

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County

AUG 17 2018

Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

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JERMAINE L. COBBS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002629

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Wanda H. Carter  
Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that he was coerced into pleading guilty to avoid a life sentence due to counsel's misadvice because none of the state's charges levied against him carried life imprisonment penalties.

## STATEMENT

Petitioner Jermaine Cobbs pled guilty to trafficking in cocaine, first offense, for 28-100 grams, possession with intent to distribute cocaine, second offense, and distribution of cocaine (first offense) during the December 2012 term of the Berkeley County General Sessions Court before Judge Markley R. Dennis, Junior. Petitioner was sentenced to a negotiated aggregate sentence of eighteen years. App. 1-12. William J. Thrower represented petitioner at the plea proceeding, and Assistant Solicitor Bryan Alfaro appeared on behalf of the state.

On March 9, 2016, petitioner filed a PCR application with Berkeley County Office of the Clerk of Court and an Amended PCR application on November 2, 2017. App. 17-21; App. 28-35. The respondent filed a return dated March 29, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 22-27.

A PCR hearing was convened on December 4, 2017, at the Berkeley County Courthouse before Judge Michael G. Nettles. App. 36-104. Petitioner was present at the PCR hearing and represented by Eduardo Curry, and Assistant Attorney General Julie Coleman appeared on behalf of the state.

On December 12, 2017, Judge Nettles issued an Order of Dismissal denying post-conviction relief to petitioner. App.106-116 Petitioner appealed Judge Nettles' Order of Dismissal. This petition follows.

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that he was coerced into pleading guilty to avoid a life sentence due to counsel's misadvice because none of the state's charges levied against him carried life imprisonment penalties.

During the plea proceeding, the solicitor apprised the circuit court judge of the controlled drug buy involving petitioner where an informant purchased cocaine from petitioner at his business on August 4, 2010, and the drugs that were found after two searches at petitioner's residence and business were executed. App. 6, l. 23 – App. 8, l. 6; App. 90, l. 24 – p. 91, l. 20.

During the PCR hearing held in the case, petitioner testified that his trial counsel advised him that he could either take the eighteen-year negotiated sentence or “spend the rest of [his] life in prison,” but note that in reality he only faced mandatory 25-year sentences instead. App. PCR hearing App. 45, lines 1-17; App. 47, l. 5- p. 48, l. 15; App. 49, lines 2-10; App. 50, l. 2 – p. 51, l. 2; App. 61, lines 6-17; App. 65, lines 12-22.

Trial counsel testified at the hearing and explained that petitioner's exposure was between “50 to 60 years” (solicitor vowed to ask for consecutive time on one of the drug charges) and that for someone nearing 40 years old like petitioner, then the sentences would have been the equivalent of a life sentence. App. 86, l. 3 – p. 89, l. 18; App. 93, lines 3-17.

The PCR judge ruled that counsel performed effectively by “fully discuss[ing]..plea negotiations with [petitioner].” App. 114-116.

Clearly, none of the drug charges levied against petitioner under S.C. Code Ann. 44-53-370 carried life imprisonment penalties; and although counsel advised petitioner that he could receive the **equivalent** of a life sentence, this **equivalency** should have been made clear to petitioner so that he would not have been coerced into pleading guilty based on the

misunderstanding that a life sentence was a penalty option via the statutes under which he was indicted.

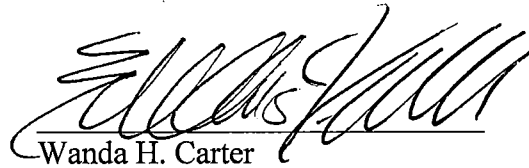
In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain the difference between a life sentence and the **equivalency** of a life sentence constituted deficient representation in violation of petitioner's right to competent legal representation under the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner could have pled not guilty and exercised his right to a trial by jury in the case.

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, it was obvious that petitioner felt pressured by counsel and coerced into pleading guilty to avoid a life sentence when in fact life imprisonment was not a sentencing option under the statutes for his charges, 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 drug charges. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily. See Boykin v. Alabama, 395 U.S. 268 (1964).

**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 17th day of August, 2018.

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Honorable Michael G. Nettles, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

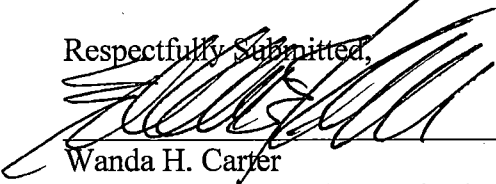
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Counsel for Jermaine Cobbs states that:

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 4, 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 Jermaine Cobbs.

Respectfully Submitted,



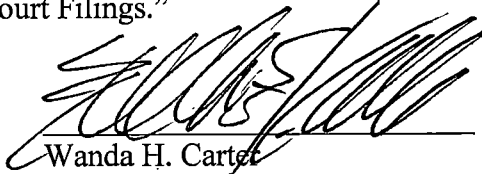
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Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 17th 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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CERTIFICATE OF SERVICE

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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 Jermaine Cobbs, #353719, at Trenton Correctional Institution 84 Greenhouse Road, Trenton, SC 29847, this 17th day of August, 2018.



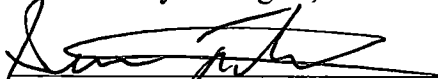
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Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 17th day of August, 2018.



(L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022.