

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Roger E. Henderson, Circuit Court Judge

CLEVELAND MCNEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002064

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily to ABHAN because trial counsel erred in failing to explain to him the nature of that offense.

STATEMENT

Petitioner Cleveland McNeal pled guilty to assault and battery of a high and aggravated nature during the July 2015 term of the Darlington County General Sessions Court before Judge Paul M. Burch and was sentenced to imprisonment for a period of ten years. App. 1-16. Paul Neely represented petitioner at the plea proceeding, and Assistant Solicitor Adam Foard appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On November 17, 2015, petitioner filed a PCR application with the Darlington County Office of the Clerk of Court. App. 18-24. The respondent filed a return dated June 1, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 25-30.

A PCR hearing was convened on July 17, 2017, at the Darlington County Courthouse before Judge Roger E. Henderson. App. 34-58. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General Johnny E. James, Junior, appeared on behalf of the state.

On August 23, 2017, Judge Henderson signed an Order of Dismissal in the case therein denying and dismissing petitioner's allegations of ineffective assistance of counsel in his case. App. 60-68.

Petitioner appealed Judge Henderson's Order of Dismissal in the case. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily to ABHAN because trial counsel erred in failing to explain to him the nature of that offense.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. According to the state's case, petitioner fired gunshots at Nebuyius Holloway while they were both riding in his (Holloway's) vehicle on November 25, 2013. App. 10, l. 5-17.

During the PCR hearing, petitioner testified that he believed his negotiated plea bargain contained a ten-year, non-violent sentence in exchange for his plea to ABHAN, but that he was ultimately coerced into accepting a ten-year, violent sentence in exchange for his guilty plea in the case. App. 38, l. 21 – p. 39, l. 23; App. 45, l. 4-5; App. 46, l. 1-2; App. 46, l. 16 – p.49, l. 7.

Trial counsel testified at the PCR hearing and stated that he reviewed with petitioner the ten-year offer on his ABHAN plea and how it would be classified (violent versus non-violent). App. 54, l. 20 – Tr. 56, l. 18.

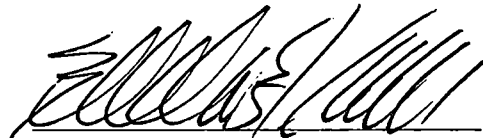
Although counsel testified that he explained the negotiated sentence; apparently, counsel failed to explain adequately to petitioner that there was no such classification categorizing ABHAN as a non-violent offense and that the only classification for ABHAN was under the violent offense category. See S.C. Code Ann. §16-1-60. Undoubtedly, counsel failed to make this clear (ABHAN's classification as violent) to petitioner before the plea proceeding. Therefore, petitioner's ABHAN plea was not given voluntarily because he was not informed of the nature of the offense, (that being its classification as violent), to which he pled guilty.

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, i.e. violent classification, of the offense of ABHAN to which petitioner pled guilty. 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)), which meant that petitioner's plea was given involuntarily.

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 23rd day of May, 2018.

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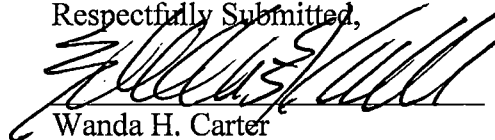
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cleveland McNeal 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 Roger E. Henderson, which was held on July 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 Cleveland McNeal.

Respectfully Submitted,

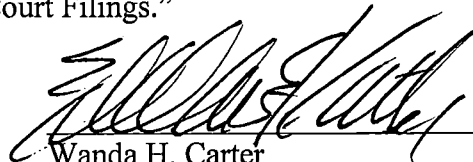


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of May, 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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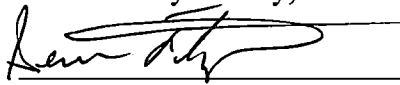
CERTIFICATE OF SERVICE

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 Johnny Ellis James, Jr., 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 Cleveland McNeal, #322191, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 23rd day of May, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2018.



Notary Public for South Carolina
My Commission Expires: 10/30/2022