner had no choice to proceed with trial counsel. Due to the statement trial counsel gave. About petitioner request for trial counsel to be reviewed on 3 occasions. An also expl- that they went in front of the judge those times and petitioner was given the option to proceed with trial counsel or pro se. Due to the fact he already re- fered one attorney. An to add, petitioner was "Incompetent" he couldn't pro se without counsel. App. 66, lines 6-12 Antonio II, (s.c. app. 1995) 319 s.c. 395, 461 s.e. 2d 825, Reversed 324 s.c. 120, 477 s.e. 2d 713. Constitutional law Ott 4782; Criminal Law Ott 273.4 (1)

Now however, at some point petitioner had felt. That trial counsel representation was not strong enough for petitioner, poor counseling, his concern toward petitioner case — was none, trial counsel concern was only a plea deal, and petitioner didn't trust counsel judgement in his case. But in "Petitioner" case he had no choice to proceed with — "trial counsel". That they had representing him in his case. App. 66, lines 6-12

In order to set aside a guilty plea, the defendant must show a reason- able probability that, but for the government misconduct, he would not have pleaded guilty and would have insisted on going to trial. The defendant also brought to the "Court" attention. That his "Sixth Amendment" has been violated. "Far as failure to investigate new errors — that was in his case, failure to file motions on defendant behalf, and allowing the state to "Indict" him for the same offense's". App. 33, 22-25

"That also violate the defendant due process". However Due process gives the "Defendant" the right to exercise those rights. The defendant also brought to the court attention. That his "Fast and Speedy Trial Motion" was violated. An in the defendant case the motion was filed, but the time line for the motion expired for the state. — "Copy before the plea deal". App. 36, line 5-6 — App. 36, lines 11-12

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However at the conclusion of the PCR hearing [the Court] came into agreement with the trial Counsel. In the way the court talks as if, the risk was not great. When he testified that it — Look like he got ten anyway from all the testimony I saw. He had the knife, cut the victim. That was easily provable from the transcript I read. So he's just looking at two more years. He got — if he goes back to trial. — app. 67, 11-16

Had not the trial counsel push petitioner and to entering an involuntary guilty pleas in the case. An stood by petitioner decision, — but instead he was so determine and unrelentant. To use the one's who are a major influence in the petitioner life, his [parents]. Against the defense. Parker v. North Carolina, 397 U.S. 790, 90 S. Ct. 1474 (Mem), 25 L. Ed. 2d 785, U.S. N.C., May 04, 1970 (NO. 268, 270)

To avoid setting up a defense for the petitioner. So he could exercise his rights to be trial by jury of a group of his peer's. Instead trial counsel couldnt let up and accept petitioner decision, but became ineffective. When trial counsel was unwilling to proceed with petitioner desire for trial. Cutter v. Stevenson, F. Supp 2. d, 2009 WL 2997603, D.S.C., September 16, 2009 (NO. 0:08-CV-02762-PMDPSG). It's clearly, petitioner was coerced into pleading guilty to the state's charges in the case and as a result, his pleas were involuntarily given.

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## Conclusion

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

Respectfully Submitted,

Denton D. Baxter  
Denton D. Baxter

Defendant

Petitioner for Petition

This 30<sup>th</sup> day of August, 2015.

 ORIGINAL



**SCCID**

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SEP 15 2015

September 15, 2015

**S.C. Supreme Court**

The Honorable Daniel E. Shearouse  
Clerk of Court  
The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

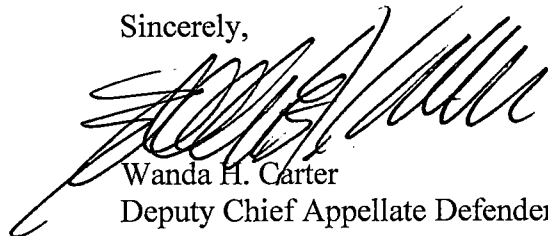
Re: Lentavis Baxter v. State of South Carolina

Dear Mr. Shearouse:

Please accept the pro se petition filed by the above named individual in response to the Johnson petition I recently filed with the Court in the case. Petitioner inadvertently mailed this to our office.

If you have further questions, do not hesitate to contact me.

Sincerely,



Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/smf

Enclosure