

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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WILLIAM COAXUM,

V.

STATE OF SOUTH CAROLINA,

PETITIONER  
S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2018-000572

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

## **ISSUE PRESENTED**

Trial counsel erred in failing to advise petitioner to enter Alford<sup>2</sup> pleas on all three armed robbery charges simultaneously (as he was adamant about his innocence) in order to avoid consecutive proceedings that would ultimately trigger LWOP sentencing in the case.

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<sup>2</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

## STATEMENT

Petitioner William Coaxum pled guilty to one count of armed robbery<sup>3</sup> during the April 2008 term of the Charleston County General Sessions Court and was sentenced to imprisonment for a period of twelve years. Appellant was tried by jury on two remaining armed robbery indictments,<sup>4</sup> which included respective accompanying gun possession charges also, during the January 2009 term of the Charleston County General Sessions Court before Judge R. Markley Dennis Junior. Petitioner was convicted on one armed robbery charge only (and the related gun charge) and sentenced to LWOP under S.C. Code Ann §17-25-45 due to his prior 2008 armed robbery conviction. App. 1-365. Beattie Butler represented petitioner during the trial and at the prior guilty plea proceeding, and Assistant Solicitor Greg Voight appeared on behalf of the state at both proceedings as well.

Petitioner appealed his 2008 jury convictions and sentences for armed robbery and possession of a firearm during the commission of a violent crime from his trial by jury. On November 7, 2011, the South Carolina Court of Appeals reversed his 2008 jury trial convictions and sentences, but on October 8, 2014, the South Carolina Supreme Court reversed the South Carolina Court of Appeals' decision in the case, which in turn nullified the remand for a new trial and affirmed the convictions and sentences. App. 367–376.

On July 15, 2015, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 378- 393. The respondent filed an amended return and partial motion to dismiss dated December 2, 2016. App. 394-400. A PCR hearing was convened on December 5, 2016, at the Charleston County Courthouse before Judge Thomas W. Cooper. App. 402-445. Petitioner was present at the hearing and represented by Christopher L. Murphy, and Assistant

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<sup>3</sup> 2007-GS-10-9978.

<sup>4</sup> 2008-GS-10-2629 and 2630.

Attorney General Alicia A. Olive appeared on behalf of the State. On March 8, 2018, Judge Cooper signed an Order of Dismissal in the case. App. 447-459.

Petitioner appealed Judge Cooper's Order of Dismissal. This petition follows.

### ARGUMENT

Trial counsel erred in failing to advise petitioner to enter Alford<sup>5</sup> pleas on all three armed robbery charges simultaneously (as he was adamant about his innocence) in order to avoid consecutive proceedings that would trigger LWOP<sup>6</sup> sentencing.

Petitioner was charged with three robberies committed in 2007: 1) an armed robbery at a Picadilly Cafeteria in Charleston on April 30, 2007; 2) an armed robbery of a Pizza Hut in Charleston on November 27, 2007; and 3) an armed robbery of a North Charleston Inn on November 27, 2007. Petitioner pled guilty to the Picadilly Cafeteria armed robbery on April 9, 2008.<sup>7</sup> Approximately one year later, petitioner was tried on the remaining two armed robbery charges and accompanying weapon charges on January 12-19, 2009, whereinafter he was found guilty on only one armed robbery charge (Pizza Hut incident) and sentenced to LWOP. The jury did not reach a verdict on the Charleston Inn armed robbery and weapon charge

At trial, Pizza Hut Store Manager Tamera Brown testified that she was working until closing at the Dorchester-Leeds Avenue site and had begun counting the money when she heard a knock at the door and looked up to find a gunman inside while holding employee Charles Jones in front of her. Brown stated that the gunman asked her to open the safe, which she could not do,

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<sup>5</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>6</sup> S.C. Code Ann. §17-25-45.

<sup>7</sup> The guilty plea transcript is not available.

but that she managed to open the register. The gunman then took the money out of the register and then fled. After calling 911, police arrived at the scene and took her to nearby Rivers Avenue for a show up identification whereinafter she identified petitioner as the gunman. App. 107, 18 – p.115, l. 13.

