

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Paul M. Burch, Circuit Court Judge

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BRITTANY LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000181

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Trial counsel erred in failing to adequately explain sentencing consequences to petitioner to the extent that there is a difference between a recommendation for a sentence on a guilty plea and a binding plea bargain where a specific sentence is negotiated in exchange for a guilty plea?

## STATEMENT

Petitioner Brittany Lewis pled guilty to two charges of driving under the influence resulting in death during the February 2015 term of the Horry County General Sessions Court before Judge Larry B. Hyman, who sentenced her to imprisonment for two concurrent twenty-five-year terms. App. 1-29. Petitioner was represented by Kia Wilson at the plea proceeding, and Assistant Solicitor Lauree Richardson Ortiz appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On April 20, 2015, petitioner filed a PCR application with the Horry County Office of the Clerk of Court. App. 32-38. The respondent filed a return dated February 3, 2016, requesting that a hearing be held in the case. App. 39-43. A PCR hearing was convened on May 11, 2016, at the Horry County Courthouse before Judge Paul M. Burch. App. 45-74. Petitioner was present at the hearing and represented by James k. Falk, and Assistant Attorney General Caitlin B. Hastings appeared on behalf of the state.

On December 18, 2017, Judge Burch filed an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of counsel. App. 76-83.

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

## ARGUMENT

Trial counsel erred in failing to adequately explain sentencing consequences to petitioner to the extent that there is a difference between a recommendation for a sentence on a guilty plea and a binding plea bargain where a specific sentence is negotiated in exchange for a guilty plea.

During the plea proceeding the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner traveled through a stop sign on Highway 701 in Georgetown and “t-boned” into another vehicle killing two passengers inside. App. 11, lines 1-9.

During the PCR hearing, petitioner testified in effect that she signed off on what she believed to be a plea agreement/bargain where she would receive a sentence of twenty-years maximum in exchange for her guilty pleas, but that she received two concurrent twenty-five-year sentences instead. App. 48, l 17 – p. 52, l. 22.

Trial counsel testified at the PCR hearing and explained that the solicitor extended a plea offer agreeing to recommend only a sentence cap of twenty-years, and that there was no plea bargain or agreement reached where petitioner would receive a negotiated twenty-year sentence in exchange for the guilty pleas, and that she explained the difference between these two concepts (recommendation and a negotiated plea bargain) to petitioner prior to the plea proceeding. App. 55, l. 1 – p. 56, l. 8; Tr. 61, l. 6 – p. 64, l. 11; Tr. 65, l. 16 – Tr. 68, l. 19.

Solicitor Richardson testified at the hearing and stated that the twenty-year offer in petitioner’s case was a recommendation only and not a bonding negotiated sentence in effect arising out of a plea bargain. App. 70, lines 2-25. The PCR agreed that this was a recommendation only and denied PCR relief to petitioner. App. 5-8.

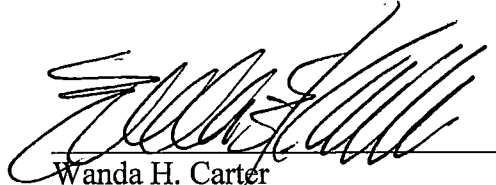
As a rule, a plea judge does not have to accept a recommendation for sentencing in the case. State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982). A plea bargain on the other hand

rests on contractual principle where each party would receive the benefit of the bargain. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994). Here, trial counsel erred in failing to explain that a recommendation was not the same as a firm plea bargain agreement and that a judge was not obligated to accept the state's recommendation for a twenty-year sentence offered by the state.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). In the case at hand, counsel's failure to explain to petitioner that a sentencing recommendation calling for a twenty-year cap did not translate into an automatic confirmed plea bargain for a twenty-year sentence guaranteed violated petitioner's right to competent legal representation by counsel at her plea proceeding because petitioner plead guilty without an understanding of the sentencing consequences in her case. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner might not have pled not guilty and instead exercised her right to a trial by jury in the case.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner requests that this petition be granted and full briefing allowed 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 13th day of August, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Paul M. Burch, Circuit Court Judge

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BRITTANY LEWIS,

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RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Brittany Lewis 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 Paul M. Burch, which was held on May 11, 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 Brittany Lewis.

Respectfully Submitted,



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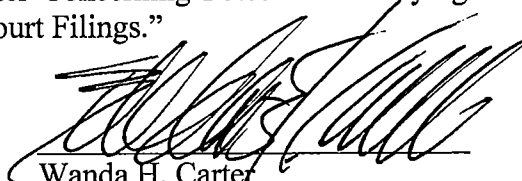
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 13th 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."



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
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ATTORNEY FOR PETITIONER

This 13th day of August, 2018.

STATE OF SOUTH CAROLINA

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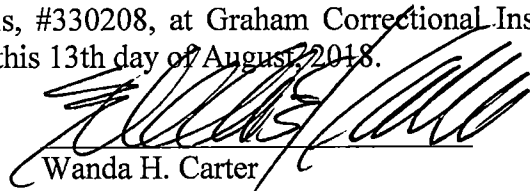
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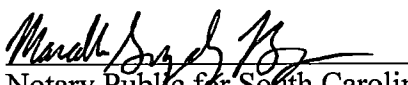
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CERTIFICATE OF SERVICE  
—————

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 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 Brittany Lewis, #330208, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 13th day of August, 2018.



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 13th day of August, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: 7/26/2028