

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Spartanburg County
Roger L. Couch, Circuit Court Judge

VIKKI M. CORBIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO.2015-001090

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in abrogating petitioner's right to allocution during the sentencing phase of the plea proceeding held in the case.

STATEMENT

Petitioner Vikki Mason Corbin pled guilty to eleven counts of forgery (less than 10,000.00) during the July 2013 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II. Petitioner was sentenced to an aggregate ten-year prison term on her convictions. App. 1-28. No appeal was perfected on petitioner's behalf. Beverly Jones represented petitioner at the plea proceeding and Assistant Solicitor Kate Robinette appeared on behalf of the state.

On September 19, 2013, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 30-36. The respondent filed a return requesting that a PCR hearing be held in response to petitioner's PCR action. App. 37-40.

A PCR hearing was convened on March 24, 2015, at the Spartanburg County Courthouse before Judge Roger L. Couch. Petitioner was present at the hearing and represented by Christopher D. Brough, and Assistant Attorney General Suzanne White appeared on behalf of the state. App. 42-64. On May 8, 2015, Judge Couch issued an Order of Dismissal therein denying petitioner's PCR allegations of ineffective assistance of counsel in his case. App. 66-72.

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

ARGUMENT

Trial counsel erred in abrogating petitioner's right to allocution during the sentencing phase of the plea proceeding held in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts in the case. Apparently, petitioner, who was an employee of Zuzu's Fashion Store in Greer, took numerous checks out of the store cash register and passed the forged checks throughout local area businesses. This was discovered by the store owner on September 25, 2012. App. 17, 1.11 – p. 18, 1.8.

Also during the plea proceeding, trial counsel explained that petitioner had previously received drug treatment and mental health counseling for her mental illness, one of which was bipolar disorder; but that she relapsed upon learning of her mother's terminal illness and her father's illness as well, and thereafter committed the crimes for which she was charged. App. 23, 1.3 – p. 26, 1.23.

In addition, petitioner addressed the plea judge and explained that she was "clean" for two years, but relapsed when she learned of her mother's pending death because this reminded her of her mother's first departure when she was a child, and that the angst of facing the fact that her mother would leave again, albeit via death, was too painful, particularly after she found out that her father was ill also. Petitioner stated that she was very sorry for the incidents. App. 27, 1.4 – p.28, 1.2.

During the PCR hearing, petitioner complained that trial counsel stopped her from continuing to explain to the plea judge about how and why the events occurred in her case in order to complete the case in mitigation. Petitioner stated that trial counsel told her that she "had said enough," but that she (petitioner) "[felt] like she should have been able to say what [she] needed to say." App. 47, 1.3-7.

Trial counsel testified at the PCR hearing and explained that she submitted to the plea judge letters from her parents in mitigation because both were too ill to attend the proceeding, and that petitioner “talked about her dad, of course, and her mother [as] part of the [case in]mitigation.” App. 57, lines 4-11.

The PCR judge ruled that petitioner did not meet her burden of proving any claim that trial counsel rendered ineffective assistance in the case. App. 66-72.

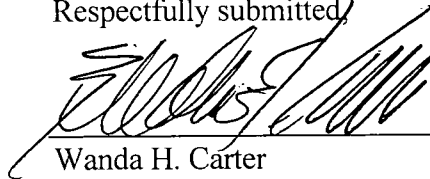
The right of allocution refers to the practice of the judge’s inquiry as to whether the defendant has anything to say prior to sentencing. State v. Stokes, 345 S.C. 368, 548 S.E.2d 202 (2001), citing to State v. Phillips, 215 S.C. 314, 54 S.E. 2d 901 (1949) at footnote 11. Thus, allocution is the defendant’s right to speak on his own behalf before sentencing is handed down by the judge. When a defendant is denied the right to address the judge before sentencing, which is a denial of the right to allocution, then the fairness and integrity of the proceeding are compromised because but for the denial of the right to allocution, a lesser sentence might have been issued by the judge. See also, United States v. Muhammad, 478 F.3d 247 (4th Cir. 2007).

In the case at bar, counsel erred by interrupting and cutting short petitioner’s right to allocution prior to sentencing at her plea proceeding. Petitioner had a compelling set of circumstances which could have yielded a lesser sentence had she been allowed to fully and completely address and explain in detail to the plea judge the dire situation that led to her actions in the case. Counsel’s error in abrogating petitioner’s right to allocution at the plea proceeding constituted deficient legal representation in petitioner’s case in violation of the Sixth Amendment. See also Hill v. Lockhart, 474 U.S. 52 (1985). Petitioner was prejudiced by trial counsel’s error in this regard because had petitioner been able to fully exercise her right to allocution, a reasonable probability exists that the outcome of her sentence would have been different.

CONCLUSION

Based on the foregoing argument, petitioner requests that this petition be granted and full briefing allowed on the above raised issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
ROGER L. COUCH, CIRCUIT COURT JUDGE

VIKKI M. CORBIN,

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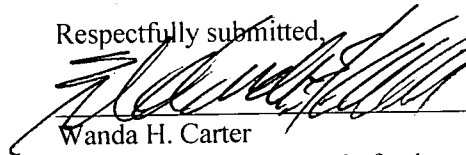
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Vikki Mason Corbin 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 March 24, 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 Vikki Mason Corbin.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of November, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Roger L. Couch, Circuit Court Judge

VIKKI M. CORBIN,

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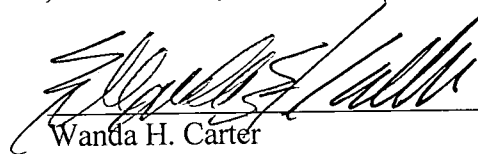
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

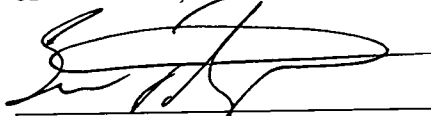
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Vikki Mason Corbin, #292858, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 20th day of November, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of November, 2015.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.