

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

RECEIVED

AUG 06 2018

S.C. SUPREME COURT

DAVID REAGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000233

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
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ATTORNEY FOR PETITIONER

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The PCR judge erred in denying petitioner’s allegation that his guilty plea was given involuntarily on the ground that he was coerced into pleading guilty after counsel advised that there was no proof that someone else committed the crime and that there was no defense available on the murder charge because counsel failed to advise that the state must prove every element of the offense charged beyond a reasonable doubt if he desired a trial by jury in the case.3

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that his guilty plea was given involuntarily on the ground that he was coerced into pleading guilty after counsel advised that there was no proof that someone else committed the crime and that there was no defense available on the murder charge because counsel failed to advise that the state must prove every element of the offense charged beyond a reasonable doubt if he desired a trial by jury in the case.

STATEMENT

Petitioner David Mark Reagan pled guilty to voluntary manslaughter during the August 2015 term of the Charleston County General Sessions Court before Judge R. Markley Dennis, Jr. and was sentenced to imprisonment for a period of twenty-five years. App. 1-20. Luke Malloy represented petitioner at the plea proceeding and Assistant Solicitor Bruce DuRant appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal of his conviction and sentence.

On May 26, 2016, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 22-41. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 42-47.

A PCR hearing was held on December 7, 2017, at the Charleston County Courthouse before Judge Michael G. Nettles. App. 49-80. Petitioner was present at the hearing and represented by James Falk, and Assistant Attorney General Julie A. Coleman appeared on behalf of the state. On January 23, 2018, Judge Nettles signed an Order of Dismissal therein denying petitioner's PCR allegations of ineffective assistance of trial counsel in his case. App. 82-89.

Petitioner appealed Judge Nettles' Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty plea was given involuntarily on the ground that he was coerced into pleading guilty after counsel advised that there was no proof that someone else committed the crime and that there was no defense available on the murder charge because counsel failed to advise that the state must prove every element of the offense charged beyond a reasonable doubt if he desired a trial by jury in the case.

The solicitor apprised the plea judge of the facts of the case. Kathy Hawkins was found dead in her apartment on August 22, 2013, and petitioner, who was alleged to have been her boyfriend, was arrested in connection with her death. After an interrogation, the solicitor claimed that petitioner "admitted that he was with her at the time she passed away." App. 9, l. 12 – App. 11, l. 8.

During the PCR hearing held in the case, petitioner testified that he pled guilty because he "didn't have any defense whatsoever," and that trial counsel told him that he would be found guilty beyond a reasonable doubt. App. 70, l. 3-20. Moreover, petitioner added that the defense of erotic asphyxiation (rather than strangulation) could have applied in the case, and that Johnson was alive after their sex by choking ended, and that it wasn't until after he woke from his nap that he realized she was dead. Petitioner maintained that alcohol and pills played a role in her death. App. 71, l. 10 - p. 74, l. 8; App. 73, l. 21 – p. 77, l. 12; App. 62, lines 4-6.

Trial counsel testified at the hearing and explained that a sentence of 30 years to life would have been the maximum sentences for murder and that petitioner's age (mid 50's) had to be considered in his case as well. App. 57, l. 20 – p. 58, l. 7; p. 58, l. 25 – p. 59, l. 2. Counsel stated that there was nothing else establishing that "someone else committed the murder." App. 68, lines 7-8.

The PCR judge ruled that petitioner failed to show any deficiency on counsel's representation with respect to any defenses in his case. App. 82-89.

A defendant does not have to present a defense, or prove a defense, or prove his innocence via proof that someone else committed the crime charges against him. The defendant has a right to remain silent, plead not guilty, and put the state to its burden of proof. See State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), citing to Doyle v. Ohio, 426 U.S. 610 (1976) and Griffin v. California, 380 U.S. 609 (1981). The prosecution must prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979). Apparently, petitioner was not informed of these fundamental constitutional principles and was coerced into pleading guilty believing he had choice because he had no defense for a trial.

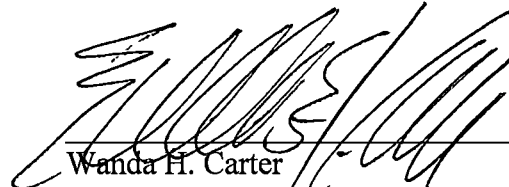
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances, one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 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 charge because he believed he had no defense and that there was no proof that someone committed the

crime. Counsel's error in failing to advise petitioner that the state had the burden of proof if he opted for a jury trial in the case and that the defense had no burden of proof at trial constituted deficient legal representation in petitioner's case; and but for counsel's error in this regard, a reasonable probability existed that petitioner would have opted for a trial by jury on the murder charge. Per these circumstances in the instant case, clearly petitioner did not plead guilty voluntarily. See Boykin v. Alabama, 395 U.S. 268 (1964). Counsel's deficient performance in his representation of petitioner in this case as outlined above violated petitioner's right to effective assistance of legal counsel in a criminal case as guaranteed under the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, 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 6th day of August, 2018.

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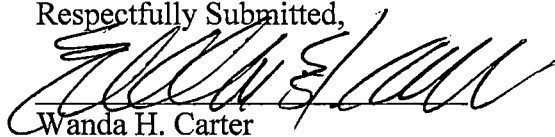
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Mark Reagan 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 post-conviction relief hearing before Judge Michael G. Nettles, which was held on December 7, 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 David Mark Reagan.

Respectfully Submitted,



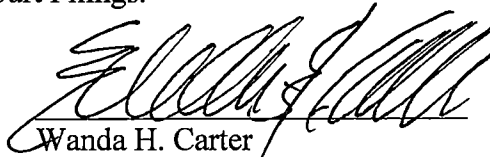
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of August, 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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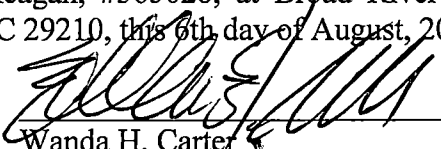
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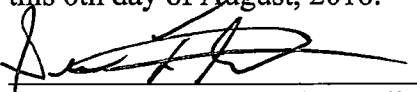
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Megan Harrigan Jameson, 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 David Mark Reagan, #365028, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of August, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2018.



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