

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

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ROBERT ANDREW MCFADDEN,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-00779

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Wanda H. Carter  
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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that his guilty pleas were not given voluntarily because he was coerced into pleading guilty to the state's charges lodged against him.

## STATEMENT

Petitioner Robert A. McFadden pled guilty to grand larceny, first degree burglary, and voluntary manslaughter<sup>1</sup> during the March 2015 term of the Berkeley County General Sessions Court before Judge Deadra L. Jefferson. Petitioner was sentenced to imprisonment for an aggregate period of thirty years. App. 1-19. Grover C. Seaton represented petitioner at the plea proceeding and Assistant Solicitor Anne Williams appeared on behalf of the state. Petitioner did not appeal his convictions and sentences.

On July 28, 2015, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 31-38. On May 17, 2016, the respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 39-44.

On April 17, 2017, a PCR hearing was convened at the Berkeley County Courthouse before Judge Brooks P. Goldsmith. App. 46-94. Petitioner was present at the hearing and represented by Rodney D. Davis, Esquire, and Assistant Attorney General Alicia Olive appeared on behalf of the state. On July 28, 2017, Judge Goldsmith issued an Order of Dismissal with respect to petitioner's PCR allegations of ineffective assistance of trial counsel. App. 96-108.

Petitioner appealed Judge Goldsmith's Order of Dismissal. This petition follows.

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<sup>1</sup> Petitioner was indicted for murder, but pled guilty to the lesser offense of voluntary manslaughter.

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty pleas were not given voluntarily because he was coerced into pleading guilty to the state's charges lodged against him.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner and codefendants Clark and Swanger entered Roy Bennett's house on July 15, 2012, gained access to his safe, and then put a bag over Bennett's head, which led to suffocation, and ultimately fled in Bennett's vehicle. App. 15, l. 8 – p.19, l. 25.

During the PCR hearing, petitioner testified that he was in effect forced to accept the plea offer and plead guilty because his trial counsel informed him that he could possibly have received a forty-year sentence on the charges if he opted for a trial by jury and "lost," and was convicted at trial. App. 57, l. 17 – p. 58, l. 10. Petitioner stated that counsel did not discuss possible defenses in the case. App. 59, l. 13 – Tr. 63, l. 1. Petitioner testified that he wanted a trial and that he informed counsel of his desire for a jury trial, but that counsel was in effect unprepared for trial and "push[ed] [him] to take the plea." App. 64, l. 16 – p. 65, l. 24. Petitioner testified further regarding the matter as follows:

Q: You testified that your attorney gave you the [plea] offer"

A: Yes ma'am

Q: Did you want to take the plea at that time?

A: No, ma'am

Q: Why did you take the plea?

A: Like I said I got scared

Q: Because your attorney told you the time that you would be facing if you.

A. Forty years day for day or life; yes, I got scared I got a ten-year old son right now. I got scared. App. 70, l. 14 – Tr. 71, l. 3.

Trial counsel testified at the hearing and admitted that petitioner had “been adamant all along that he wanted a trial,” but in effect that the better cause of action was to accept the plea offer and avoid a sentence of forty years or more “because he likely would have been convicted at trial.” App. 80, l. 15 – Tr. 81, l. 18.

At the close of the hearing, PCR counsel made the following closing argument:

Judge, the sole thrust of our application is that it’s the flip side of the same coin that this was a rush to plea even though it had been almost three years that Mr. McFadden had been incarcerated. But in that time even with comparing the two – few visits, the majority by the paralegal, even if the testimony of Mr. McFadden is discounted and in three years on these serious charges we would argue that that led to then the day before the plea this rush to plea; this undue pressure to plea without fully being informed by his attorney. So Mr. McFadden felt pressured into the plea and he testified as much that he felt scared based on what he was facing based on the advice that he was given the day before the plea of what was likely going to happen in a trial that was upcoming in two or four weeks. App. 88, l. 3-17.

The PCR judge ruled that petitioner failed to meet his requisite burden of proof on the allegations of ineffective assistance of counsel in the case. App. 102-107.

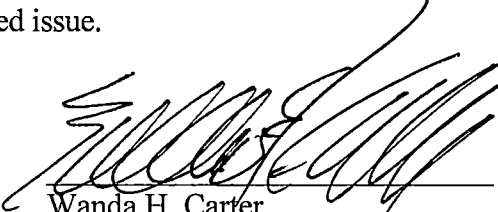
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one’s guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 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 charges. Clearly, petitioner desired a jury trial. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily. Additionally, the tactic counsel used, i.e., the threat of harsh sentencing to obtain petitioner’s pleas, was a coercive tactic, which in turn violated petitioner’s right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case. See Hill v. Lockhart, 484 U.S. 52 (1985). Also, but for the coercive measure used by trial counsel to secure petitioner’s involuntary pleas, 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, counsel for 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 26th day of February, 2018.

STATE OF SOUTH CAROLINA

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Certiorari to Berkeley County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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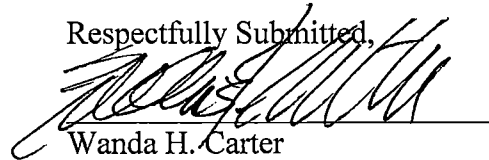
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Robert A. McFadden 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 April 17, 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 Robert A. McFadden.

Respectfully Submitted,

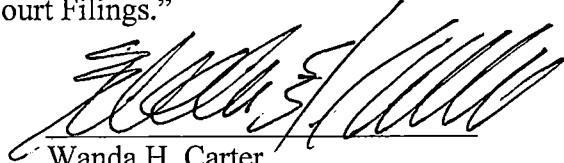


Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 26th day of February, 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."



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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 Rasheeda Cleveland, 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 Robert A. McFadden, #315301, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 26th day of February, 2018.

  
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of February, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022.