

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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ORIGINAL

Certiorari to Berkeley County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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JAN 19 2018

BRITTANY LYN SWANGER,

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001980

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Lara M. Caudy  
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**ISSUE PRESENTED**

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where she pled guilty due to plea counsel's promise that she would be eligible for parole after serving a quarter of her negotiated fifteen year sentence and where Petitioner was prejudiced since she would not have pled guilty if she would have known she would not be eligible for parole until she served at least eighty-five percent of her sentence?

## STATEMENT OF THE CASE

Petitioner was physically and sexually abused by her father as a young child. She dropped out of school before completing the ninth grade and has “been on her own since she was about thirteen.” App. 15, ll. 3-9. Petitioner became addicted to crack cocaine and, at the time of the murder, was living in a hotel. As the assistant solicitor explained to the plea judge, the then twenty-three year old Petitioner “just kind of got mixed up smoking crack with the wrong people at the wrong time.” App. 12, ll. 19-21.

At the direction of her two male codefendants, Petitioner allegedly knocked on the decedent’s door and pretended to be a secretary for his attorney in an effort to gain access to his home. The group needed more money to buy crack cocaine and planned to rob the decedent. During the course of the robbery, the group put a plastic bag over the decedent’s head and bound his hands and feet together with duct tape causing him to suffocate to death. App. 11, ll. 14-17. The assistant solicitor admitted Petitioner “did not realize the robbery was going to escalate into a murder” and that she only participated because “she was very frightened of the other two codefendants.” App. 11, ll. 19 – 21, l. 3.

Petitioner “came forward very quickly” after the murder and “started cooperating.” She provided law enforcement with “very valuable information” that was used to prosecute her codefendants. App. 12, l. 25 – 26, l. 8. As a result of her extensive cooperation and limited participation in the murder, the state allowed Petitioner to plead guilty to voluntary manslaughter with a negotiated sentence of fifteen years imprisonment. App. The assistant solicitor told the plea judge that Petitioner “has shown true remorse from the first time we met with her.” App. 13, l. 25 – 26, l. 2.

A Berkeley County Grand Jury indicted Petitioner on September 19, 2012 for the offense of murder. App. 82-83. On March 25, 2015, Petitioner pled guilty to the lesser included offense of voluntary manslaughter before the Honorable Kristi Lea Harrington. App. 1. Assistant Solicitor Anne Williams represented the state, and Grover Seaton represented Petitioner. App. 2. Judge Harrington sentenced Petitioner to fifteen years imprisonment. App. 4, ll. 18-23; App. 21, ll. 10-13.

On January 26, 2016, Petitioner filed an application for post-conviction relief raising the claim argued in this petition. App. 23-31. The state filed a return to this application on June 15, 2016. App. 32-38. An evidentiary hearing was convened on April 17, 2017 before the Honorable Brooks P. Goldsmith. App. 39. Assistant Attorney General Alicia Olive represented the state, and Lance Boozer represented Petitioner. App. 39.

Petitioner testified at the evidentiary hearing that plea counsel told her she would be eligible for parole after she served a quarter of her fifteen year sentence. App. 46, ll. 19-23. More specifically, counsel told Petitioner she would be eligible for parole in 2016, after serving approximately four years. App. 48, l. 23 – 49, l. 15. Counsel also gave Petitioner advice as to what to tell the parole board once she became eligible for parole. Petitioner testified that counsel told her to express her remorse and tell the board of her limited participation in the murder. App. 46, l. 19 – 47, l. 3.

Moreover, Petitioner maintained that she would not have pled guilty if she would have known she would not be eligible for parole after she served a quarter of the fifteen year sentence. Instead, she would have rejected the offer, and if the state refused to extend a more favorable offer, she would have proceeded to trial. App. 48, ll. 8-15.

Grover Seaton, Petitioner's plea counsel, maintained that he never advised Petitioner she would be eligible for parole after serving a quarter of her sentence. Instead, he said he told her she would have to serve eighty-five percent before becoming parole eligible. Seaton further claimed that he never made Petitioner any promises of when she would be released on parole. App. 59, l. 5 – 60, l. 3; App. 61, ll. 7-15.

