

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Jocelyn J. Newman, Circuit Court Judge

TIMOTHY JAMAL WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000072

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
(803) 734-1330

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentencing because petitioner desired a jury trial in the case.

STATEMENT

Petitioner Timothy Jamal Wilson pled guilty to attempted murder during the June 2015 term of the Sumter County General Sessions Court before Judge W. Jeffrey Young and was sentenced to imprisonment for a period of twelve years. App. 1-19. Petitioner did not appeal his conviction and sentence.

On September 11, 2015, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 21-31. The respondent filed a return dated November 7, 2015, requesting that a hearing be held in the case. App. 22-35.

A PCR hearing was convened on July 27, 2016, at the Sumter County Courthouse before Judge Jocelyn Newman. App. 37-77. Petitioner was present at the hearing and represented by Lance Boozer. On December 20, 2016, Judge Newman issued an Order of Dismissal in the case. App. 80-87.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in coercing petitioner to plead guilty to the state's charges filed against him in order to receive lenient sentencing because petitioner desired a jury trial in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On March 13, 2013, petitioner came out of a certain residence and shot Quintin Roach, who had just driven up in front of that residence. App. 7, l. 23 – p. 9, l. 25.

During the PCR hearing, petitioner testified that his case started out as a trial, which was what he wanted, but that he ended up pleading guilty because counsel in effect “forced” him to take the plea by saying he would get forty one years imprisonment if he lost the case, and that she brought his mother on board to convince him to take the plea. Petitioner stated that he believed he could have “beat[en] it” with a self-defense claim (which counsel was prepared to present), and that he wanted a trial. Petitioner stated that counsel in effect insisted that he take the plea. App. 43, l. 11 – p. 48, l. 4; App. 48, l. 24 – p. 49, l. 21.

Petitioner's mother, Frances Renee Wilson, testified at the PCR hearing and explained that trial counsel told her that her son (petitioner) would face a forty-year prison term if he didn't take the plea. Wilson stated that neither she nor her son wanted the plea because they both desired a trial, but that he had no choice. App. 57, l. 1 – p. 61, l. 8; App. 61, l. 21 – p. 63, l. 1.

Trial counsel testified during the hearing and stated that it was in petitioner's best interest to take the plea because the evidence against him was overwhelming (two eyewitnesses, his own statement and the fact that victim lived), but that she did not pressure him to do so. Counsel stated that she simply told him “what he faced.” App. 65, l. 7-24; Tr. 67, l. 19 – p. 68, l. 14.

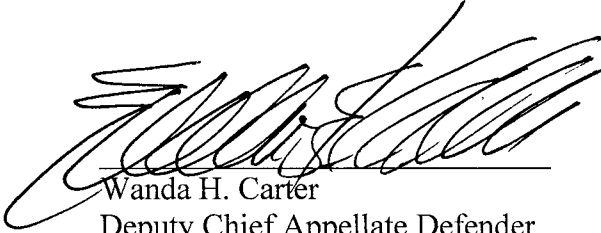
The PCR judge ruled that plea counsel met the reasonable standard of professional norms with respect to her legal representation of petitioner in the case. App. 83-85.

The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, *supra*.

In the case at bar, petitioner felt pressured by counsel into pleading guilty to the charge. Petitioner desired a jury trial. Per these circumstances in the instant case, clearly petitioner did not plead guilty within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964). Additionally, the coercive measure counsel used (threat of harsh sentencing to obtain petitioner's pleas) violated petitioner's right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea proceeding (See Hill v. Lockhart, 484 U.S. 52 (1985)), particularly since petitioner would rather have had a jury trial in the case. Also, but for the coercive measure used by trial counsel to secure petitioner's involuntary plea, petitioner would probably have exercised his right to a jury trial on the charges filed against him in the case.

CONCLUSION

Based on the foregoing argument, 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 30th day of August, 2017.

STATE OF SOUTH CAROLINA

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Certiorari to Sumter County

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Jamal Wilson 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 27, 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 Timothy Jamal Wilson.

Respectfully Submitted,



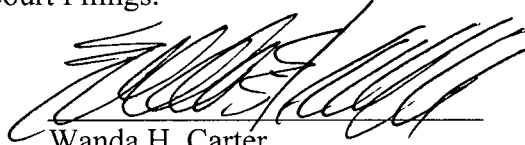
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 30th 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."



Wanda H. Carter
Deputy Chief Appellate Defender

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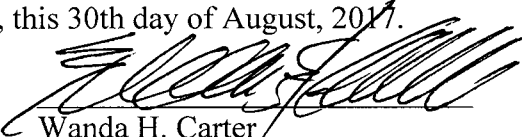
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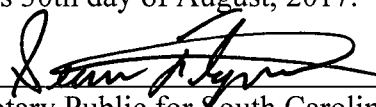
RESPONDENT

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 Timothy Jamal Wilson, ##359578, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 30th day of August, 2017.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 30th day of August, 2017.

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