

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

JUN 21 2018

S.C. SUPREME COURT

JAVAN FREDERICK MAYS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000891

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) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR judge erred in dismissing petitioner’s PCR claim under 2015-CP-42-01784 that his trial court convictions and sentences were obtained unconstitutionally in violation of his Sixth Amendment right to counsel, which he did not waive properly prior to trial, because he was not warned sufficiently of the details of the dangers and disadvantages associated with self-representation.3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

ISSUE PRESENTED

The PCR judge erred in dismissing petitioner's PCR claim under 2015-CP-42-01784 that his trial court convictions and sentences were obtained unconstitutionally in violation of his Sixth Amendment right to counsel, which he did not waive properly prior to trial, because he was not warned sufficiently of the details of the dangers and disadvantages associated with self-representation

STATEMENT

Petitioner Javan Frederick Mays was convicted of armed robbery, possession of a firearm during the commission of a violent crime, and two counts of attempted murder per jury trial held during the November 2013 term of the Spartanburg County General Sessions Court before Judge Alexander S. McCaulay. Petitioner appeared pro se at trial along with J. Roger Poole, Esquire, as standby counsel. Assistant Solicitor Derrick Balsa appeared on behalf of the state at trial. Petitioner was sentenced to imprisonment for an aggregate twenty-year term. App. 1-259. Petitioner appealed, but his appeal was dismissed by the South Carolina Court of Appeals. See State v. Mays, 2015-UP-179 (S.C. Ct. App. filed April 8, 2015). App. 279–280. Susan B. Hackett, Esquire, of the S.C. Office of Appellate Defense represented petitioner on appeal and filed an Anders Brief of Appellant on November 12, 2014. App. 261–278.

Petitioner filed a PCR application on April 28, 2015, with the Clerk’s Office in action 2015-CP-42-01784 (App. 281-301) attacking his trial court convictions,¹ and petitioner filed a PCR action also under 2015-CP-42-2535 (App 338-344) attacking his convictions via his guilty pleas on criminal domestic violence and discharging a firearm charges. On February 11, 2016, a return was filed in PCR action 2015-CP-42-01784. App. 302-306.

A PCR hearing was convened on November 9, 2016, at the Spartanburg County Courthouse before Judge Frank R. Addy on PCR action 2015-CP-42-01784 only after PCR action 2015-CP-42-2535 was dismissed. Petitioner was present at the hearing and represented by Rodney Richey, Esquire, and Assistant Attorney General Alicia Olive appeared on behalf of the state. App. 307-327. On March 24, 2017, Judge Addy issued an Order of Dismissal in the case. App. 329-337. Petitioner appealed Judge Addy’s Order of Dismissal. This petition follows.

¹ Petitioner’s trial court convictions were for armed robbery, possession of a firearm during the commission of a violent crime, and two counts of attempted murder.

ARGUMENT

The PCR judge erred in dismissing petitioner’s PCR claim under 2015-CP-42-01784 that his trial court convictions and sentences were obtained unconstitutionally in violation of his Sixth Amendment right to counsel, which he did not waive properly prior to trial, because he was not warned sufficiently of the details of the dangers and disadvantages associated with self-representation.

PCR action 2015-CP-42-01784 addressed petitioner’s trial court convictions. Petitioner appeared pro se at that trial. In PCR action 2015-CP-42-01784, petitioner raised the following issue regarding his trial in his PCR application:

“waiver (of right to counsel at trial) was invalid because [the trial judge] failed to adequately explain the dangers and disadvantages of self-representation as required by the Sixth and Fourteenth Amendments to the U.S. Constitution.” App. 283; App 297-299.

Petitioner testified at the PCR hearing and afterwards, the PCR Judge made the following finding:

Mr. Mayes, I’ve had a chance to look at this transcript while this hearing has been going on and compare it against the transcript and as far as Faretta² is concerned, I don’t think that’s an issue at all. Obviously page nine (9) of the transcript the judge goes over “you have to assume the risk of deficient representation if you choose to represent yourself...[and you respond: “yes sir.”] and that you have to follow the rules as a lawyer.” App. 323, l.24 – p. 324, l. 7.

The PCR judge denied and dismissed petitioner’s PCR right to counsel allegation under 2015-CP-42-01784 by ruling in an Order of Dismissal that “the record clearly reflects that the trial judge ensured that [petitioner] made a knowing choice to represent himself....after being appropriately advised of the dangers and disadvantages of self-representation.” App. 331–333.

² Faretta v. California, 422 U.S. 806 (1975).