By order filed September 20, 2017, Judge Goldsmith denied Petitioner relief. App. 73-81. He found Petitioner failed to prove plea counsel misadvised her concerning her parole eligibility. App. 79. He found credible counsel's testimony that he advised Petitioner she would not be eligible for parole until she served at least eighty-five percent of her sentence. App. 79. The judge also relied on the fact that the plea court repeatedly told Petitioner that she should expect to serve her fifteen year sentence day for day. App. 79.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to plea counsel's advice that she would be eligible for parole after serving a quarter of her sentence and because Petitioner was prejudiced since she would not have pled guilty if she would have known she would not be eligible for parole until she served at least eighty-five percent of her sentence, this petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where she pled guilty due to plea counsel's promise that she would be eligible for parole after serving a quarter of her negotiated fifteen year sentence and where Petitioner was prejudiced since she would not have pled guilty if she would have known she would not be eligible for parole until she served at least eighty-five percent of her sentence.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to plea counsel's promise that Petitioner would be eligible for parole after serving a quarter of her negotiated fifteen year sentence if she pled guilty instead of proceeding to trial. Petitioner was prejudiced because, as Petitioner's testimony indicated, she would not have pled guilty but for plea counsel's promise.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Id. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. at 59. "[T]he voluntariness of a guilty plea is not determined by an examination of a specific

inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-574, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000)).

“The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)). Additionally, a guilty plea that was “entered by one fully aware of the direct consequences . . . must stand *unless* induced by . . . misrepresentation (including unfulfilled or unfulfillable promises) . . .” Brady v. United States, 397 U.S. 742, 755 (1970) (emphasis added) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (reversed on other grounds, 356 U.S. 26 (1958)). Accordingly, counsel provides ineffective assistance in the adversarial system when he induces the defendant to plead guilty.

In this case, Petitioner was induced into pleading guilty by plea counsel’s promise that she would be eligible for parole after serving a quarter of her negotiated fifteen year sentence. Petitioner testified at the evidentiary hearing that counsel told her she would be eligible for parole in 2016 after serving approximately four years. However, after she entered the Department of Corrections, Petitioner learned that she was required to serve at least eighty-five percent of her sentence before becoming eligible for parole and that her expected release date was 2025 rather than 2016. Counsel’s promise concerning Petitioner’s parole eligibility induced Petitioner to accept the negotiated fifteen year sentence and waive her right to a jury trial. This promise rendered Petitioner’s guilty plea involuntary.

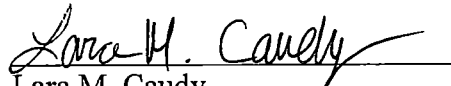
Moreover, there is a reasonable probability that but for plea counsel's promise, Petitioner would not have pled guilty and would have insisted on proceeding to trial. Petitioner testified that she would not have pled guilty had it not been for plea counsel's promise. Specifically, Petitioner testified that she would have rejected the fifteen year negotiated sentence, and if the state did not extend a more favorable offer, she would have gone to trial. App. 48, ll. 8-15. Thus, Petitioner was prejudiced by plea counsel's promise. Lockhart, 474 U.S. at 59. It was *only* because of this promise that Petitioner decided to plead guilty.

As a result of the invalid plea and the resulting prejudice, Petitioner's conviction should be reversed and, respectfully, this Court should grant her a new trial.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of January, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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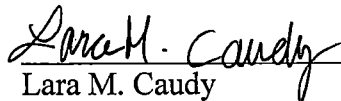
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Counsel for Brittany Lyn Swanger states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the records and transcript of Petitioner's post-conviction relief hearing, which was held on April 17, 2017 before the Honorable Brooks P. Goldsmith, and, in her opinion, seeking certiorari from the order of dismissal is without merit.
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 Brittany Lyn Swanger.

Respectfully Submitted,

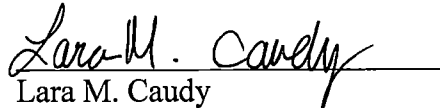
  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of January, 2018.

**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."

  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 19th day of January, 2018.

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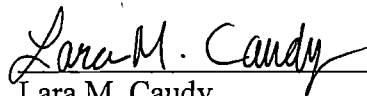
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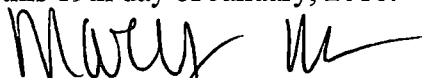
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 have been served upon Megan Harrigan Jameson, 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 upon Brittany Lyn Swanger, #363443, at Camille Griffin Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 19th day of January, 2018.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 19th day of January, 2018.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027.