

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Anderson County

Honorable Frank R. Addy, Circuit Court Judge

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MALE DWAYNE CURRY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001250

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Trial counsel erred in coercing petitioner to plead guilty after a plea bargain was offered to him in the case.

## STATEMENT

Petitioner Male Dwayne Curry pled guilty to two counts of armed robbery during the August 2013 term of the Anderson County General Sessions Court before Judge J. Cordell Maddox, Jr., and was sentenced to imprisonment for an aggregate term of fifteen years. App. 1-12. Hervey Young represented petitioner at the plea proceeding and Assistant Solicitor Rame Lambert Campbell appeared on behalf of the state. Petitioner did not appeal his convictions and sentences.

On June 20, 2014, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court. App. 14 – 20. The respondent filed a return dated January 25, 2015, requesting that a hearing be held in the case. App. 21 -26.

A PCR hearing was convened on September 1, 2015, at the Anderson County Courthouse before Judge Frank R. Addy, Jr. App. 27 – 56. Petitioner was present at the hearing and represented by Hugo Wingo Welborn, and Assistant Attorney General John Walter Whitmire appeared on behalf of the state.

On September 25, 2015, Judge Addy issued an Order of Dismissal therein denying and dismissing petitioner's allegations of ineffective assistance of counsel in the case. App. 58 – 64.

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

## ARGUMENT

Trial counsel erred in coercing petitioner to plead guilty after a plea bargain was offered to him in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Petitioner was charged with approaching a woman while armed in a Bi-Lo parking lot in Clemson, South Carolina, and having her withdraw money from an ATM; and shortly thereafter, he also approached two females in an Ingles lot parking presumably for the same purpose. App 9, l. 8 – p. 10, l. 25.

During the PCR hearing held in the case, petitioner testified that he believed that his trial attorney was not prepared and in effect coerced him into pleading guilty after a plea offer was made by the state. App. 40, l. 15 – p. 41, l. 2. Specifically, petitioner explained as follows:

A. I had four different public defenders and...one of them even threatened me...[and] I felt the public defender's office was totally against me. App. 41, l. 25 – p. 42, l. 5.

Trial counsel's testimony from the PCR hearing lended credence to petitioner's allegation that he was coerced into entering guilty pleas in the case. For example, counsel's answers at the PCR hearing follow:

Q: Did he offer any hesitation on going forward with the plea?

A: Only because he was adamant that he wanted a jury trial, but I think in looking at the grand scheme of things, he saw that his exposure was a little bit higher than the risk factor there. App.. 51, lines 20-25.

Q. Did you tell him on the day that he pled guilty, "if you don't do this today, you're probably going to get a much lengthier sentence?"

A. I probably would have told him that we're going to jury trial if he didn't want to take the plea.

Q. Did you threaten him in any way?

A. Of course not.

Q. Did you tell him that, it's now or never. If you don't do it today, you're going to have to have a jury trial"?

A. I probably would have told him that because his case was on the trial docket for that week.

Q. Did he indicate to you any type of concern on his part about pleading guilty to any of this?

A. I'm sorry. Say that again.

Q. Did he indicate to you his concerns about pleading guilty to any of these things?

A. Prior to us going to court, he was adamant that he wanted to have a jury trial. App. 53, lines 1-19.

The PCR judge found "counsel's testimony convincing and credible and [petitioner's] testimony mostly suspect and unavailing" and that as a result, petitioner's pleas were voluntarily and knowingly given in the case. App. 61 - 63.

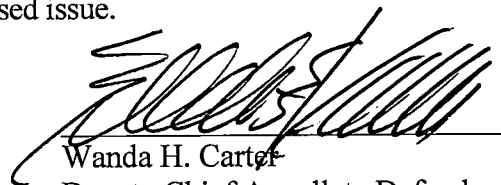
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 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 after a plea offer was made in the case. However, it was clear that petitioner desired a jury trial. Per these circumstances in the instant case, clearly petitioner did not plead guilty voluntarily 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, (See Hill v. Lockhart, 484 U.S. 52 (1985)), particularly since petitioner would rather have been tried by a jury in the case. Thus, but for the coercive measure used by trial counsel to secure petitioner’s involuntary pleas, petitioner would have probably exercised his right to a jury trial on the charges filed against him in the case.

### CONCLUSION

Based on the foregoing argument, counsel for 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 8th day of February, 2017.

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---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Male Dwayne Curry 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 Frank R. Addy, which was held on September 1, 2015 (Evidentiary 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 Male Dwayne Curry.

Respectfully Submitted,



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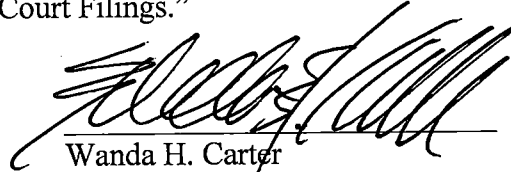
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 8th day of February, 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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CERTIFICATE OF SERVICE

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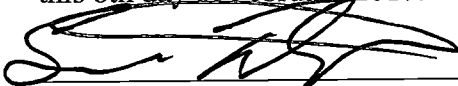
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Male Dwayne Curry, #151935, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 8th day of February 2017.

  
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Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 8th day of February 2017.

  
\_\_\_\_\_ (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.