

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

 ORIGINAL

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Certiorari to Horry County

RECEIVED

OCT 16 2017

Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

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MARCUS ALLEN BELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000493

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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  
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(803) 734-1330

ATTORNEY FOR PETITIONER

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The PCR judge erred in denying petitioner’s allegation that his guilty pleas were given involuntarily because he was not afforded an opportunity to review the discovery materials prior to the plea proceeding, which in turn meant that he was unable to properly assess his case and make a “voluntary and intelligent choice among alternative courses of actions”<sup>1</sup> available to him. ....3

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily because he was not afforded an opportunity to review the discovery materials prior to the plea proceeding, which in turn meant that he was unable to properly assess his case and make a "voluntary and intelligent choice among alternative courses of actions"<sup>2</sup> available to him.

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<sup>2</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

## STATEMENT

Petitioner Marcus Allen Bell pled guilty to unlawful possession of a firearm by a person convicted of a violent offense and trafficking in illegal drugs (heroin) during the March 2015 term of the Horry County General Sessions Court before Judge Michael G. Nettles. Christopher D. Helms represented petitioner at the plea proceeding and Assistant Solicitor Travis Hyman appeared on behalf of the state. Petitioner was sentenced to imprisonment for an aggregate period of thirteen-years. App. 1-12. Petitioner did not appeal his convictions or sentences.

On July 21, 2015, petitioner filed a PCR application with the Horry County Office of the Clerk of Court. App. 14-20. The respondent filed a return dated February 4, 2016, requesting that a hearing be held in the case. App. 21-24. A PCR hearing was convened on November 14, 2016, at the Horry County Courthouse before Judge Brooks P. Goldsmith. App. 26-111. Petitioner was present at the hearing and represented by Steven Fowler, Esquire, and Assistant Attorney General Valerie Giovanoli appeared on behalf of the state. On December 5, 2016, Judge Goldsmith issued an Order of Dismissal in the case. App. 115-124.

Petitioner appealed. This petition follows.

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily because he was not afforded an opportunity to review the discovery materials prior to the plea proceeding, which in turn meant that he was unable to properly assess his case and make a "voluntary and intelligent choice among alternate courses of actions"<sup>3</sup> available to him.

Petitioner was faced indictments on twenty charges, but pled guilty to two offenses charged against him in exchange for the dismissal on the remaining charges. App. 2, lines 1-16.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, petitioner was the subject of an ATF investigation coordinated with state officials in 2013, and that after five undercover controlled drug buys were made from him, he was arrested. On later dates, several searches of petitioner's home were conducted while he was on home detention and more drugs and a gun were confiscated. Hence, the origin of the 20 offenses charged against him. App. 4, l. 4 – p. 5, l. 18.

During the PCR hearing held in the case, petitioner testified that on the day of the plea proceeding and on the day before his plea proceeding, he asked counsel for his discovery information, but that counsel would not let him see it despite his requests and that he promised to mail it to him. App. p. 34, l. 10 – p. 41, l. 15. Petitioner explained that although counsel stated there were no options and that he would lose at trial, petitioner desired a trial nonetheless and stated that he was "rushed" into pleading guilty. App. 40, l. 10 – p. 42, l. 13. Petitioner stated that he was not privy to the discovery (App. 44 l. 9-15) until after he pled guilty. App. 46, l. 4-7; Tr. 53, l. 1-4. Petitioner stated that he plead guilty on March 24, 2015, and received his

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<sup>3</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

discovery on March 30, 2015, and that he received additional discovery material on November 4, 2015. App. 61, l. 22 – p. 65, l. 3; App. 69, l. 17-25; App. 75, l. 22-25. Petitioner added that he later learned that there were several legal issues (such as a defective custody chain, an increase in the amount of drugs added to his data reports, and other forensic issues) that he was not aware of until he reviewed the discovery papers after the plea.

Trial counsel testified at the PCR hearing and explained that he discussed and reviewed the discovery materials with petitioner, but that he could not confirm that petitioner was in receipt of the discovery (presumably what was mailed to him) when he met with petitioner. App. 84, l. 17-24; App. 87, l. 23 – p. 88, l. 10; App. 90, l. 20 – p. 91, l. 7.

