

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable D. Craig Brown, Circuit Court Judge

DEONDRE LEAPHART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001133

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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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentencing because petitioner desired a jury trial in the case.

STATEMENT

Petitioner Deondre Leaphart pled guilty to first degree burglary, kidnapping, and armed robbery during the December 2013 term of the Lexington County General Session Court before Judge Robert E. Hood, and was sentenced to an aggregate thirty-year prison term. App. 1 -33. David Farrell represented petitioner at the plea proceeding and Assistant Solicitor Shawn Graham appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On August 19, 2014, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App. 35-41. The respondent filed a return dated April 28, 2015, requesting that a hearing be held in response to petitioner's PCR action. App. 42-47.

A PCR hearing was convened on December 7, 2015, at the Lexington County Courthouse before Judge D. Craig Brown. App. 49-77. Petitioner was present at the hearing and represented by Aimee J. Zmroczek, and Assistant Attorney General Patrick L. Schmeckpeper appeared on behalf of the state.

On January 15, 2016, Judge Brown issued an Order of Dismissal denying petitioner's PCR allegations in the case. App. 79 - 87. Judge Brown denied petitioner's motion to reconsider by Order dated April 15, 2016. App. 88-89.

Petitioner appealed Judge Brown's Orders. This petition follows.

ARGUMENT

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentencing because petitioner desired a jury trial in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner and his codefendants Deshaun Drafts and Laquarius Brannon,¹ all of whom were armed on September 13, 2011, kicked in the front door of a home that belonged to Ms. Morales and Ms. Dreher, who were present inside with their five minor children inside also. The state alleged that all three men “raped” both women and took money from their purses.²

During the PCR hearing, petitioner testified that he was “pressured into taking the pleas” and that he wanted a trial. App. 59, lines 18 – 19; App. 63, lines 3 – 9. Petitioner stated that he did not want to plead out and that he desired a trial. App. 65, lines 14 – 19. Petitioner explained as follows:

Q. And your – you said that you wanted your attorney to appeal your plea?

A. Yes.

Q. Why was that?

A. Because from the beginning – from the start I ain't – I ain't even want to take a plea.

Q. Okay. So why did you take the plea?

¹ Petitioner's co-defendants pled to identical charges as petitioner and received identical sentences as well.

² Petitioner's charges on criminal sexual conduct, possession of a weapon during violent crime, robbery, and grand larceny were dismissed. App. 19, 1 – 25.

A. I got pressured into taking the plea. I was – I was really pressured to take it.

Q. Okay. Why do you feel like – tell the judge why you feel – you’ve got to tell him why you feel like you got pressured.

A. I – I repeatedly told him no three or four times.

Q. And what did your attorney say in response to that?

A. He pulled me – he pulled me to the side and kept reasoning with me to take the plea, saying that he felt like it was best or that I can get more time what – what I was pleading to. App. 59, l. 11 – p. 60, l.4.

Q. I told him repeatedly I didn’t want to take it...but he kept pressuring me and pressuring me and pressuring me. App. 67 lines 16-18.

Trial counsel testified at the PCR hearing and explained that petitioner never wanted to go to trial, and that petitioner admitted “they got me...just do the best you can for me.” App. 70, l. 24 – p. 71, l. 10. Regarding petitioner’s coercion complaint, trial counsel responded as follows.

Q. Did you exert any pressure or coercion or promise on him?

A. No, no coercion or pressure at all. There was overwhelming evidence against him. He was the only one of the defendants that they had DNA evidence from the sexual assault, they had a fingerprint from the vehicle that was stolen from the victims of the sexual assault, he gave six or eight statements, I think, and he was Mirandized in writing each time. He was picked out of a photo lineup by all the victims. They just had a huge body of evidence against him. App 73, lines 14 - 22.

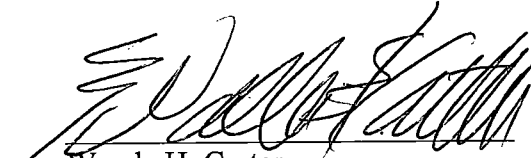
The PCR judge ruled that petitioner’s allegation that counsel coerced him to plead guilty to the charges was not credible and that his pleas were voluntarily and knowingly given in the case. App. 85-87.

The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, *supra*.

In the case at bar, petitioner felt "pressured" by counsel into pleading guilty to the charges. Petitioner desired a jury trial. Per these circumstances in the instant case, clearly petitioner did not plead guilty within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964). Additionally, the coercive measure counsel used (threat of harsh sentencing to obtain petitioner's pleas) violated petitioner's right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case (See Hill v. Lockhart, 484 U.S. 52 (1985)), particularly since petitioner would rather have opted for a jury trial in the case. Also, but for the coercive measure used by trial counsel to secure petitioner's involuntary pleas, petitioner would probably have exercised his right to a jury trial on the charges filed against him in the case.

CONCLUSION

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



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of January, 2017.

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STATE OF SOUTH CAROLINA,

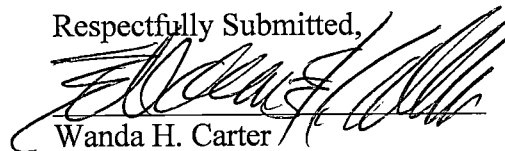
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Deondre J. Leaphart 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 D. Craig Brown, which was held on December 7, 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 Deondre J. Leaphart.

Respectfully Submitted,

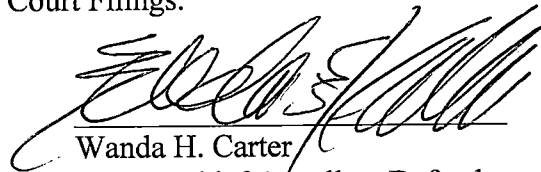


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of January, 2017.

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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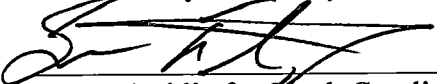
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Patrick Schmeckpeper, 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 Deondre J. Leaphart, #349364, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 17th day of January, 2017.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of January, 2017.



Notary Public for South Carolina
My Commission Expires: 10/30/2022