

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

NOV 30 2015

**S.C. Supreme Court**

\_\_\_\_\_  
Certiorari to Greenville County  
Eugene C. Griffith, Jr., Circuit Court Judge  
\_\_\_\_\_

RODRICK DEON IRBY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000824  
\_\_\_\_\_

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) 734-1343

ATTORNEY FOR PETITIONER

# INDEX

INDEX.....	1
ISSUE PRESENTED.....	2
STATEMENT.....	3
ARGUMENT.....	4
CONCLUSION.....	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

ISSUE PRESENTED

Trial counsel erred in failing to object to the plea judge's unfair sentence given to petitioner because undue emphasis was placed on the length of his prior criminal record.

## STATEMENT

Petitioner Rodrick Deon Irby was convicted of trafficking in cocaine during the May 2013 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin. Petitioner was sentenced to imprisonment for a period of eight years. Joseph Maxwell represented petitioner at the plea proceeding, and Assistant Solicitor Joyce Monts appeared on behalf of the state. App. 1-22. Petitioner did not enjoy the benefit of a direct appeal in the case.

On February 28, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 24-32. The respondent filed a return dated May 7, 2014, requesting that a hearing be held in response to petitioner's PCR action. App. 33-36.

A PCR hearing was held at the Greenville County General Sessions Court before Judge Eugene C. Griffith, Junior. App. 38-57. Petitioner was present at the PCR hearing and represented by Caroline M. Horlbeck, and Assistant Attorney General Karen C. Ratigan appeared on behalf of the state. On February 16, 2015, Judge Griffith issued an Order of Dismissal in the case. App. 59-65.

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

## ARGUMENT

Trial counsel erred in failing to object to the plea judge's unfair sentence given to petitioner because undue emphasis was placed on the length of his prior criminal record.

During the plea proceeding, the solicitor apprised the trial judge of the facts in the case. Apparently, petitioner was shot during a bad drug deal that occurred on April 28, 2010, at a Marathon Gas Station on Wade Hampton Boulevard in Greenville County. Cocaine was found on petitioner at some point after police arrived on the scene. App.17, l.16 – p.19, l.2. Thereafter, the solicitor reduced petitioner's third offense drug trafficking charge to a second offense drug trafficking charge and recommended an eight-year sentence. The solicitor advised the plea judge during the plea proceeding that petitioner was presently serving a thirty-nine-month federal sentence at that time. App. 17, l. 16 – p. 19, l. 9; App.21, lines 9-13.

During the plea proceeding, petitioner's prison record was read into the record as follows:

**Solicitor:** Your Honor, 2000, a burglary, second degree, kidnapping, lynching, second degree, strong arm robbery, 2002, possession of crack cocaine, a second possession of crack cocaine, second offense, assault and battery high and aggravated nature, 2004, breach of peace, 2006, driving under suspension, second, a possession of marijuana, 2007, trafficking crack cocaine out of Laurens County, 2011, open container, September of 2011, distribution of crack cocaine, third offense out of Laurens County....and August of 2012 is when he pled on his federal charges. He pled to PWID and distribution of cocaine base. I don't know what his – turned himself in date was for that, but the guilty plea was accepted August 13<sup>th</sup> of 2012. App. 21, l. 19 – p. 22, l. 8.

The plea judge gave the following response after petitioner's record was read into the record:

**The Court:** For somebody his age, that record is something to behold. I'm going to give him eight years. App. 22, lines 15-16.

During the PCR hearing, petitioner testified that counsel led him to believe that the plea judge would issue a five-year sentence to him despite the solicitor's eight-year recommendation. In addition, petitioner testified that he was prejudiced and received an unfair sentence after the plea judge heard his entire criminal record because it had a negative impact on the judge, which was obvious as the judge voiced her rejection in effect on sentencing leniency as requested by trial counsel after his lengthy prior record was published. Petitioner claimed in effect that trial counsel erred in failing to object to his sentence on the ground that the plea judge was unduly impressed by his long criminal record and did not sentence him fairly as a result; and also that he would have elected to proceed with a jury trial had he known that his record would have unfairly impacted his sentencing proceeding. App. 42, l.1 – p.51, l.22.

Trial counsel testified during the plea proceeding and stated that he asked for sentencing leniency. App. 56, lines 3-8. Also, see App.19, lines 16-17. However, note that it was trial counsel who advised the plea judge that petitioner possessed an "extensive" record. App. 21, lines 10-13.

The PCR judge ruled in effect that counsel did not render ineffective assistance with respect to the sentencing phase of the plea proceeding. App. 59-65.

As a rule, a sentencing judge should know all the material facts including any information material to punishment (such as the defendant's criminal record) prior to sentencing. State v. Franklin, 276 SC 240, 226 S.E.2d 896 (1976). However, a judge's sentence cannot stem from prejudice, oppression, or any corrupt motive. State v. Franklin, *supra*. In the case at bar, the plea judge was clearly taken aback and reeling over the long length of petitioner's prior convictions, which in turn meant that this translated into a higher degree of prejudice connected to the plea judge's actions as she contemplated petitioner's sentence. In other words, petitioner's request for

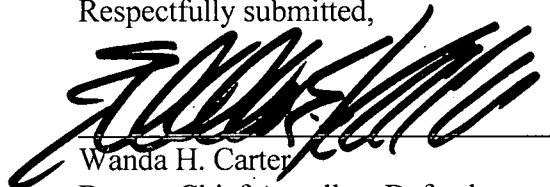
sentencing leniency was most likely not given sufficient consideration by the plea judge due to his “extensive” prior criminal record. This resulted in an unfair sentencing proceeding for petitioner.

Clearly, counsel’s error in failing to object to the unfair sentence received by petitioner in the case constituted legal assistance that fell below the standard of competence demanded of criminal attorneys. Counsel’s deficient performance in petitioner’s case violated petitioner’s Sixth Amendment right to competent counsel during his plea proceeding. See Hill v. Lockhart, 474 U.S. 52 (1985). But for counsel’s error in this regard, a reasonable probability exists that the outcome of petitioner’s sentence would have been different.

CONCLUSION

Based on the foregoing argument, counsel requests that this Court grant the petition and allow full briefing on the above raised issue.

Respectfully submitted,

A large, bold, handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO GREENVILLE COUNTY  
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

---

RODRICK DEON IRBY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

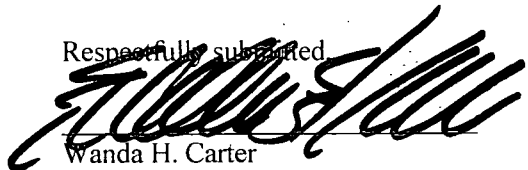
---

Counsel for Rodrick Deon Irby states:

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 records and transcript of petitioner's post-conviction relief hearing which was held on December 16, 2014. 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 the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Rodrick Deon Irby.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of November, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Greenville County

Eugene C. Griffith, Jr., Circuit Court Judge  
\_\_\_\_\_

RODRICK DEON IRBY,

PETITIONER,

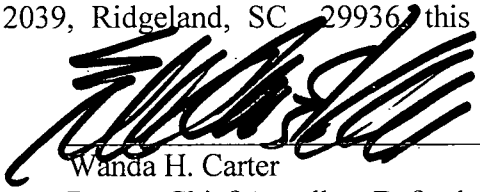
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Rodrick Deon Irby, #263567, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 30th day of November, 2015.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of November, 2015.

  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.