

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 ORIGINAL

Certiorari to Lancaster County

William Jeffrey Young, Circuit Court Judge

RECEIVED

NOV 17 2017

MICHAEL E. HYATT,

PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000901

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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ISSUE PRESENTED

Trial counsel erred in failing to convey the state's plea offer on a lesser charge to petitioner because petitioner's position was that he would have accepted the plea deal if this information had been communicated to him prior to trial.

STATEMENT

Petitioner Michael E. Hyatt was tried on the indicted offense of attempted murder, but found guilty of assault and battery of a high and aggravated nature during the January 2014 term of the Lancaster County General Sessions Court before Judge Brian Gibbons. Petitioner was sentenced to imprisonment for a period of nine years.¹ App. 1-577. Petitioner was represented by Mark Grier and William Frick at trial, and Assistant Solicitor Andy Cook appeared on behalf of the state at trial.

Petitioner appealed, but his conviction and sentence were affirmed. See State v. Hyatt, Unpublished Opinion No. 2015-UP-326 (Ct. App. filed July 1, 2015). Susan B. Hackett, Esquire, represented petitioner on appeal.

On August 6, 2015, petitioner filed a PCR application with the Lancaster County Office of the Clerk of Court. App. 579-588. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 589-592. A PCR hearing was convened on January 8, 2017, at the Lancaster County Courthouse before Judge William Jeffrey Young. Petitioner was present at the PCR hearing and represented by Ashley McMahan, and Assistant Attorney General Patrick Schmeckpeper appeared on behalf of the state. App. 594-649. On March 28, 2017, Judge Young issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of trial counsel. App. 658-665.

Petitioner appealed Judge Young's Order. This petition follows.

¹ Appellant's son Aaron Hyatt was tried along with appellant as a co-defendant also on the charge of attempted murder and found guilty of assault and battery of a high and aggravated nature. Aaron Hyatt was sentenced to a four-year prison term.

ARGUMENT

Trial counsel erred in failing to convey the state's plea offer on a lesser charge to petitioner because petitioner's position was that he would have accepted the plea deal if this information had been communicated to him prior to trial.

Petitioner was accused of attempting to kill Kamil Nassrah by “striking [him] on the left rear side of his head with a wooden tool handle” on September 16, 2010. See indictment at App. 668. On October 12, 2010, paperwork was submitted by the state offering a plea “straight up to ABHAN.” See petitioner's exhibit #2 at App. 653.

At trial, Kamil Nassrah testified that he was farming on the date in question and that he and Donnell Melton were leaving with their hay and driving down Merle Lane when appellant's son Aaron Hyatt appeared on the road also. Nassrah explained that Aaron Hyatt drove up and blocked him in while uttering threats and immediately thereafter, appellant appeared holding a big stick and approached fast. Then, Nassrah shot appellant. App. 180, l. 14 – App. 193, l. 24. Note that during the incident, Nassrah inferred that he received a head wound from being hit by a stick. The solicitor's opening comments summarizing the events follow:

Nassrah never got to call law enforcement because as soon as he gets this phone out [Nassrah] is going to testify that he feels like he [got] shot in the back of the head, at the time he didn't know what hit him, but something hit him in the back of his head and he falls out of his truck and when he comes to his senses he's not in a daze anymore [and] he sees appellant standing in front of him with a big wooden stick raised above his head. App. 164, lines 10-18.

Appellant's testimony was that he was working in his yard when Nassrah and Melton, who held a big wrench, stopped to threaten him and that his son Aaron (with whom he was on the phone with at the time) heard the threats. Soon, Aaron appeared at the scene presumably in

defense of appellant and met Nassrah and Melton on Merle Lane. Afterwards, appellant went to Merle Lane presumably in defense of Aaron and met Nassrah and Melton on Merle Lane. Appellant stated that he had a wooden stick in his possession and that he saw Nassrah point a gun and shoot at Aaron. Appellant explained that he tried to knock the gun away from Nassrah, but Nassrah shot at him and that he responded in self-defense by hitting Nassrah in the head with the stick. Tr. 387, l. 4 – p. 426, l. 6.

During the PCR hearing, petitioner testified that trial counsel never informed him of a plea offer presented in the case, and that he would have considered a plea deal had that information been relayed to him prior to trial. App. 597, l. 17 – p. 598, l. 4; App. 607, l. 9 – 18; App. 608, l. 5 – p. 609, l. 6.

Trial counsel testified during the PCR hearing and explained that the state indeed produced a plea offer in the case. Counsel admitted that he “[couldn’t] say that he did go over [with appellant] the [state’s] offer to plead straight up to ABHAN.” App. 635, l. 1-24; App. 622, lines 10- p. 623, l. 7. Counsel stated that his standard practice was to discuss plea offers with clients. App. 623, l. 21 – p. 625, l. 18. See plea offer at App. 653.

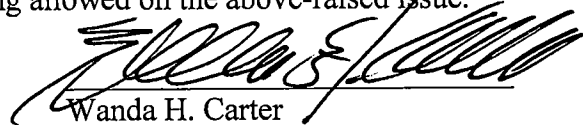
The PCR judge ruled that counsel’s assistance was not ineffective because his standard practice was to convey plea offers to his clients. However, the PCR judge acknowledged counsel’s inability to specifically remember conveying the plea offer to petitioner. App. 661.

In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the Court held that counsel was ineffective in failing to communicate a plea offer to his client and that petitioner was prejudiced based on the differences in the sentence handed down and the plea offer sentence. Likewise, based on the testimony in the case at bar, counsel’s apparent failure to communicate the ABHAN plea offer in 2010 constituted ineffective assistance of counsel; and prejudice resulted because

although petitioner was ultimately convicted of ABHAN, he could have begun serving his sentence four years earlier beginning in 2010 rather than after the 2014 trial. Additionally, he might have received a lesser sentence as compared to his trial court sentence had he been privy to and accepted the plea offer. Trial counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea bargaining stage in violation of the Sixth Amendment and but for this error, a reasonable probability exists that petitioner would have received the benefit of a more favorable prison sentence un his case. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that petitioner's petition be granted and full briefing allowed on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Honorable William Jeffrey Young, Circuit Court Judge

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PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael E. Hyatt 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 William Jeffrey Young, which was held on January 9, 2017, 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 Michael E. Hyatt.

Respectfully Submitted,



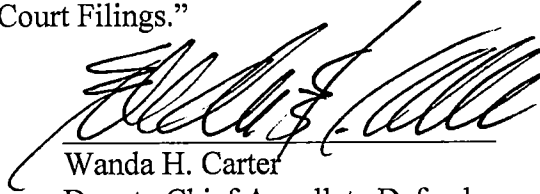
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of November, 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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ATTORNEY FOR PETITIONER

This 17th day of November, 2017.

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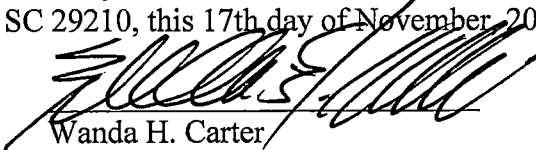
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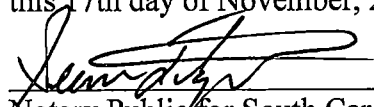
RESPONDENT

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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 Michael E. Hyatt, #358395, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 17th day of November, 2017.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of November, 2017.

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