

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

JERONICA N. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001130

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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Trial counsel erred in failing to investigate properly into the details of the drug reports issued in the case and in failing to move to dismiss the drug charge against petitioner as a result because the drug reports contained three different weights from two different chemists, one of whom was not available to be interviewed, which in turn suggested the existence of a defective custody chain and drug evidence tampering as dismissal grounds..... 3

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ISSUE PRESENTED

Trial counsel erred in failing to investigate properly into the details of the drug reports issued in the case and in failing to move to dismiss the drug charge against petitioner as a result because the drug reports contained three different testing weights from two different chemists, one of whom was no longer available to be interviewed, which in turn suggested the existence of a defective custody chain and drug evidence tampering as dismissal grounds.

STATEMENT

Petitioner Jeronica Wilson pled guilty to distribution of crack cocaine, third offense, during the February 2014 term of the Charleston County General Sessions Court before Judge R. Markley Dennis, and was sentenced to imprisonment for a period of ten years. App. 1-21. Jason King represented petitioner at the plea proceeding, and Assistant Solicitor Ron Stoney appeared on behalf of the state. Petitioner did not appeal his conviction or sentence.

On June 13, 2014, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 23 – 29. The respondent filed a return dated April 5, 2015, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 33-37. Petitioner filed an amended PCR application dated October 30, 2015. App. 30-32.

A PCR hearing was convened on December 15, 2015, at the Charleston County Courthouse before Judge Deandra L. Jefferson. App. 39-126. Petitioner was present at the hearing and represented by James K. Falk, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. On April 26, 2016, Judge Jefferson signed an Order of Dismissal in the case.

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

ARGUMENT

Trial counsel erred in failing to investigate properly into the details of the drug reports issued in the case and in failing to move to dismiss the drug charge against petitioner as a result because the drug reports contained three different weights from two different chemists, one of whom was not available to be interviewed, which in turn suggested the existence of a defective custody chain and drug evidence tampering as dismissal grounds.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, the state was in possession of a videotape capturing a controlled drug sale of .3grams of crack cocaine that transpired between petitioner and an undercover narcotics officer on January 27, 2012, in Charleston, South Carolina. App. 13, l. 6 – 14.

During the PCR hearing, petitioner testified in effect that he was concerned with the weight changes (from .3 grams to .4 grams to .27 grams) from the test results of the drug evidence against him because this suggested tampering and what appeared to be a defective custody chain that involved two different chemists and a questionable chain on two sets of paperwork on the same. App. 67, l. 12 – p. 69, l. 15. App. 48, l. 6 – p. 50, l. 17; App. 55, l. 22 – p. 57, l. 4. The issue of the accuracy and integrity of two separate documents reflecting different reports on the drug evidence in question was an issue that petitioner wanted counsel to investigate into and present in a suppression motion either at trial or prior to trial, but counsel in effect saw no merit regarding the matter. Therefore, petitioner pled guilty involuntarily by default. App. 52, l. 19 – p. 55, l. 20; App. 57, l. 25 – p. 58, l. 15; App. 63, l. 11 – p. 64, l. 4. Petitioner's position was that "[counsel] didn't investigate (into the) analysis of the substance." App. 59, l. 25 – p. 60, l. 7; App. 72, l. 15-25.

Trial counsel testified during the PCR hearing and explained that he knew petitioner was concerned with the handling of the drug evidence and chain of custody in the case, and that he responded by obtaining a computer generated print out of all signatures on the custody chain. App, 79, l. 7 – p. 80, l. 14. Counsel added that he had no grounds to suppress the drug evidence on a custody chain prior to trial, but would have raised the issue had the case been tried. App. 81, l. 9 – p. 23; App. 82, l. 2-9. Additionally, counsel stated that he had no qualms with the weight variations of the drug evidence either, but would have raised the point in the event of a trial also. App. 82, l. 12-p. 84, l. 7. Counsel admitted that two different chemists (first one unavailable) and two drug reports were generated in the case. App. 85, l. 13 – p. 87, l. 4.

