

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable John C. Hayes, Circuit Court Judge

RONALD BROWN,

RECEIVED

OCT 16 2017

S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002378

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Wanda H. Carter  
Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Petitioner's plea was given involuntarily due to a misunderstanding regarding sentencing consequences because counsel advised that a thirty-year sentence, rather than life imprisonment, would be imposed in exchange for pleading guilty as charged, but instead petitioner ended with the equivalent of a life sentence (forty-five-year prison term) after pleading guilty in the case.

## STATEMENT

Petitioner Ronald Earl Brown pled guilty to first degree assault and battery by a mob during the October 2014 term of the Greenville County General Sessions Court before Judge Edward Miller. Petitioner was sentenced to imprisonment for a period of forty-five years. App. 1-16. Chris Posey represented petitioner at the plea proceeding and Assistant Solicitor Jeff Weston appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On September 18, 2015, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 18-23. The respondent filed a return dated January 29, 2016, requesting that a hearing be held in the case. App. 25-29.

A PCR hearing was convened on October 24, 2014, at the Greenville County Courthouse before Judge John C. Hayes, III. App. 31-49. Petitioner was present at the hearing and represented by Richard H. Warder, and Assistant Attorney General Patrick L. Schmeckpeper appeared on behalf of the state.

On October 25, 2016, Judge Hayes signed an Order denying post-conviction relief to petitioner. App. 51-54.

Petitioner appealed. This petition follows.

## ARGUMENT

Petitioner's plea was given involuntarily due to a misunderstanding regarding sentencing consequences because counsel advised that a thirty-year sentence, rather than life imprisonment, would be imposed in exchange for pleading guilty as charged, but instead petitioner ended with the equivalent of a life sentence (forty-five-year prison term) in the case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, when petitioner and friends showed up at the deceased's cousin's sweet 16 birthday party and started to make gang signs and chant gang sounds, the party was shut down. Thereafter, an altercation ensued between the birthday girl and some of these males, and when the deceased attempted to interfere, he was chased and beaten by the group. The state alleged that petitioner was one of the primary aggressors. Tr. 5, l. 21 – p. 7, l. 25.

During the PCR hearing, petitioner, petitioner's mother, and petitioner's sister all testified that trial counsel informed them that a thirty-year sentence would be the prison term handed down by the judge in exchange for a guilty plea in the case, and in effect that a life sentence would be given only if he went to trial. App. 34, l. 22 – p. 37, l. 5; App. 38, l. 16 – p. 40, l. 19; App. 41, l. 21 – p. 43, l. 5.

Trial counsel testified at the PCR hearing and explained that petitioner was set to receive a thirty-year sentence (recommendation) if he pled guilty and cooperated by testifying against the co-defendants who went to trial, but that petitioner "backed out of his cooperation agreement." App. 46, l. 16 – 25; App. 47, l. 1-6; App. 48, l. 1-11. However, counsel admitted that he told petitioner that it was unlikely that he would receive a sentence of life-imprisonment if he pled guilty. App. 47, l. 7-12.

The PCR judge found that petitioner failed to prove that his plea was involuntarily given because counsel advised petitioner of the sentencing range of thirty years to life in his case. App. 54.

Clearly, petitioner did not understand the sentencing consequences in his case. Petitioner was misinformed by counsel that a plea would guarantee the avoidance of a life sentence, which he received in effect in the case, as his forty-five-year sentence was tantamount to a life sentence, and that his failure to cooperate and testify against his co-defendants would not impact his sentencing consequences. Therefore, petitioner believed he would receive a thirty-year sentence in the case regardless of whether he cooperated or not.

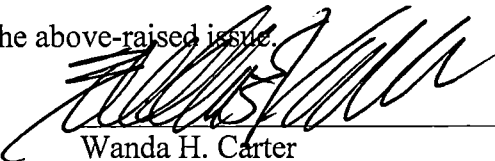
A judge has wide discretion in determining what sentence to impose and can conduct an inquiry broad in scope and largely unlimited as to the kind of information he may consider. State v. Franklin, 267 S.C. 240 226 S.E.2d 896 (1976). Counsel erred in failing to advise petitioner that his (petitioner's) refusal to cooperate with the agreement to testify against others, which resulted in the state's refusal to recommend a thirty-year sentence, might impact the judge's decision regarding whether a thirty-year sentence would be appropriate. Counsel's error constituted deficient representation during a plea proceeding. Also, counsel's advice that a plea would protect him from receipt of a life sentence when the sentencing range was thirty-years to life constituted deficient representation also. Had petitioner known of the sentencing consequences he would likely have faced if he refused to cooperation per the agreement to testify against his codefendants, then he would have plead not guilty and opted for a jury trial 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 fully explain sentencing consequences to petitioner violated petitioner's right to competent legal representation at his plea proceeding because petitioner plead guilty without an understanding of the sentencing consequences in his case. 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, counsel for petitioner would request 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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Honorable John C. Hayes, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

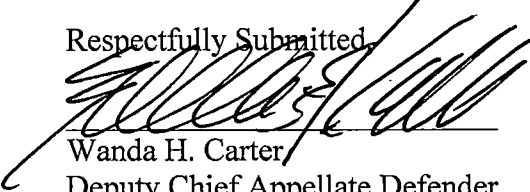
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Counsel for Ronald Brown states that:

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 John C. Hayes, which was held on October 24, 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 Ronald Brown.

Respectfully Submitted,

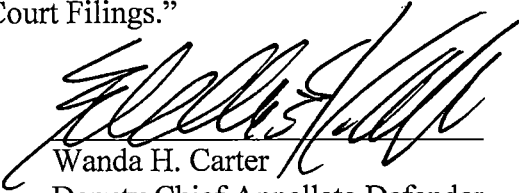


Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

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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\_\_\_\_\_  
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 DeShawn H. Mitchell, 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 Ronald Brown, #361682, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of October, 2017.

  
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Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 16<sup>th</sup> day of October, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022