

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

JASON SHANE LAWSON,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001522

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT
PETITIONER

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ISSUE PRESENTED

Whether petitioner's guilty plea was involuntary and unknowing because plea counsel failed to timely communicate with petitioner about his acceptance of the State's plea offer?

STATEMENT

On March 30, 2012, a Laurens County grand jury indicted petitioner for attempted murder, armed robbery, kidnapping, and a weapons charge. App. 138-149. On June 5, 2014, petitioner pled guilty before the Honorable Frank R. Addy, Jr. to attempted murder, strong arm robbery, the weapons charge, and kidnapping. App. 1-3. C. Dale Scott represented the State. App. 1. Daniel J. Farnsworth represented petitioner at the plea hearing. App. 1. Elizabeth P. Wiygul previously represented petitioner. App. 68, ll. 22 – 24. Judge Addy sentenced petitioner to concurrent sentences of twenty-three years' imprisonment for attempted murder and kidnapping and five years' imprisonment for the weapons charge. App. 44, ll. 5 – 17.

On October 16, 2014, petitioner filed a PCR application. App. 47. On June 7, 2016, a hearing was held before the Honorable Brooks P. Goldsmith. App. 64. Laura M. Saunders represented petitioner. App. 64. Justin J. Hunter represented the State. App. 64. On July 14, 2016, Judge Goldsmith denied petitioner's PCR application. App. 127. This petition follows.

ARGUMENT

Petitioner's guilty plea was involuntary and unknowing because plea counsel failed to timely communicate with petitioner about his acceptance of the State's plea offer.

At his PCR hearing, petitioner introduced into evidence the State's written plea offer of twenty years to all pending charges. App. 125. The offer states that it expired May 4, 2012. App. 125. At the time petitioner was represented by Elizabeth P. Wiygul ("Wiygul") and petitioner sent her a letter telling her that he wanted the best deal available "[w]hich was the twenty-year deal." App. 72, ll. 10 – 17.

Also introduced into evidence was a letter from Wiygul to petitioner dated May 21, 2012—well after the State's offer expired. App. 124. Wiygul's letter indicates that she received petitioner's letter requesting acceptance of the best deal available. App. 124. It is clear by the context of this letter that Wiygul had previously failed to convey the State's twenty-year offer because she described the offer to petitioner in the letter. App. 124. Wiygul wrote that she wanted to review the discovery with petitioner before he accepted the offer. App. 124.

Petitioner only spoke with Wiygul a "couple more times for only a few minutes each time." App. 73, ll. 22 – 25. Petitioner saw Wiygul and "told her that I wanted the deal, but the deal had long since expired." App. 79, l. 21 – 80, l. 7. Petitioner "never got to speak to her in person until after the deal had expired." App. 80, ll. 2 – 7. Dissatisfied with the delay of his case, petitioner's family hired Daniel J. Farnsworth ("Farnsworth"). App. 74, ll. 1 – 18.

Wiygul testified that the expiration date on the State's offer was only a "preprinted" date and that the solicitor's office in Laurens County never withdrew an offer without telling her first. App. 106, ll. 3 – 8. Wiygul claimed the twenty-year offer was still valid on May 21, 2012, when

she wrote petitioner. App. 106, ll. 9 – 16. Wiygul claimed petitioner rejected the offer and “was very firm that he wanted a trial.” App. 106, ll. 17 – 23.

By the time Farnsworth was hired, the only offer the State was willing to make was for thirty years. App. 88, ll. 2 – 25. Farnsworth corroborated petitioner’s testimony about the twenty-year offer. App. 88, ll. 2 – 14. Farnsworth testified that after he got the case, petitioner

...advised me that he had discussed these offers with her, and as he testified to, I think I remember him telling me that he wanted that twenty. And for some reason he didn’t hear back from her or he didn’t get to tell her he didn’t—you know, he wanted or didn’t want to the offers. I think he may have said he wrote her a letter or something.

App. 88, ll. 8 – 14. Petitioner ultimately received a twenty-three year sentence. App. 44, ll. 5 – 17.