The PCR judge found no ineffective assistance of trial counsel per the rationale that counsel made a strategic decision not to challenge the weight of the drugs pretrial because he didn't want to "show his cards to the state" and thus petitioner failed to prove prejudice in that regard. App. 136; App. 132.

In the case at bar, there were two different chemists who handled and tested the drug evidence, one of which no longer worked at the lab and might not have been available to testify at trial, and two different reports on the drug evidence with weights ranging from .3 and .4 and .27 in weight grams. Clearly, all of this was indicative of drug tampering and defective custody chain issues; and undoubtedly counsel erred as a result in failing to move to dismiss the drug charge against petitioner based on the questions surrounding the integrity and accuracy of the drug results of the drug evidence in the case.

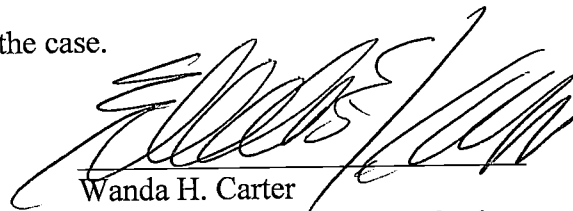
As a rule, the state must establish as complete a chain as practicable with respect to drug evidence, but the manner of the handling of the evidence must be reasonably demonstrated. Benton v. Pellum, 232 S.C. 26, 108 S.E.2d 534 (1957). Compare State v. Sweet, 374 S.C. 1, 647

S.E.2d 202 (2007), where the Court reversed due to a defective custody chain where the confidential informant who gave the drugs he bought from the defendant to the police officer at the crimes scene did not testify to this effect at trial.

In the case at bar, counsel's error in failing to move to dismiss the drug charge against petitioner prior to the drug plea proceeding due to a highly likelihood of a defective custody chain, and unreasonable handling of the drug evidence by the chemists, and tampering based on the discrepancies in their reports, all constituted deficient legal representation in petitioner's case such that but for counsel's ineffective legal assistance as outlined above, the outcome of petitioner's case might have been different (motion to dismiss granted or motion to suppress granted at trial). This error violated petitioners Sixth Amendment right to effective assistance of counsel in the case. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of November, 2016.

STATE OF SOUTH CAROLINA
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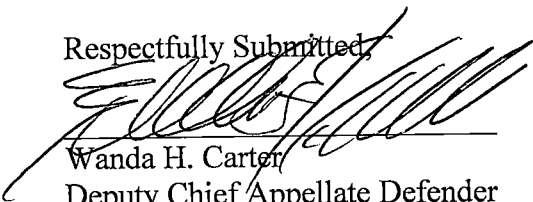
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeronica N. Wilson states that:

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 Deadra L. Jefferson, which was held on December 15, 2015, 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 Jeronica N. Wilson.

Respectfully Submitted,

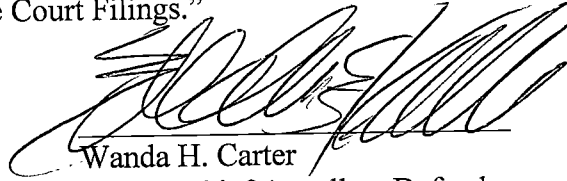


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of November, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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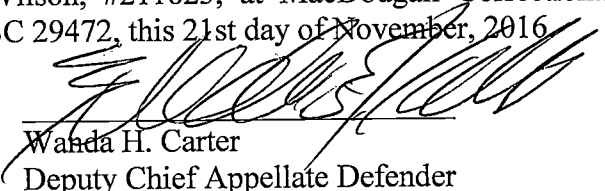
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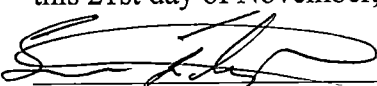
CERTIFICATE OF SERVICE

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 Rutledge Johnson, 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 Jeronica N. Wilson, #211823, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 21st day of November, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of November, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022.