

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Berkeley County

Honorable Larry B. Hyman, Circuit Court Judge

JASON LATROY JAMES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000011

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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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to disclose the state's evidence in its entirety to petitioner because this meant that petitioner's guilty plea was not given knowingly as he was unable to make an intelligent choice among alternative courses of action available to him.

STATEMENT

Petitioner Jason Latroy James pled guilty to second degree assault and battery by a mob during the November 2013 term of the Berkeley County General Sessions Court before Judge Stephanie P. McDonald. Petitioner was sentenced to imprisonment for a period of seven years. App. 1-13. Chad Shelton represented petitioner at the plea proceeding and Assistant Solicitor Adrian Dejeu appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On April 18, 2014, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 15-24. The respondent filed a return dated April 16, 2015, requesting that a hearing be held in response to petitioner's PCR action. App. 25-29.

A PCR hearing was convened on September 9, 2015, at the Berkeley County Courthouse before Judge Larry B. Hyman. App. 30 – 69. On October 13, 2015, Judge Hyman issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of trial counsel. App. 71-77.

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

ARGUMENT

Trial counsel erred in failing to disclose the state’s evidence in its entirety to petitioner because this meant that petitioner’s guilty plea was not given knowingly as he was unable to make an intelligent choice among alternative courses of action available to him.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner along with two co-defendants,¹ all of whom were housed at a detention center in Berkeley County, “attacked fellow inmate Dustin Lane” on February 19, 2013, while he slept. Lane was “choked” and hit. App. 6, l. 8 – p. 7, l. 5.

During the PCR hearing, petitioner testified that “there was other evidence that [he] wasn’t able to review,” and in effect that he wanted to see all the evidence that the state had “against [him]” in order to determine his chances of being found “guilty or not.” App. 45, l. 17 – 21; App. 46, l. 2 – 17; p. 53, l. 24 – p. 54, l. 2. For example, petitioner testified that trial counsel never discussed the issue of the victim’s ability to identify him as one of the perpetrators and that only his name sans anything more appeared in the discovery materials. App. 49, l. 22 – p. 50, l. 4; App. 62, lines 15-19. Also, petitioner testified that there was a CD (jail telephone calls) in existence in the case that he was not privy to before he pled guilty. App. 54, l. 23 – p. 26, l. 25.

Trial counsel testified at the PCR hearing and explained that he provided petitioner with a copy of the discovery in the case. App. 61, l. 10 – p. 62, l. 14.

The PCR judge ruled that trial counsel’s assistance was effective and that petitioner pled guilty voluntarily. App. 75 – 77.

In a single witness identification case, the prosecution has the burden of proving the identity of the perpetrator in order to avoid a false or mistaken identification at trial. State v.

¹Travis Parker and David Smalls

Jones, 344 S.C. 48, 543 S.E.2d 541 (2001); United States v. Telfaire, 469 F.2d 552 (1972). In the case at bar, the inmate who was injured was sleeping when the attack occurred and there was an indication that petitioner was only identified via his voice or not at all in the case. App. p. 62, lines 15 – 23. Therefore, there was a question as to the identity of the attackers and an issue regarding whether petitioner was identified as an attacker in the case. Additionally, although the co-defendants were indicted along with petitioner as accomplices, petitioner denied that he was guilty on the assault charge levied against him. Note that the record is devoid of the co-defendants' positions in the case.

Compare the case of Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006), where the PCR court found that counsel erred in failing to supply the defendant with critical information prior to the plea proceeding that the witness who identified him in a photographic line-up could not identify him at the scene; but the Court reversed on appeal after finding that the photographic line-up identification settled the identification issue, which rendered the non-disclosed information evidence that was not considered to be material exculpatory evidence. However, in the case at bar, the record contained no evidence that expressly settled the identity issue.

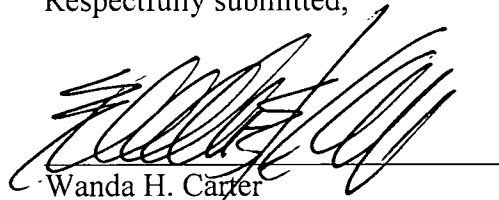
A guilty plea must represent a voluntary and intelligent choice among alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25 (1970). Here, petitioner's plea was not given knowingly because he could not make an intelligent choice about pleading guilty or exercising his right to a trial by jury because he did not receive the state's evidence in its entirety prior to the plea proceeding. Counsel's failure to supply all of the state's evidence to petitioner in the case prior to the plea proceeding constituted deficient representation in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52

(1985). Petitioner was prejudiced because but for the omission, he might have elected not to plead guilty and chosen to exercise his right to a trial by jury on the assault charge levied against him.

CONCLUSION

Based on the foregoing argument, petitioner requests that this 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', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County
Honorable Larry B. Hyman, Circuit Court Judge

JASON LATROY JAMES,

PETITIONER,

V.

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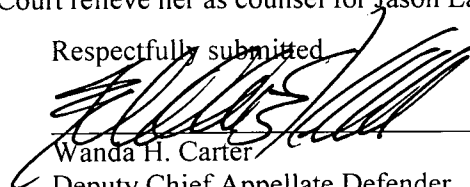
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Latroy James 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 1/13/2016. 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 Jason Latroy James.

Respectfully submitted



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 25th day of July, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County
Honorable Larry B. Hyman, Circuit Court Judge

JASON LATROY JAMES,

PETITIONER,

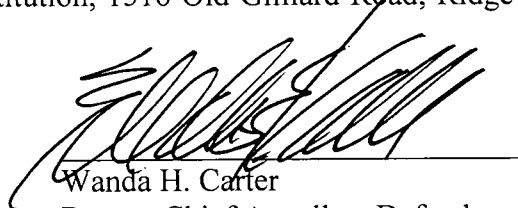
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STATE OF SOUTH CAROLINA,

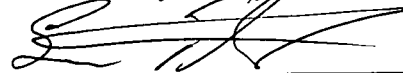
RESPONDENT

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 J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Jason Latroy James, 357760 at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC, 29472, this 25th day of July, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 25th day of July, 2016.


_____(L.S.)

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