Under S.C. Code Ann. section 17-27-10 (1), it is clear that one's PCR claim that "[his] conviction or [his] sentence was in violation of the Constitution of the United States or the Constitution or laws of this (South Carolina) State" would qualify as a cognizable PCR claim. Here, petitioner's cognizable PCR claim is that he was tried without counsel's assistance in violation of the Sixth Amendment. Since Gideon v. Wainwright, 372 U.S. 335 (1963), the Court announced the right to counsel via the Sixth Amendment for criminal defendants who are indigent. Also, once a trial has commenced, the Sixth Amendment guarantees the defendant the right to have counsel present at all critical stages. United States v. Wade, 388 U.S. 218 (1967); Powell v. Alabama, 287 U.S. 45 (1932). An exception to the right to counsel rule is if the defendant waives his right to counsel. Here, the record is devoid of any proof that petitioner validly waived his right to counsel at trial.

A defendant can waive the right to counsel only if he knows of the dangers and disadvantages of the absence of counsel's assistance at trial. Faretta v. California, 422 U.S. 806 (1975). A defendant may waive his right to counsel by conduct, verbal request, or forfeiture. State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996). Petitioner was not warned exactly and sufficiently what dangers and disadvantages he faced in the event he chose to proceed pro se at trial. Additionally, the fact that petitioner had previously been in court for a similar proceeding in the past did not mean that legal matters pertaining to this trial did not need to be re-addressed. Prejudice is presumed when a defendant is denied the right to counsel. McKnight v. State, 320 S.C. 356, 465 S.E.2d 352 (1995).

Prior to trial, the following colloquy occurred regarding the right to counsel:

The Court: It's my understanding that a prior order of Judge Gibbons, your petition to have the public defender dismissed as your attorney and for you to proceed pro se, meaning you'll represent yourself, was granted; is that correct?

Mr. Mays: Yes, sir.

The Court: Do you still wish to proceed without an attorney?

Mr. Mays: Yes, sir.

The Court: Now, you do understand the advantages and disadvantages of proceeding without an attorney?

Mr. Mays: Yes, sir.

The Court: How long have you – how many times have you ever been in criminal court?

Mr. Mays: Several.

The Court: Several. So you're familiar with the process?

Mr. Mays: yes, sir.

The Court: Now have you discussed your decision to proceed without an attorney, pro se?

Mr. Mays: Yes, sir.

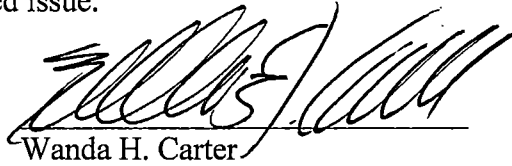
The Court: And do you still wish to proceed without an attorney?

Mr. Mays: Yes, sir. App. 6, l. 22 – p. 7, l. 18.

A waiver is an intentional relinquishment of a known right. Johnson v. Zerbst, 304 U.S. 458 (1938). Here, petitioner did not voluntarily and intelligently waive his right to counsel at his trial because he was uninformed of the details regarding the dangers and disadvantages of self-representation, and therefore he was in effect tried by jury sans counsel in violation of his Sixth Amendment right to the assistance of counsel at trial. See also Article 1, section 14 of the South Carolina State Constitution.

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.

A 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 21st day of June, 2018.

STATE OF SOUTH CAROLINA
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Honorable Frank R. Addy, Circuit Court Judge

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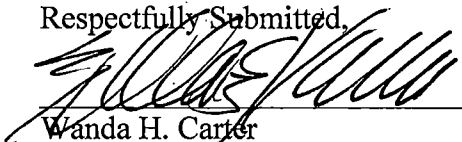
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Javan Frederick Mays 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 Frank R. Addy, which was held on November 9, 2016, 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 Javan Frederick Mays.

Respectfully Submitted,

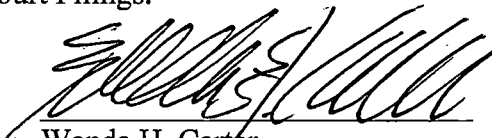


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of June, 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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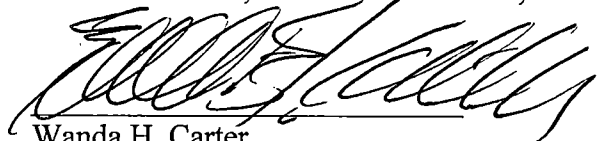
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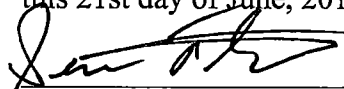
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari in the above referenced case has been served upon Jordan Cox, 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 Javan Frederick Mays, #250287, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of June, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of June, 2018.



(L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.