

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Orangeburg County
Honorable Maite Murphy, Circuit Court Judge

ALVIN L. CLARK ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002659

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 meet and consult sufficiently with petitioner before his plea proceeding commenced.

STATEMENT

Petitioner Alvin L. Clark pled guilty to trafficking in crack cocaine (second offense) during the August 2013 term of the Orangeburg County General Sessions Court before Judge Edgar W. Dickson, and was sentenced to imprisonment for a period of five years. Doug Mellard represented petitioner at the plea proceeding and Assistant Solicitor Ted Lupton appeared on behalf of the state. App. 1-13. Petitioner did not enjoy the benefit of a direct appeal.

On March 31, 2014, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 16 – 23. The respondent filed a return dated June 4, 2014, requesting that a PCR hearing be held in the case. App. 24 - 29.

A PCR hearing was convened on May 20, 2015, at the Orangeburg County Courthouse before Judge Maite Murphy. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney General J. Clayton Mitchell appeared on behalf of the state. App. 30 – 47. On August 18, 2015, Judge Murphy issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 49-56.

Petitioner appealed Judge Murphy's Order of Dismissal in the case. This petition follows.

ARGUMENT

Trial counsel erred in failing to meet and consult sufficiently with petitioner before his plea proceeding commenced.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On June 23, 2013, police executed a search warrant on a particular residence in Orangeburg County. Petitioner was outside on the front porch when the officers arrived there. After the house was searched and drugs were found, petitioner was arrested at the scene. App. 7, l. 22 – p. 8, l. 7.

During the PCR hearing, petitioner testified that he did not meet his trial attorney until the day he went to court and that counsel's only advice was to "take the plea or [else be placed] on the trial docket." Petitioner argued that this lack of explanation about the case was ineffective assistance of counsel. App. 35, l. 1 – 14; App. 11, l. 12 – 17. Trial counsel testified at the PCR hearing and explained that he met with petitioner on July 10, 2013, July 15, 2013, and on the date of the plea proceeding. App. 43, l. 10 – 18.

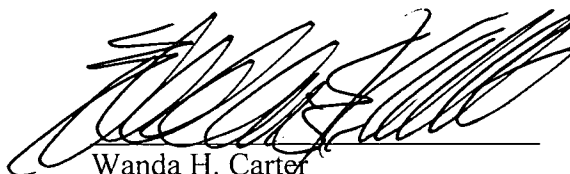
The PCR judge ruled that petitioner's allegations against trial counsel were not credible, and in effect that counsel's representation in the case constituted effective assistance in the case. App. 52 – 55.

Clearly, whether counsel met with petitioner for the first time on the day of the plea proceeding or twice before the plea proceeding; nonetheless, this failure to explain the charges, possible defenses and an overall assessment of the case prior to the plea constituted ineffective assistance of counsel in violation of the right to competent counsel in a criminal case under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). Compare Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991), where the Court reversed when the defendant, who pled guilty to 29 indictments involving various counts of grand larceny, burglary, and petit larceny, only spoke with

his court appointed attorney three times for a total of less than thirty minutes. In Dover, counsel's initial interview lasted five to ten minutes, the second meeting was a handshake and a greeting, and the third meeting was on the day the pleas were entered in the case. Likewise, in the case at bar, trial counsel could not have adequately prepared for petitioner's case with such few meetings and consultations with him. But for counsel's deficient representation in this case, a reasonable probability exists that petitioner's plea proceeding might have ended differently or he would have elected to exercise his right to a trial on the charge against him.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the above-raised issue.

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 12th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

ALVIN L. CLARK ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alvin L. Clark 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 record of petitioner's trial before Judge Maite Murphy, which was held on May 20, 2015 (PCR Hearing), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.
- Therefore, counsel requests that the Court relieve her as counsel for Alvin L. Clark.

Respectfully Submitted,


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 12th day of August, 2016.

STATE OF SOUTH CAROLINA

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Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

ALVIN L. CLARK ,

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V.

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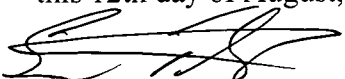
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johanna Velenzuela, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Alvin L. Clark, #285179, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 12th day of August, 2016.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 12th day of August, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.