The PCR judge ruled that counsel reviewed all of the state’s evidence in the case and that he mailed off a copy of the discovery before the plea proceeding, and that as a result, there was no showing that counsel was ineffective in his representation of petitioner in the case. App.121-123.

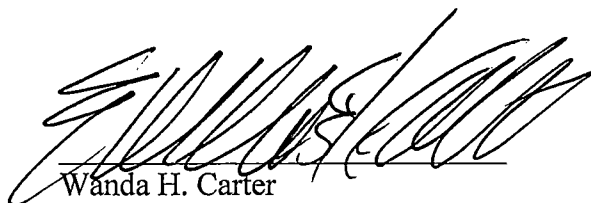
Counsel admitted that he could not confirm that petitioner received the discovery package. Petitioner’s position was that he was not privy to the discovery information in his case prior to his plea; and that had he been afforded an opportunity to review his discovery prior to the plea, then he would have raised legal challenges to the state’s case and opted for a trial and pled not guilty. Therefore, without the benefit of reviewing the discovery materials prior to the plea, petitioner pled guilty without a proper assessment of the case and alternative courses of actions available to him. The purpose of discovery is to enable one who is asserting a right or claim to determine the exact nature of the claim or right and the extent thereof, which in turn aids the truth seeking process. CJS Discovery §12. A guilty plea must represent a “voluntary and intelligent choice among alternative courses of actions” open to a defendant. North Carolina v.

Alford, 400 U.S. 25 (1970). See also Holden v. State, 393 S.C. 565, 393 S.C. 565 (2011). Here, petitioner's pleas were not a voluntary and intelligent choice among alternative courses of actions.

Counsel's failure to supply all of the state's evidence via the discovery materials to petitioner in the case prior to the plea proceeding constituted deficient representation in violation of the Sixth Amendment to the United States Constitution. Thus, petitioner's pleas were not given knowingly and voluntarily because he could not make an intelligent choice about pleading guilty or exercising his right to a trial by jury since he was unable to review the state's evidence in its entirety prior to the plea proceeding. Hence, the resulting prejudice. See Hill v. Lockhart, 484 U.S. 52 (1985). Additionally, petitioner was prejudiced because but for the omission, he most likely would have elected to plead not guilty and exercised his right to a trial by jury on the charges 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.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of October, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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MARCUS ALLEN BELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

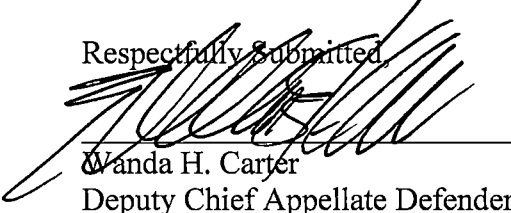
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Counsel for Marcus Allen Bell states that:

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 Brooks P. Goldsmith, which was held on November 14, 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 Marcus Allen Bell.

Respectfully Submitted,



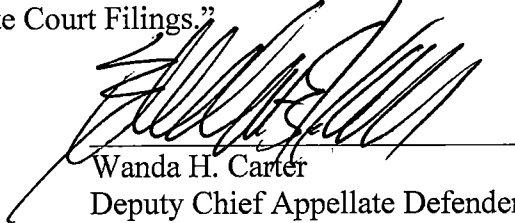
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Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 16th day of October, 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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This 16th day of October, 2017.

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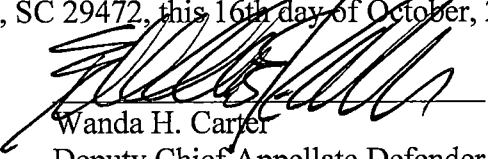
RESPONDENT

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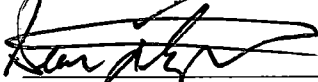
CERTIFICATE OF SERVICE

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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 Johnny Ellis James, Jr., 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 Marcus Allen Bell, #310927, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 16th day of October, 2017.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 16th day of October, 2017.

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