

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

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Certiorari to Florence County  
D. Craig Brown, Circuit Court Judge  
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SYLLVESTER D. TAYLOR

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001854  
\_\_\_\_\_

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

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ATTORNEY FOR PETITIONER

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## ISSUE PRESENTED

In light of the holding in Morris v. South Carolina, 371 S.C. 278, 639 S.E.2d 53 (2006),<sup>1</sup> trial counsel erred in failing to move for a continuance after the solicitor called for a trial in absentia in petitioner's case because additional time was needed to locate petitioner and provide him with an opportunity to appear in court and plead guilty per a plea bargain that had already been agreed upon by all parties involved in the case.

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<sup>1</sup> In Morris, supra, the Court held that trial counsel was ineffective in failing to move for a continuance so that the defendant could plead to an agreed upon plea bargain on a lesser offense rather than proceeding on with a trial in the defendant's absence, which yielded a greater sentence.

## STATEMENT

Petitioner Syllvester D. Taylor was convicted in absentia on the charge of possession of crack cocaine with intent to distribute (third offense) per jury trial held during the April 2007 term of the Florence County General Sessions Court before Judge Thomas A. Russo. Petitioner was sentenced to imprisonment for a period of thirty years. App. 1 – 182. Vick Meetze represented petitioner at trial, and Assistant Solicitor Robert W. Wells appeared on behalf of the state.

On appeal, petitioner's case was reversed by the South Carolina Court of Appeals,<sup>2</sup> but the South Carolina Supreme Court reversed the Court of Appeals' holding on appeal.<sup>3</sup> See State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (Ct. App. 2010), and State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013), respectively.

On May 17, 2013, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 184 – 188. The respondent filed a return dated May 13, 2014, requesting that a PCR hearing be held in the case. App. 189 – 193.

A PCR hearing was held on April 15, 2015, at the Florence County Courthouse before Judge D. Craig Brown. App. 195 – 232. Petitioner was present at the hearing and represented by Croom Hunter, and Assistant Attorney General Jonathan Waller appeared on behalf of the state. On August 5, 2015, Judge Brown issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 234 – 243.

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

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<sup>2</sup> The S.C. Court of Appeals reversed and held that police lacked reasonable suspicion to stop and detain petitioner. State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (2010).

<sup>3</sup> The S.C. Supreme Court reversed the Court of Appeals and held that police had reasonable suspicion to stop, detain, and search petitioner. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663.

## ARGUMENT

In light of the holding in *Morris v. South Carolina*, 371 S.C. 278, 639 S.E.2d 53 (2006),<sup>4</sup> trial counsel erred in failing to move for a continuance after the solicitor called for a trial in absentia in petitioner's case because additional time was needed to locate petitioner and provide him with an opportunity to appear in court and plead guilty per a plea bargain that had already been agreed upon by all parties involved in the case.

At trial, police officer Toby Bellamy testified that on the night on July 5, 2006, police received an anonymous tip about a black male riding on a bicycle on Ervin Street in Charleston, South Carolina, was selling drugs. Said male on the bicycle, who was later identified as appellant, was subsequently stopped by police, searched, and then arrested after crack cocaine was found in a green tennis ball in his pocket. App. 85, l. 2 – p. 93, l. 25.

During the PCR hearing held in the case, petitioner testified that “he had signed a plea” before the trial started (the day before jury was selected). Tr. 204, l. 3 – 13. Petitioner explained as follows:

Q: [T]ell me about how you decided to plead guilty because it sounds like you were initially going to go to trial.

A: Like I tell you, [trial counsel]he spoke of no legal defense...So I let him know that I wasn't going to no trial with [trial counsel], being that [trial counsel] couldn't speak of...no defense strategy...So I informed [trial counsel]that I would take the plea –

Q. So you wanted to take the five-year plea offer?

A: Exactly.

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<sup>4</sup> In *Morris*, supra, the Court held that trial counsel was ineffective in failing to move for a continuance so that the defendant could plead to an agreed upon plea bargain on a lesser offense rather than proceeding on with a trial in the defendant's absence, which yielded a greater sentence.

Q: Okay. Well, why didn't you come back the next day?

A: Well, I didn't have transportation... And I stayed a little ways out  
-App. 207, l. 24 - p. 208, l. 16.

