

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable Jocelyn J. Newman, Circuit Court Judge

RECEIVED

AUG 07 2017

S.C. SUPREME COURT

SENTRELL LEE MCCULLOUGH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002515

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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Petitioner’s plea was given involuntarily due to a misunderstanding regarding sentencing consequences because counsel advised petitioner that he would receive a two-to-four-year sentence on the offense of first degree criminal sexual conduct charged against him without an explanation of the maximum sentence, i.e. that there was a possibility that a sentence of up to 30 years imprisonment could have been imposed in the case.¹3

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¹ Petitioner received a twenty-year prison sentence in exchange for his guilty plea.

ISSUE PRESENTED

Petitioner's plea was given involuntarily due to a misunderstanding regarding sentencing consequences because counsel advised petitioner that he would receive a two-to-four-year sentence on the offense of first degree criminal sexual conduct charged against him without an explanation of the maximum sentence, i.e. that there was a possibility that a sentence of up to 30 years imprisonment could have been imposed in the case.

STATEMENT

Petitioner Sentrell Lee McCullough pled guilty to first degree criminal sexual conduct during the January 2015 term of the Williamsburg County General Sessions Court before Judge George C. James, Jr., and was sentenced to imprisonment for a period of twenty years. William Legrand Carraway represented petitioner at the plea proceeding and Assistant Solicitor Kimberly Barr appeared on behalf of the state. App. 1-25. Petitioner did not enjoy the benefit of a direct appeal in the case.

On November 9, 2015, petitioner filed a PCR application in the case. App. 26-34. The respondent filed a return requesting that a PCR hearing be held in response to petitioner's PCR action. App. 35-41.

A PCR hearing was convened on July 26, 2016, at the Williamsburg County Courthouse before Judge Jocelyn Newman. App. 43-45. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General Julie A. Coleman appeared on behalf of the state.

On November 30, 2016, Judge Newman issued an Order of Dismissal denying PCR relief to petitioner. App. 89-95.

Petitioner appealed. This petition follows.

ARGUMENT

Petitioner's plea was given involuntarily due to a misunderstanding regarding sentencing consequences because counsel advised petitioner that he would receive a two-to-four-year sentence on the offense of first degree criminal sexual conduct charged against him without an explanation of the maximum sentence, i.e. that there was a possibility that a sentence of up to 30 years imprisonment could have been imposed in the case.²

The state alleged that on July 23, 2014, petitioner engaged in sexual battery with a minor child who was five years old. App. 9, lines 8-13. At the plea proceeding, the following colloquy occurred:

The Court: And the sentencing range for this is 0 to 30 years. And you said a recommendation or negotiated how many years.
Solicitor: 20 years

The Court: I thought you said two

Defense Counsel: She did say two

The Court: you did say two.
App. 3, lines 17-23.

During the PCR hearing, petitioner testified that he thought he would receive a two-year sentence or a two-to-four year sentence in exchange for a guilty plea based on the advice given to him by trial counsel, but then realized that he would receive a twenty year sentence in the end. App. 52, l. 20 – p. 53, l. 17; App. 55, l. 11-13. Petitioner stated that he would not have pled guilty had he known he was not getting the agreed upon two-to-four-year sentence in the case. App. 60, lines 7-10. Petitioner's father and stepmother both testified at the PCR hearing and

² Petitioner received a twenty-year prison sentence in exchange for his guilty plea.

confirmed that trial counsel stated that a sentence of no more than two-to-four years would be the prison time petitioner would serve in the case. App. 61, l. 18 – p. 63, l. 4; App. 66, lines 1-18.

Trial counsel testified at the hearing and admitted that he did try working out a two-to-four year sentence in the case, but other family members came forward saying this incident was not the first incident. App. 71, l. 20-24; App. 82, l. 6-18; App. 72, l. 1-8. Then, other incidents involving sexual assaults allegedly committed by petitioner came to the solicitor's attention. App. 72, l. 19 – p. 74, l. 6. Thereafter, the solicitor's compromise was an offer of a twenty-year/twenty-two-year recommendation. App. 75, lines 10-19.

The PCR judge ruled that petitioner failed to meet his burden to establish that trial counsel's assistance in the case was ineffective. App. 89-96.

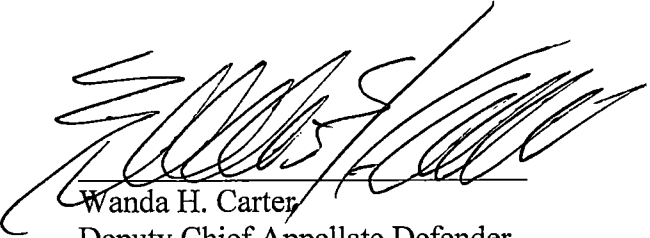
Clearly, counsel had a duty to advise petitioner of the maximum sentencing range, which would have been thirty years in this instance, and that although the goal was to obtain a two-to-four year prison sentence; nonetheless, a ten-or-twenty-or-thirty-year sentence or any time in between would have always been a possibility in the case.

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 advise petitioner that a sentence reaching a maximum of thirty years would have been a sentencing possibility in the case violated petitioner's right to competent legal representation by counsel at his plea proceeding. Thus, petitioner pled guilty without an understanding of the sentencing consequences in his case. Also, counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under 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 and exercised his right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that his petition be granted and full briefing allowed 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 7th day of August, 2017.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sentrell Lee McCullough 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 July 26, 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 Sentrell Lee McCullough.

Respectfully Submitted,



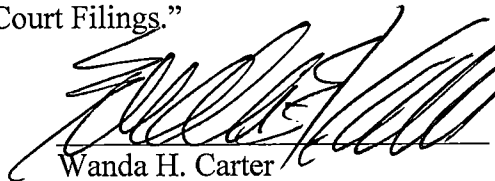
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of August, 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 Julie Coleman, 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 Sentrell Lee McCullough, ##362851, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 7th day of August, 2017.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of August, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.