

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

**RECEIVED**

NOV 23 2016

S.C. SUPREME COURT

\_\_\_\_\_  
TERRY WHISENHUNT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001253

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

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

Petitioner’s pleas were given involuntarily due to counsel’s  
misadvice regarding sentencing consequences in the case. ....3

CONCLUSION .....4

PETITION TO BE RELIEVED AS COUNSEL .....5

**ISSUE PRESENTED**

Petitioner's pleas were given involuntarily due to counsel's misadvice regarding sentencing consequences in the case.

## STATEMENT

Petitioner Terry Whisenhunt pled guilty to armed robbery and second degree burglary (nonviolent) during the August 2012 term of the Calhoun County General Sessions Court before Judge Kristi Harrington and was sentenced to imprisonment for an aggregate fifteen-year term. Glen Walters represented petitioner at the plea proceeding, and Assistant Solicitor Donald N. Sorenson appeared on behalf of the state. App. 1-37. Petitioner appealed, but per Rule 203(d)(1)(B)(iv), SCACR, the appeal was dismissed for lack of sufficient explanation to support an appeal.

On January 21, 2014, petitioner filed a PCR application with the Calhoun County Office of the Clerk of Court. App. 39-47.

The respondent filed a return dated March 26, 2014, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 48-52. An amended PCR application was filed on May 18, 2015. App. 54-55.

A PCR hearing was convened on February 25, 2016, at the Calhoun County Courthouse before Judge Maite Murphy. App. 57-89. Petitioner was present at the hearing and represented by Anna Good, and Assistant Attorney General Clay Mitchell appeared on behalf of the state.

On May 23, 2016, Judge Murphy issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 91-103.

Petitioner appealed Judge Murphy's Order of Dismissal. This appeal follows.

## ARGUMENT

Petitioner's pleas were given involuntarily due to counsel's misadvice regarding sentencing consequences in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, five males, one of whom was petitioner, kicked in the door of Daniel Neil's home on the night of December 27, 2011, and then entered, and took money and a phone from inside the home. App. 14, l. 20 – p. 18, l. 7.

During the PCR hearing, petitioner testified that he understood counsel's advice to mean that he would receive a YOA sentence (or in effect an extension of his present YOA sentence from a prior conviction) in exchange for his guilty pleas in the instant case. App. 67, l. 12-21; App. 60, l. 24-p. 64, l. 1. Petitioner added that he believed he would have another separate proceeding wherein a YOA sentence would be handed down in his case. App. 63, l. 5-11. Petitioner stated that he would have not pled guilty in the case had he known he would not have received a YOA sentence. App. 64, lines 14-17.

Trial counsel testified at the PCR hearing and explained that there was no sentencing guarantee or promise of a bifurcated proceeding in petitioner's case, and in effect that receipt of a YOA sentence was "down the drain." App. 77, l. 25 – p. 79, l. 4.

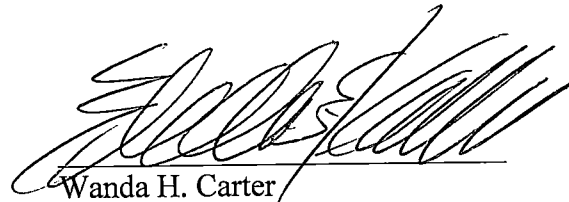
The PCR judge ruled that petitioner's pleas were given voluntarily because he was advised of his charges and the penalties attached therein. App. 94-96.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); 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). Here, counsel's failure to explain to petitioner that a

YOA sentence was not a sentencing option in the case was tantamount to deficient legal representation that violated petitioner's right to competent legal representation by counsel at his plea proceeding and as a result, petitioner pled guilty without an understanding of the sentencing consequences in his case. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner would not have pled guilty and exercised his right to a trial by jury in the case.

### CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition on the above-raised issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

\_\_\_\_\_

TERRY WHISENHUNT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_

PETITION TO BE RELIEVED AS COUNSEL

\_\_\_\_\_

Counsel for Terry Whisenhunt 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 Maite Murphy, which was held on February 25, 2016, 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 Terry Whisenhunt.

Respectfully Submitted,

  
\_\_\_\_\_

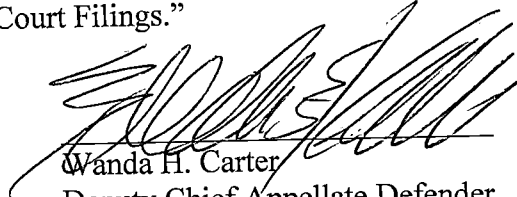
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 23rd 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."



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 23rd day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

\_\_\_\_\_

TERRY WHISENHUNT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

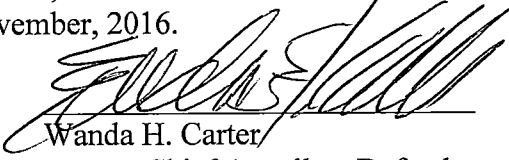
RESPONDENT

\_\_\_\_\_

CERTIFICATE OF SERVICE

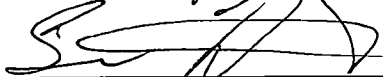
\_\_\_\_\_

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 Ruston Neely, 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 Terry Whisenhunt, #343850, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of November, 2016.

  
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 23rd day of November, 2016.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022