

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

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JASON BRIAN OSBORNE,

**RECEIVED**

JUN 05 2017

PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002478

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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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 object to the plea judge's failure to place the factual basis for each charge against petitioner on the record.

## STATEMENT

Petitioner Jason Osborne pled guilty to nineteen various property and theft charges<sup>1</sup> during the January 2015 term of the Spartanburg County General Sessions Court before Judge Edward W. Miller. App. 1 – 42. Petitioner was sentenced to imprisonment for an aggregate period of fifteen years. Matthew Shealy represented petitioner at the plea proceeding and Assistant Solicitor Grady Anthony appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On February 12, 2016, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 44-49. The respondent filed a return dated September 14, 2015, requesting that a hearing be held in response to petitioner's PCR allegations. App. 50-55.

A PCR hearing was convened on June 16, 2016, at the Spartanburg County Courthouse before Judge R. Ferrell Cothran, Junior. App. 57-103. Petitioner was present at the hearing and represented by Leah B. Moody, Esquire, and Assistant Attorney General Alicia Olive appeared on behalf of the state.

On October 26, 2016, Judge Cothran signed an Order of Dismissal. App. 110 – 121. Petitioner appealed the Order of Dismissal. This petition follows.

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<sup>1</sup> Failure to stop (2013-GS-42-2366); Possession of a stolen vehicle third or subsequent offense (2013-GS-42-5562); Possession of a stolen vehicle third or subsequent offense (2014-GS-42-0371); Receiving stolen goods, third or subsequent (2013-GS-42-2367); Three counts of possession of a stolen vehicle, third or subsequent (2013-GS-42-2368, -2369, and -2374); Grand Larceny, third or subsequent (2013-GS-42-2370); Two counts of petit larceny, third or subsequent (2013-GS-42-2371, and -2378); Two counts of financial transaction card fraud, third or subsequent (2013-GS-42-2373, and -2375); Two counts of breaking into a motor vehicle (2013-GS-42-2372 and -2379); Two counts of financial transaction card theft (2013-GS-42-2376, and -2377); Forgery, third or subsequent (2013-GS-42-2381); Two counts of obtaining property under false pretenses, third or subsequent (2013-GS-42-2380, and -2386).

## ARGUMENT

Trial counsel erred in failing to object to the judge's failure to place the factual basis for each charge against petitioner on the record.

At the plea proceeding, the following colloquy occurred regarding the charges:

Solicitor: Finally, your Honor we've got [petitioner]. As we mentioned earlier we've already stipulated to the facts of this incident, the 19 counts into the record. App. 38, l. 1-5.

During the PCR hearing, petitioner complained that the factual circumstances of his case were not read into the record and that he could not agree and plead to the charges because neither the judge nor the solicitor read the charges [and in effect the factual basis for the charges] into the record. App. 69, l. 19 – p. 70, l. 15; App. 72, l. 3 – 8; App. 73, l. 11-13.

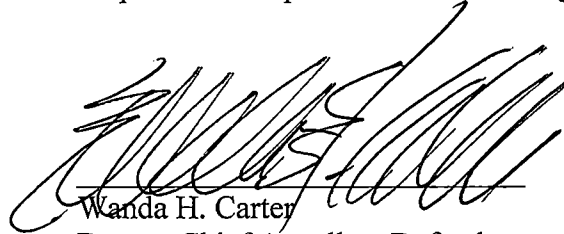
The PCR judge found that there was no error committed with regard to whether there was a factual basis presented for each of petitioner's pleas because the parties stipulated to the facts of the pleas during the proceeding. App. 119 – 120.

Clearly, it was error for petitioner's charges to be presented and his guilty pleas on those charges accepted without placing the factual basis for each charge on the record during the plea proceeding. See also App. 85, l. 2 – p. 86, l. 6. A court cannot enter judgement in a plea of guilty unless it is satisfied that there is a factual basis for the plea. State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (2006); State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); United States v. Oberski, 734 F.2d 1030 (5<sup>th</sup> Cir. 1984). The purpose of a requirement that a factual basis of a guilty plea be established is to assure the plea's accuracy and to assure the Court that the conduct which the defendant admits by his plea of guilty constitutes the offense charged in the indictment. U.S. v. Thompson, 680 F.2d 1145 (7<sup>th</sup> Cir. 1982).

Counsel erred in allowing petitioner to plead to the charges without having the factual basis for each charge placed on the record. Counsel's error in this regard constituted deficient representation in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for the omission, a reasonable probability exists that petitioner would have opted to plead not guilty to the offenses charged against him. Thus, appellant's pleas were accepted contrary to due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina State Constitution.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Jason Brian Osborne 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 R. Ferrell Cothran, which was held on June 15, 2016, 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 Jason Brian Osborne.

Respectfully Submitted,



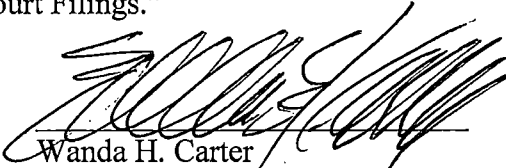
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 5th day of June, 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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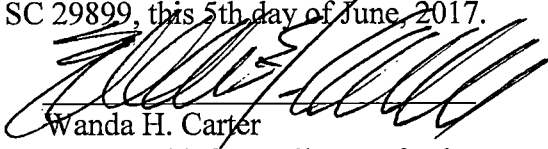
RESPONDENT

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CERTIFICATE OF SERVICE

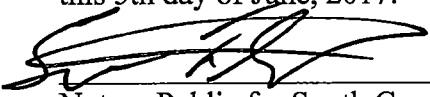
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Valerie Govanoli, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, 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 Brian Osborne, #246524, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 5th day of June, 2017.



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 5th day of June, 2017.



(L.S)  
Notary Public for South Carolina  
My Commission Expires: 10/30/2022