

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Saluda County

Brooks P. Goldsmith, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

FEB 10 2016

SC SUPREME COURT

JASMINE D. JENNINGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001426  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to explain adequately sentencing consequences in the case.

## STATEMENT

Petitioner Jasmine D. Jennings pled guilty to two counts of reckless homicide during the May 2013 term of the Saluda County General Sessions Court before Judge William P. Keesley. Petitioner was sentenced to a term of ten years on one reckless homicide conviction and three years, consecutive, with probation on her second reckless homicide conviction. Petitioner was represented by Robert T. Williams at the plea proceeding and Assistant Solicitors Donald V. Myers and H. Franklin Young appeared on behalf of the state. Petitioner did not appeal her convictions and sentences.

On May 21, 2014, petitioner filed a PCR application with the Saluda County Office of the Clerk of Court. App. 38 – 46. The respondent filed a return dated September 22, 2014, requesting that a hearing be held in the case. App. 47 – 51.

Subsequently, petitioner filed two amended PCR applications dated April 8, 2015, and April 15, 2015, respectively. App. 53 -57. A PCR hearing was convened on April 20, 2015, at the Lexington County Courthouse before Judge Brooks P. Goldsmith. Petitioner was present at the hearing and represented by Kristy G. Goldberg, and Assistant Attorney General Walt Whitmire appeared on behalf of the state. App. 58 – 106.

On June 3, 2015, Judge Goldsmith issued an Order of Dismissal in the case. App. 107 – 114. This petition follows.

## ARGUMENT

Trial counsel erred in failing to adequately explain sentencing consequences in the case.

This case involved an accident that occurred on December 15, 2012, on Highway 23 in Saluda County between Batesburg and Monetta when petitioner, who was driving her vehicle in a lane to pass, struck another vehicle as it turned into a driveway off the roadway. The two persons inside the vehicle that was turning died from their injuries. App. 30, ll. 5 -23; App. 7, l. 22 – p. 8, l. 12; App. 32, l. 24 – p. 33, l. 17.

During the PCR hearing, petitioner testified that counsel told her that she would likely get probation and that she relied on that advice in deciding to plead guilty as charged. Petitioner stated that she was not pleased, and that if everything had been “brought out, then she wouldn’t have got that much time.” App. 66, l. 21 – p. 67, l. 10.

Trial counsel testified at the PCR hearing and explained that he requested probation and admitted that he told petitioner that he “didn’t know” if she would receive jail time or in effect probation time, but also stated that he did not advise that she would get probation. App. 86, ll. 2 – 20. App. 87, ll. 22 – 25.

The PCR judge rejected the allegation that trial counsel erred in misadvising petitioner that she would receive a probation sentence and denied and dismissed this allegation. App. 112 -113.

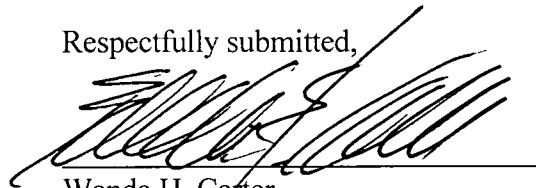
Clearly, counsel misadvised petitioner by indicating that a probation sentence was possible and requested the same, and then stated later that he was unsure if jail time would result, but added finally that he never advised that a probation sentence was a possibility. Counsel’s advice regarding sentencing was confusing double-talk. In order for a defendant to plead guilty he must have a full understanding of the consequences of his plea. Simpson v. State, 317 SC 506, 455 S.E. 2d 175 (1195); Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999); Hinson v. State, 297 S.C. 456, 377

S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Counsel's failure to adequately explain sentencing consequences in this case violated petitioner's Sixth Amendment right to effective assistance of counsel during a plea proceeding. See Hill v. Lockhart, 484 U.S. 52 (1985). Hence, petitioner's guilty pleas were not given voluntarily.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that the Court grant the petition and 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 10th day of February, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SALUDA COUNTY  
BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE

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JASMINE D. JENNINGS,

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STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Jasmine D. Jennings 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 April 20, 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 Jasmine D. Jennings.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 10th day of February, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Saluda County

Brooks P. Goldsmith, Circuit Court Judge  
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JASMINE D. JENNINGS,

PETITIONER,

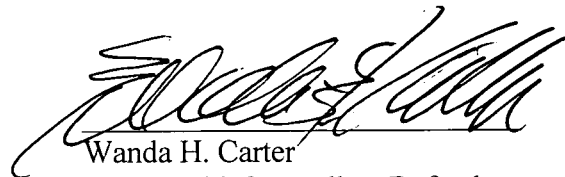
V.

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 Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jasmine D. Jennings, #355568, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 10th day of February, 2016.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day  
of February, 2016.



(L.S.)

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