The PCR court found both Wiygul and Farnsworth credible. App. 132. This credibility finding as to both attorneys is problematic because their testimony conflicted. Wiygul testified that petitioner rejected the twenty-year offer and Farnsworth testified that petitioner wanted to accept the twenty-year offer, but was unable to communicate with Wiygul. The PCR court ultimately denied relief by crediting only Wiygul’s testimony that she conveyed the offer to petitioner and he rejected it. App. 134.

This finding by the PCR court is logically inconsistent and erroneous. The letters referenced by petitioner corroborate his version of events and that he wanted the best deal available, not that he wanted to go to trial. App. 124. Farnsworth also corroborated petitioner’s claim that he wanted to accept the offer, but could not communicate with Wiygul. App. 88, ll. 8 – 14.

Petitioner proved that his Sixth Amendment right to counsel was violated. Strickland v. Washington, 466 U.S. 668 (1984). “Defendants have a Sixth Amendment right to counsel, a right


that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). “Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). “[C]ounsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State.” Davie v. State, 381 S. C. 601, 609, 675 S.E.2d 416, 420 (2009). Defense counsel must “explain to the defendant all plea offers made by the prosecuting attorney.” Missouri v. Frye, 132 S.Ct. 1399, 1408 (2012).

This Court decides ineffective assistance of counsel claims related to plea offers on a case-by-case basis. Davie at 613, 675 S.E.2d at 422; accord Frye, 132 S.Ct. at 1408 (“it may be neither prudent nor practicable to try to elaborate or define detailed standards for the proper discharge of defense counsel’s participation in the [plea-bargaining] process”). Wiygul failed to communicate with petitioner and, as a result, petitioner failed to accept the State’s twenty-year offer. Petitioner received a sentence three years longer than the State’s offer. This proves prejudice.

It is within this Court’s discretion to fashion a remedy for this violation of petitioner’s Sixth Amendment rights. See Lafler, 132 S.Ct. at 1389 (“the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal”). The proper remedy in this case would entail remanding and requiring the State to reoffer a plea with a twenty-year sentence. Therefore, this Court should grant certiorari, reverse petitioner’s convictions, and require the State to reoffer its original plea agreement to twenty years’ imprisonment which petitioner would have accepted but for plea counsel’s ineffective assistance.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and require the State to reoffer its original plea agreement to twenty years' imprisonment.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
Honorable Frank R. Addy, Circuit Court Judge

JASON SHANE LAWSON,

PETITIONER,

V.

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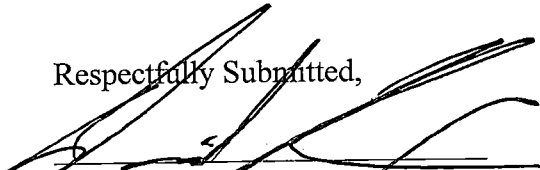
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Shane Lawson states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before Honorable Frank R. Addy, which was held on June 7, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jason Shane Lawson.

Respectfully Submitted,

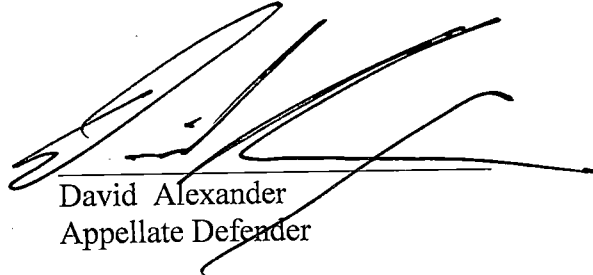


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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This 8th day of March, 2017.

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JASON SHANE LAWSON,

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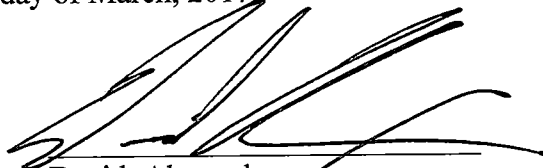
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RESPONDENT

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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 Justin J. Hunter, 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 Jason Shane Lawson, #290801, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 8th day of March, 2017.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

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

Maia Mendez (L.S)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.