

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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SC SUPREME COURT

FRANK BECKHAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001235

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 failing to move for the withdrawal of petitioner's guilty plea on the offense of possession of crack cocaine because petitioner claimed that he was innocent of that charge.

STATEMENT

Petitioner Frank Beckham pled guilty to possession of crack cocaine (first offense) and distribution of crack cocaine (second offense) during the Spartanburg County General Sessions Court before Judge J. Derham Cole. Roger Poole represented petitioner at the plea proceeding and Assistant Solicitor Scott Spivey appeared on behalf of the state. Petitioner was sentenced to prison terms of five years on the distribution conviction and three years on the possession conviction. App. 1 – 30. Petitioner appealed, but his direct appeal was dismissed pursuant to Rule 203(d)(1)(B)(iv), SCACR. App. 31 – 33.

On February 25, 2013, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. A PCR hearing was held on September 15, 2014, at the Spartanburg County Courthouse before Judge Roger L. Couch. App. 47 – 83. Petitioner was present at the hearing and represented by J. Brandt Rucker, and Assistant Attorney General J. Clayton Mitchell appeared on behalf of the state.

On April 23, 2015, Judge Couch signed an Order of Dismissal in the case. App. 85 – 91. Petitioner appealed Judge Couch's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to move for the withdrawal of petitioner's guilty plea on the offense of possession of crack cocaine because petitioner claimed that he was innocent of that charge.

Both drug convictions in this case (one possession and one distribution) emanated from an undercover operative who allegedly made two twenty-dollar controlled crack cocaine purchases from petitioner. One such sale occurred on November 14, 2010, and the second sale transpired on November 23, 2010. Apparently, the confidential informant went to an area where James McCluney's residence was located and approached petitioner, who was near McCluney's residence, and asked for crack cocaine. The solicitor stated that on both dates, petitioner went into McCluney's house and came out with the crack cocaine, which he surrendered in exchange for cash (\$20.00) from the informant. Tr. 18 – 22, l. 4.

During the plea proceeding, petitioner objected to entering a plea on the possession of crack cocaine charge and argued that the informant never came back on November 14, 2010 (when the possession offense allegedly occurred) and picked-up the crack cocaine. App. 21, l. 3 – 4. Petitioner explained during the PCR hearing as follows:

Petitioner: Yeah, I understand what he said, but it's not true. She never did come back after she got the first – got me the first time with that little speck. She never did come back.

The Court: All right. So do you want a jury trial on that charge?

Petitioner: I don't know. I need to talk with Mr. Poole a little more, because she never did come back. She never did. That one time she came back she carried that piece off and took that piece back. She never did come back. I never did see her no more. I never sold her nothing else. Never went and got nothing else for her. And that's that honest truth. If I did I would go ahead and plead guilty to it. That's why I'm saying I wanted him to read that because when he said that – possession of the other charge, she never did

come back. That was the – that was the only time she came, the first time, and cut that piece off. She never did come back....I am guilty of the first one, but I'm not guilty of them other two.

The Court: Well, I thought you said you were guilty of the one that happened on November the 23rd.

Petitioner: No. That's the one I'm saying I'm guilty of.

The Court: Okay. Well, this would have happened before that, November 14.

The Court: Are you saying you never sold it to her but once?

Petitioner: But one time, is what I am saying.

The Court: You only sold it once?

Petitioner: One time. Them other charges, I don't know that he's talking about. I didn't sell it but one time to her.

The Court: All right. Well, do you just want me to accept your plea on the distribution occurring on November the 23rd?

Petitioner: Yes...because I'm guilty of that. App. 22 l. 7 – p. 24, l. 2.

Trial counsel testified during the PCR hearing and explained that petitioner rejected the plea offer on the charges and that he wanted a jury trial. App. 68, lines 9-18; App. 76, line 3-6.

The PCR judge ruled that “petitioner ha[d] not established any constitutional violations or deprivations that would require [the]...grant [of petitioner's PCR] application. App. 90-91.

A trial court can reject a guilty plea if the defendant protests his innocence. State v. Paris, 354 S.C. 1, 578 S.E.2d 751 (2003). The withdrawal of a guilty plea is not absolutely precluded or conditional upon whether the plea has already been accepted by the trial judge, but rather the withdrawal of a guilty plea rests within the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 292 S.E.2d 793 (1982); State v. Lee, 274 S.C. 372, 264S.E.2d 418 (1980). The permission of the withdrawal of a guilty must be given if the defendant has credibly asserted his

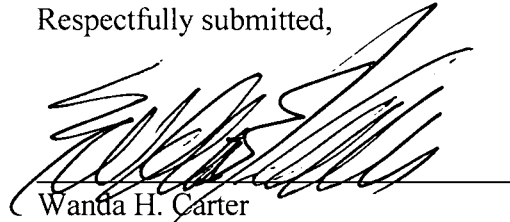
legal innocence. United State v. Sparks, 67 F.3d 1145 (4th Cir. 1995). Here, petitioner credibly asserted his innocence. A plea received despite a defendant's protests of innocence cannot be considered voluntarily given. See Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009), where counsel was found ineffective in failing to move to withdraw appellant's guilty plea where the plea was accepted despite "appellant's protestation of his innocence." Likewise, petitioner's guilty plea on the possession offense was given involuntarily also because he too claimed his innocence on that charge.

Thus, trial counsel erred in failing to move for the withdrawal of petitioner's guilty plea on the possession of crack cocaine charge after petitioner claimed he was innocent of that charge. Counsel's omission in this regard constituted deficient performance in connection with his representation of petitioner during the instant plea proceeding in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 57 (1985). But for counsel's error in this regard, petitioner might not have a possession of crack cocaine conviction on his record.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court allow full briefing 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 7th day of January, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

FRANK BECKHAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001235

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Frank Beckham, Jr. 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 September 15, 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 Frank Beckham, Jr..

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of January, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Roger L. Couch, Circuit Court Judge

FRANK BECKHAM,

PETITIONER,

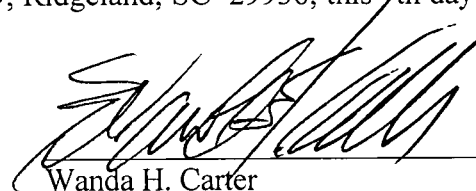
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

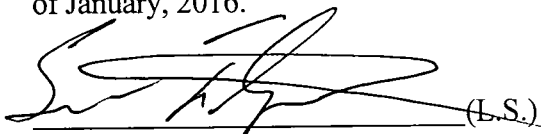
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Frank Beckham, Jr., #133580, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC- 29936, this 7th day of January, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of January, 2016.



(L.S.)

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