

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Jocelyn J. Newman, Circuit Court Judge

SHAQUILLE BURGESS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001611

JOHNSON PETITION FOR WRIT OF CERTIORARI

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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

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that trial counsel was ineffective in failing to adequately and fully explain collateral sentencing consequences connected to his guilty plea conviction in the case.

STATEMENT

Petitioner Shaquille Burgess pled guilty to armed robbery during the March 2013 term of the Florence County General Sessions Court before Judge D. Craig Brown. Petitioner was sentenced to imprisonment for a period of ten years. Joshua Bailey represented petitioner at the plea proceeding and Deputy Solicitor John Jupertinger appeared on behalf of the state. App. 1 – 14. Petitioner did not enjoy the benefit of a direct appeal in the case.

On June 30, 2013, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 16-21. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 23-28.

A PCR hearing was convened at the Florence County Courthouse before Judge Jocelyn J. Newman. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney General Croom Hunter appeared on behalf of the state. App. 30-69.

On July 28, 2016, Judge Newman signed an Order of Dismissal denying PCR relief to petitioner on his ineffective assistance of counsel allegations raised in the case.

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

ARGUMENT

The PCR judge erred in denying petitioner's allegation that trial counsel was ineffective in failing to adequately and fully explain collateral sentencing consequences connected to his guilty plea conviction in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner was charged with "pointing a [gun] at a confidential informant of the Bureau of Alcohol & Tobacco firearms." App. 11, lines 7-16. It appeared as though this case was "a drug deal involving fake soap." App. 58, lines 13-20.

During the PCR hearing held in the case, petitioner testified that trial counsel failed to advise him of the collateral consequences of his armed robbery plea. Petitioner stated specifically that he thought he would serve his sentence and be "scot free," but learned later that upon his release he would still be subjected to what he called "house arrest," i.e. placed under a community supervision program where drug tests were given. Petitioner added that he would have opted for a jury trial had he been informed of the details involved in the community supervision program. App. 41, l. 3-12; App. 43, l. 19 – p. 44, l. 2; App. 48, l. 5-10; App. 50, l. 20 – p. 51, l. 3.

Trial counsel testified at the PCR hearing and stated that he informed petitioner that community supervision would follow as a part of his SCDC release. App. 67, l. 17-24.

The PCR judge ruled that petitioner was informed of the consequences of his plea, and that his plea was given voluntarily, and that counsel did not err with respect to his advice regarding plea consequences. App. 74-76.

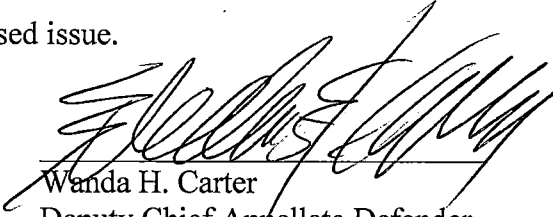
As a rule, a plea of guilty is not rendered involuntarily if the defendant is not informed of the collateral consequences of a conviction, and counsel is not considered ineffective if he or she

fails to inform a defendant of the collateral consequences of a conviction. State v. Smith, 329 S.C. 280, 494 S.E.2d 626 (1997). In Smith, the Court held that counsel was not ineffective in failing to advise the defendant that his second degree burglary conviction would be classified as a violent crime because this was a collateral sentencing consequence. See also Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991). In Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2009), the Court held that counsel was not ineffective in failing to advise the defendant of parole eligibility because this was a collateral sentencing consequence. In Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002), the Court held that trial counsel was not ineffective in failing to advise the defendant that he would have to enroll in a community supervision program after his release from prison because this was a collateral consequence also.

However, if the defendant's attorney "undertakes to advise a defendant about parole eligibility (i.e. collateral consequences) and gives erroneous advice, then the plea may be collaterally attacked." Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989). Here, counsel stated that he advised petitioner about being placed in a community supervision after his prison release. Clearly, counsel did "undertake" to mention community supervision, but failed to adequately explain in depth all aspects of the community supervision program. Therefore, counsel erred with regard to fully explaining collateral sentencing consequences. This violated petitioner's Sixth Amendment right to competent counsel (Hill v. Lockhart, 484 U.S. 52 (1985)), during his plea proceeding and rendered his guilty plea involuntarily given 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.

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 3rd day of May, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shaquille Burgess 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 Jocelyn J. Newman, which was held on June 1, 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 Shaquille Burgess.

Respectfully Submitted,



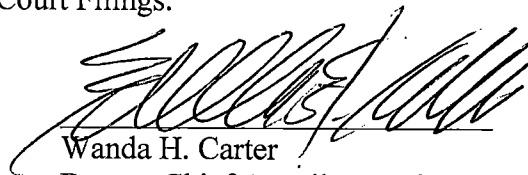
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of May, 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

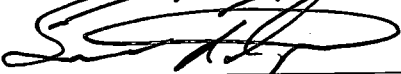
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Shaquille Burgess, #354554, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 3rd day of May, 2017.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of May, 2017.


_____ (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022