

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Lexington County

RECEIVED

Honorable Perry H. Gravely, Circuit Court Judge

MAR 31 2017

WILLIAM DAVID BOONE,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001743

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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(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to advise petitioner that the sentencing exposure he faced at the plea proceeding could yield greater sentences (including the possibility of consecutive sentences) because of the occurrence of simultaneous adjudications on both the plea conviction and the probation violation.

STATEMENT

Petitioner William David Boone pled guilty to criminal domestic violence (third offense) during the May 2014 term of the Lexington County General Sessions Court before Judge William P. Keesley. Petitioner was sentenced to imprisonment for a period of five years. Also during that plea proceeding, petitioner's probation sentence was revoked by five years (to run consecutively) from a 2011 conviction of criminal domestic violence of a high and aggravated nature.¹ App. 1-19. Elizabeth C. Fullwood represented petitioner at the plea proceeding and Assistant Solicitor Shannon A. Davis appeared on behalf of the state. Petitioner did not appeal his trial court conviction and sentence or his probation violation sentence.

On December 2, 2014, petitioner filed a PCR applicatin with the Lexington County Office of the Clerk of Court. App. 21-27. On March 17, 2015, the respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 28-31.

A PCR hearing was convened on April 21, 2016, at the Lexington County Courthouse before Judge Perry H. Gravely. Petitioner was present at the hearing and represented by Anna R. Good, and Assistant Attorney General Johanna C. Valenzuela appeared on behalf of the state. App. 33-68.

On July 21, 2016, Judge Gravely issued an Order of Dismissal denying and dismissing petitioner's allegations of ineffective assistance of counsel in the case. App. 70-75.

Petitioner appealed Judge Gravely's Order. This petition follows.

¹ In 2011, petitioner was sentenced to imprisonment for ten years, suspended upon the service of four years and five years' probation. App. 8, l. 20 – 23.

ARGUMENT

Trial counsel erred in failing to advise petitioner that the sentencing exposure he faced at the plea proceeding could yield a greater sentence (including the possibility of consecutive sentences) because of the occurrence of simultaneous adjudications on both the plea conviction and the probation violation.

Petitioner was sentenced to five years imprisonment after pleading guilty to criminal domestic violence, third offense. Petitioner admitted that he assaulted Elizabeth Lewis. App. 3, l. 14 – p. 5, l. 16. Immediately thereafter, petitioner received a probation revocation of five years following his guilty plea. The five-year probation revocation sentence was ordered to run as a consecutive sentence in the case. As a result of the combined adjudications, petitioner received an aggregate ten-year sentence in the case. App. 18, lines 4-21.

During the PCR hearing, petitioner testified that he agreed to plead guilty and that he was guilty as charged, but that he was unaware of the fact that an adjudication on his probation revocation matter would occur simultaneously, which in turn meant he was scheduled to receive two sentences, both of which could have been ordered to run concurrently or consecutively. Thus, petitioner realized ultimately that his sentencing exposure included the possibility of receipt of greater time (consecutive time totaling ten years) or lesser sentencing time, i.e. five years. App. 53, lines 16 – 22; App. 50, lines 8-12; p. 41, l. 17 – p. 42, l. 5. Petitioner stated that he would not have pled guilty if he had known that his probation violation hearing was going to take place during his plea proceeding, and that he “would have waited” and “would not have taken the plea” on that day of his two proceedings in one had he in effect known in advance of the double adjudications. App. 55, lines 13 – 19; App. 42, lines 13-25. Petitioner explained that he would not have agreed to resolve both cases and “would have never [gone] in front of the

same judges with two charges like that” had he known of sentencing consequences and that he was “blindsided.” App. 48, l. 24 – p. 49, l. 23; App. 53, l. 16 – p. 54, l. 23. He explained as follows:

A: I would have never pled guilty knowing that my probation was going to do that [consecutive sentencing] to me. App. 45, l. 24 – 46, l. 1.

A: I didn’t know anything about [a] consecutive sentence. I didn’t know what consecutive meant until I got it. App. 46, lines 4 – 7.

Trial counsel testified at the PCR hearing and stated that she explained to petitioner that a guilty plea triggers a probation violation adjudication and sentencing also, and that both would be “taken care of at the same time.” App. 59, l. 18 – p. 60, l. 14.

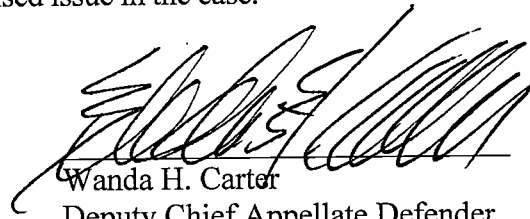
The PCR judge ruled in the Order of Dismissal that petitioner failed to meet his burden of proving that plea counsel was ineffective or that he suffered any prejudice with respect to his the simultaneous adjudications of his plea and probation revocation cases. App. 74-75.

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 he would receive two sentences and that they could be ordered to run consecutively at his plea proceeding, and that this would result in a greater sentencing time exposure meant that petitioner pled guilty without an understanding of the sentencing consequences in his case. Counsel’s deficient representation in regard to the failure to explain sentencing consequences violated petitioner’s right to competent legal representation in his case per 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 have pled not guilty as charged and opted for a probation violation adjudication that was separate from his guilty plea proceeding.

CONCLUSION

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

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of March, 2017.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William David Boone states:

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 Perry H. Gravely, which was held on April 21, 2016 (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 William David Boone.

Respectfully Submitted,



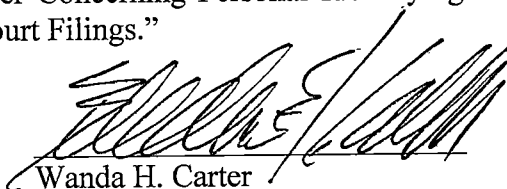
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 31st day of March, 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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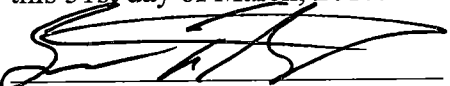
CERTIFICATE OF SERVICE

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 Jessica Kinard, 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 William David Boone, #270459, at Tyger River Correctional Institution 200 Prison Road, Enoree, SC 29355, this 31st day of March, 2017.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 31st day of March, 2017.


Notary Public for South Carolina

(L.S)

My Commission Expires: October 30, 2022.