

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County
L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

DAQUAN JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000368

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to advise the plea judge of petitioner's request to serve his sentence at an adult correctional facility rather than serving out his sentence at a youthful offender correctional facility.

STATEMENT

Petitioner Daquan Jones pled guilty to attempted second degree burglary (non-violent), petit larceny, and second degree burglary during the October 2013 term of the Richland County General Sessions Court before Judge Allison R. Lee, who imposed a youthful offender prison sentence not to exceed five years on the burglary convictions and thirty days county detention on the larceny conviction. App. 1 – 41. Constantine Pourmaras represented petitioner at the plea proceeding and Assistant Solicitor Kathryn Cavanaugh appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On May 2, 2014, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 43 – 47. The respondent filed a return dated August 18, 2014, requesting that a PCR hearing be held in the case. App. 48 – 51.

A PCR hearing was convened on January 21, 2015, at the Richland County Courthouse before Judge L. Casey Manning. App. 53 – 71. Petitioner was present at the hearing and represented by Anna R. Good, and Assistant Attorney General Clay Mitchell appeared on behalf of the state.

On February 11, 2015, Judge Manning signed an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case.

Petitioner appealed Judge Manning's Order of Dismissal. This brief follows.

ARGUMENT

Trial counsel erred in failing to advise the plea judge of petitioner's request to serve his sentence at an adult correctional facility rather than serving time at a youthful offender correctional facility.

During the plea proceeding, the plea judge was apprised of the facts of the case. Apparently, on August 11, 2012, a rock was thrown through a window of a home belonging to Keisha Sessions and a flat screen television removed from her home thereafter. Blood found at the point of entry at Sessions' home was found to be a blood match to petitioner's DNA. Petitioner was charged in that case. Later, petitioner was charged with attempting to enter a home owned by Caroline Boston Williams after the description given of that perpetrator was a match of petitioner, who was arrested in connection with that case also. App. 18, l. 21 – p. 28, l. 15.

During the PCR hearing, petitioner testified that he informed trial counsel that he had no desire to be sentenced "under YOA," but at the plea proceeding counsel failed to advise the plea judge that he (petitioner) was adverse to a YOA sentence and in effect desired to be sentenced as an adult. App. 58, l. 2 – p. 59, l. 22. Petitioner requested a new sentencing hearing based on counsel's ineffectiveness in this regard. App. 55, l. 25 – p. 56, l. 2; App. 59, l. 20 – 25.

Trial counsel testified at the PCR hearing and admitted that she knew petitioner did not want a YOA sentence, but neither requested a sentence other than a YOA (shock incarceration) sentence nor specified a sentence based on petitioner's sentencing request. App. 69, l. 22 – p. 70, l. 5; App. 66, l. 22 – p. 67, l. 2; App. 65, l. 16 – 16. Note that no plea deals were in place in petitioner's case.

The PCR judge ruled that "[petitioner] failed to meet his burden to prove counsel was ineffective in failing to object to the sentence (YOAs) imposed and in failing to oppose a sentence pursuant to the YOA," and that no prejudice was established by petitioner regarding the matter.

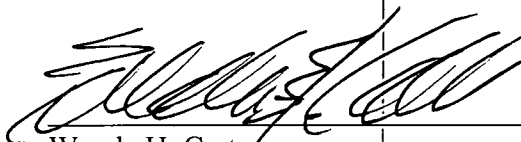
A trial judge has discretion in ruling as to whether a convicted defendant would benefit from Youthful Offender Correctional treatment. Bell v. Leeke, 266 S.C. 563, 225 S.E.2d 188 (1976); citing to Brown v. State, 265 S.C. 516, 220 S.E.2d 125 (1975); Powell v. State, 262 S.C. 592, 206 S.E.2d 883 (1974). This same rule applies under the Federal Youthful Offender Act as well. Dorszynski v. United States, 418 U.S. 424 (1974). However, in the case at bar, petitioner believed “in effect” that his prison rehabilitation would have been best served for him in an adult correctional system. South Carolina provides for the rehabilitation of inmates per Article 12, §2 of the South Carolina State Constitution. In the case of In the Matter of the Care and Treatment of Alfred William Lasure, 379 S.C. 144, 666 S.E.2d 228 (2008), the Court held that Article XII, section 2 of the South Carolina State Constitution states that the General Assembly “shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.”

Therefore, since inmate prison rehabilitation is an obvious goal at SCDC, and petitioner believed in effect that his prison rehabilitation and reform would be achieved more successfully at an adult correctional facility, then trial counsel, who knew petitioner did not want a YOA sentence, performed below the standard level of competence required of an attorney in a criminal case by failing to apprise to judge of her client’s desire to be sentenced to an adult prison facility rather than a youthful offender treatment facility as he believed there was a greater chance for reform in adult prison. Counsel’s error here violated petitioner’s Sixth Amendment right to competent counsel in a criminal plea proceeding. See Hill v. Lockhart, 474 U.S. 52 (1985). Petitioner was prejudiced because of counsel’s deficient representation in this regard because the correctional facility misplacement hindered the optimum rehabilitation for him.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this petition be granted and full briefing allowed 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 18th day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
L. CASEY MANNING, CIRCUIT COURT JUDGE

DAQUAN JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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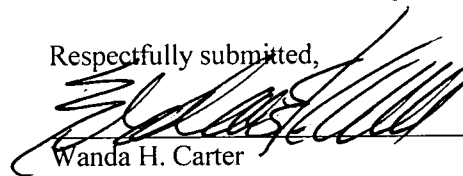
PETITION TO BE RELIEVED AS COUNSEL

Counsel for DaQuan Jones 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 January 21, 2015. 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 DaQuan Jones.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of September, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

DAQUAN JONES,

PETITIONER,

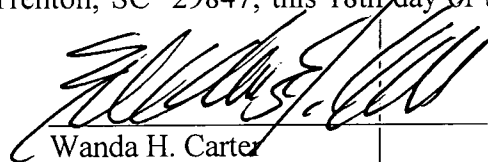
V.

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 Clay Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and DaQuan Jones, #351398, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 18th day of September, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.