Trial counsel testified during the PCR hearing and admitted that petitioner was clear in stating he did not want a trial in the case. App. 211, lines 14 - 18; App. 212, lines 3 - 4. Counsel added that during the jury selection, a bench conference was held because petitioner wanted to plead guilty on the next day, and that "Bob Wells (prosecutor).....did not have any objection to [a plea on the next day]... and [that the trial judge] did not have a problem with that either." App. 215, lines 9 - 25. However, counsel stated in effect that petitioner needed to return to court on that next day to execute the plea. App. 223, lines 12 - 20.

Note the Solicitor's comments indicating that he was amenable to allowing petitioner to plead guilty, but for his failure to appear:

[Solicitor]: On indictment number 2007-295, The State vs. Syllvester D'Andre Taylor. We picked a jury on his case yesterday. They were to call back between 10 and 10:30. The defendant ha[d] signed up to plead guilty yesterday to what I offered, but he's not show up today...What I would propose to do is this, the jury be told to be back at 2:30. We have a hearing about 12 o'clock. Then give Mr. White a chance to try to find him. If not, we'll try him in his absence.

The Court: All right. Well, [trial counsel] have you heard from him?

[Trial Counsel]: I have not, not this morning, Your Honor.

The Court: [The Solicitor] has requested a bench warrant. If no ones heard from him, I'm certainly going to grant that request. All right, well, I'm going to grant the request for a bench warrant....if he shows up before ten o'clock and we are able to go forward, let me know. App. 29, l. 5 - App. 30, l. 14

[Solicitor]: This would be 2007-295 The State vs. Syllvester D'Andre Taylor. We had picked a jury in the case yesterday. The

defendant did not come back today. I'm assuming from this point on we go ahead and try him like he's a trial in the absence.  
App. 31, lines 1 – 9.

At no point during the colloquy regarding petitioner's failure to appear for court did trial counsel move for a continuance to postpone a trial in order to find petitioner so that his agreed upon plea bargain could be executed in the case.

The PCR judge ruled that petitioner presented no proof establishing ineffective assistance of counsel in his case. App. 234 – 243.

Petitioner's case is very similar to Morris v. South Carolina, 371 S.C. 278, 639 S.E.2d 53 (2006). In Morris, the Court held that trial counsel was ineffective in failing to move for a continuance in order to execute the agreed upon the plea bargain to a lesser offense in the case rather than proceed to try the defendant in absentia because the plea would have resulted in no more than a ten-year sentence whereas the defendant's ABWIK trial in absentia yielded him a twenty-year sentence, suspended upon the service of fifteen years and five years probation. The prejudice lay with sentencing difference. In Morris, the defendant arrived at court on his scheduled trial date and signed a sentencing sheet in anticipation of entering a guilty plea to the lesser charge of ABHAN on his ABWIK indictment. Thereafter, the defendant left the courthouse and did not return; and when his case was called and he could not be located, the solicitor tried him in absentia. The Morris Court held that trial counsel's failure to move for a continuance in order to locate the defendant and have the plea agreement executed was deemed ineffective assistance of counsel.

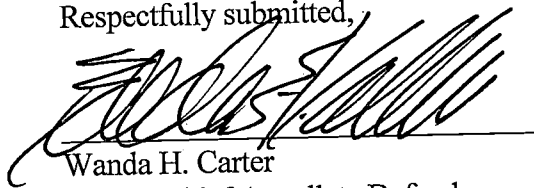
Likewise, in the case at bar, trial counsel erred in failing to object to petitioner's trial in absentia and move instead for a continuance in order to execute petitioner's prior plea agreement, which would have benefited petitioner as this would have avoided the thirty-year sentence he received per his conviction in the case. Hence, the prejudice. Clearly, counsel's representation in

this case was deficient in violation of petitioner's Sixth Amendment right to competent counsel in a criminal case. See Hill v. Lockhart, 484 U.S. 52 (1985). Moreover, but for counsel's error, a reasonable probability exists that petitioner's conviction and sentencing outcome would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of April, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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D. Craig Brown, Circuit Court Judge  
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SYLLVESTER D. TAYLOR

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

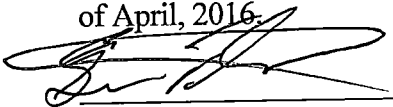
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Syllvester D. Taylor #251960, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of April, 2016.

  
Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of April, 2016.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.