

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Aiken County

APR 27 2018

Honorable J. Mark Hayes, Circuit Court Judge

S.C. SUPREME COURT

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SUZANNE COOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002195

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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  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Petitioner's plea was given involuntarily because trial counsel erred in failing to explain the elements and nature of the offense of felony DUI charged against her in the case.

## STATEMENT

Petitioner Suzanne Cook pled guilty to felony DUI (resulting in death) during the July 2016 term of the Aiken County General Sessions Court before Judge G. Thomas Cooper, Junior. Petitioner was sentenced to imprisonment for a period of eighteen years. Petitioner did not appeal her plea or sentence. App. 1-28. Elmer W. Hatcher represented petitioner at the plea proceeding, and Assistant Solicitor Samuel B. Grimes appeared on behalf of the state.

On September 26, 2016, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 29-35. The respondent filed a return dated June 12, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 36-39.

A PCR hearing was convened on September 22, 2017, at the Aiken County Courthouse before Judge J. Mark Hayes, II. App. 41-59. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General Julie A. Coleman appeared on behalf of the state.

On October 16, 2017, Judge Hayes signed an Order of Dismissal in the case therein denying petitioner's PCR allegations. App. 61-68. Petitioner appealed Judge Hayes' Order of Dismissal. This petition follows.

## ARGUMENT

Petitioner's plea was given involuntarily because trial counsel erred in failing to explain the elements and nature of the offense of felony DUI charged against her in the case.

During the plea proceedings, the solicitor apprised the plea judge of the facts of the case. On April 3, 2015, the vehicle petitioner drove in Aiken County crossed the center line and struck another vehicle, and that the driver of the vehicle struck by petitioner died as a proximate cause of the collision. App. 7, l. 9 – App. 6, l. 3. The state alleged that on that day, petitioner's blood contained methamphetamine and small amounts of Xanax, Diazepam and Versed. App. 9, l. 24 – p. 10, l. 15.

During the PCR hearing held in the case, petitioner stated in her PCR application that “my attorney told me to plead guilty without explaining...[and that my] attorney did not explain my charges.” App. 44, l. 16-22. Also during the PCR hearing, petitioner stated that trial counsel failed to in effect develop a defense on the basis that she had a seizure while driving on the day in question, and that that collision was an accident. App. 48, l. 5 – p. 49, l. 14. Trial counsel testified at the PCR hearing and stated that he knew about petitioner's seizures, but explained that petitioner was unable to provide him with medical records proving that she has problems with seizures in order to establish this as a viable defense. App. 52, l. 18 – p. 53, l. 23; App. 53, l. 11-14. Apparently, petitioner was taking methamphetamine to ease the pain from her chemotherapy treatments for cancer. App. 54, l. 18-23.

The PCR judge ruled as follows:

[Petitioner] claims her plea was given involuntarily because her attorney did not explain the charge or understand what she was doing. The guilty plea transcript shows [petitioner] was fully advised of her rights and the consequences of pleading guilty. Furthermore, trial counsel credibly testified [petitioner] fully understood what she was doing when she pled guilty. This Court

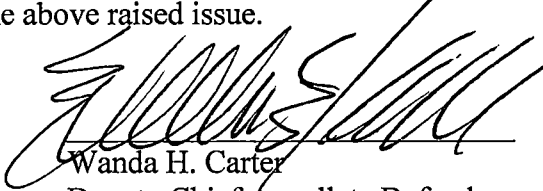
finds that there was no coercion affecting [petitioner's] decision to plead guilty, [and] the record reflects that [petitioner] was fully advised of the rights she was giving up by pleading guilty, and that her plea was entered into knowingly and intelligently. [Petitioner] presented no credible evidence as to why she should be able to depart from her statements at the plea hearing. This Court finds very credible plea counsel's testimony that [petitioner] understood everything at the plea and that it was solely [petitioner's] decision to plead guilty. [Petitioner] has failed to present any probative or credible evidence that she was coerced into pleading guilty. As a result, she has failed to meet her burden, and this allegation is denied and dismissed. App. 66-67.

Petitioner was under the impression that despite a finding of methamphetamine in her blood, she lacked criminal intent because this was an accident due to a seizure she had while driving. This meant that trial counsel failed to explain the elements and nature of the offense of felony DUI to the extent that the existence of her lack of intent per her defense that this was an accident because of her seizure was of no consequence because the legislature may criminalize behavior without regard to intent or knowledge as it did in the felony DUI statute. See State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992). In other words, the legislature may make an act or an omission of an act a crime regardless of fault, or forbid the doing of an act and make its commission criminal without regard to intent or knowledge of the doer although the intent of the doer was innocent. State v. Manos, 179 S.C. 45, 183 S.E.2d 582 (1936). Hence, the DUI statute is devoid of any language regarding knowledge or intent and is a strict liability crime. State v. Long, 186 439, 195 S.E. 624 (1983). Felony DUI under S.C. Code Ann. § 56-5-2945 includes the elements of a driver under the influence of alcohol or drugs who does an act forbidden by law or neglects a duty imposed by law that in turn causes great bodily injury or death to a person. Therefore, a seizure had while driving under the influence would not qualify as a defense on the issue of intent in the case.

In order to qualify one's plea as given voluntarily and intelligently, a defendant must be aware of the nature and crucial elements of the offense charged. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Barnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003). Here, trial counsel erred in failing to explain to petitioner the nature and elements of the offense of felony DUI charged against her so that she understood the problem with her seizure/accident as a non-defense so that she could make an informed decision regarding whether to plead guilty or opt for a jury trial. Counsel's error in this instance constituted deficient legal representation at a plea proceeding in violation of the Sixth Amendment, (See also Hill v. Lockhart, 484 U.S. 52 (1984)), and because of the error petitioner did not plead guilty voluntarily and intelligently.

**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 27th day of April, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County

Honorable J. Mark Hayes, Circuit Court Judge

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SUZANNE COOK,

PETITIONER

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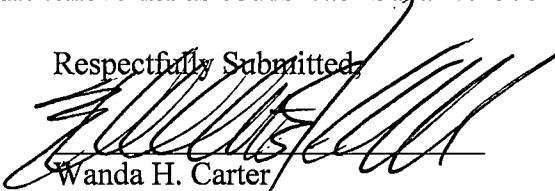
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Suzanne Cook 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 J. Mark Hayes, which was held on September 22, 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 Suzanne Cook.

Respectfully Submitted,



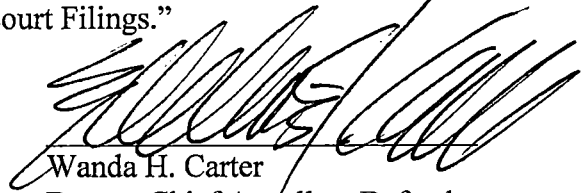
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 27th day of April, 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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South Carolina Commission on Indigent  
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ATTORNEY FOR PETITIONER

This 27th day of April, 2018.

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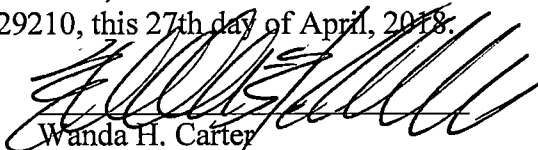
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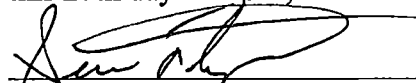
RESPONDENT

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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 Julie Coleman, 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 Suzanne Cook, #369011, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 27th day of April, 2018.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 27th day of April, 2018.

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