Petitioner testified at the PCR hearing and claimed that he was not guilty of the armed robbery charges. Petitioner explained that he did not know that his plea of guilty on the Picadilly Cafeteria armed robbery charge in April 2008 would count as one strike and that he faced LWOP exposure thereafter if he obtained a subsequent armed robbery conviction, which was highly likely since two armed robbery charges remained outstanding after his plea proceeding. App. 409, l. 23 - p. 410, l. 1; App. 410, l. 20 - p. 412, l. 8; App. 429, l. 22- p. 430, l. 14. Note that petitioner believed also that he was pleading to all three of the armed robbery charges at his April 2008 plea proceeding. App. 408, l. 18 – p. 409, l. 1; App. 414, l. 7-11; App. 417, l. 17- p. 418, l. 1. Petitioner stated that he thought he would “beat it” because he had no involvement with any of the armed robberies and as a result, he opted for a jury trial on the remaining armed robbery charges. App. 416, l. 19 – p. 417, l. 9; App. 422, l. 3-4. Petitioner asked the question: “why would [he] plead guilty to the remaining charges [since... he] was not guilty?” App. 422, l. 1-7. At trial, petitioner was found guilty on only one armed robbery indictment. The jury did not find guilt on the other armed robbery indictment.

Also during the PCR hearing, trial counsel testified that the prosecutor (Greg Voigt) was going to allow petitioner to plead to all three armed robbery charges at once to avoid LWOP, but that petitioner was not going to plead to all three of the robbery charges because he said he was not guilty of the armed robberies. Counsel added that he explained LWOP consequences and that he did try to encourage him to plead guilty to all three armed robbery charges in order to

obtain favorable sentences. App. 433, l. 4- p. 434, l. 13; App. 439, l. 7 -23; App. 440, lines 4-8.

In addition, counsel stated that he did not recall discussing Alford pleas as an alternate option in order to satisfy petitioner's innocence claims and simultaneously avoid LWOP sentencing. App. 435, lines 12-23. Counsel explained as follows:

Q. In your practice, is there any point where you say, look, to the client, you are being incredibly unreasonable, you are going to get convicted, for lack of a better word, you are making a stupid decision here? Do you force them or try to compel them to plead guilty, to do what's in their best interest, even when they don't want to do that?

A. No.

Q. You faced that situation before?

A. Yes. I should say that depending on the circumstances, I might be more persuasive in some cases than in others. But I never try to force or compel somebody to do something they didn't want to do.

Q. When someone, when a defendant maintains their innocence despite overwhelming evidence, An *Alford* plea would be a way to make everybody happy, correct?

A. Yes.

Q. Did you talk to [petitioner] about doing an *Alford* plea, saying, look, you are going to get convicted, but you can still maintain your innocence and be pled -- sentenced accordingly?

A. I don't remember. All I remember his saying is, I already pled guilty to something I didn't do; I'm not pleading guilty to anything else.

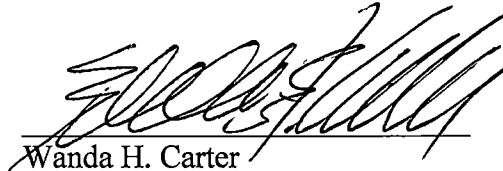
App. 436, l. 17- p. 437, l.14

Although counsel did not advise petitioner to seek a trial on the remaining two armed robbery charges due to the LWOP consequences in the case at bar; nonetheless, counsel failed to strategically honor his innocence claims at the same time and avoid LWOP by encouraging

petitioner to accept the state's offer to plead to all three charges under Alford to all three robberies. This case is different from Judge v. State, 321 SC 554, 471 S.E.2d 146 (1996). In Judge v. State, *supra*, counsel was not found ineffective in advising the defendant to reject the plea offer and go to trial despite the fact that the jury convicted the defendant although in hindsight the advice was questionable. Here, counsel properly advised petitioner to plead to all three armed robbery charges at once and not go to trial due to the consequences of subsequent/consecutive armed robbery convictions, but counsel erred in taking petitioner's case to trial without encouraging him to enter Alford pleas prior to trial as an avenue to uphold his innocence claims and to avoid LWOP. An Alford plea is one where a defendant can acknowledge the state's evidence against him, but not confirm his or her guilt because the primary thrust of an Alford plea is that a defendant may voluntarily consent to the imposition of a prison sentence even if he is unwilling or unable to admit that he participated in the acts constituting the crime. State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013). Counsel's failure to suggest to petitioner to enter Alford pleas to all three armed robbery charges in order to avoid LWOP sentencing constituted deficient legal representation in violation of the Sixth Amendment to the United States Constitution. See Strickland v. Washington, 446 U.S. 668 (1984). But for counsel's error as outlined above, a reasonable probability exists that petitioner would not have received an LWOP sentence.

**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.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of September, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

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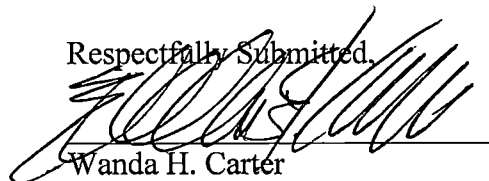
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Counsel for William Coaxum states that:

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 G. Thomas Cooper, Jr., which was held on December 5, 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 William Coaxum.

Respectfully Submitted,



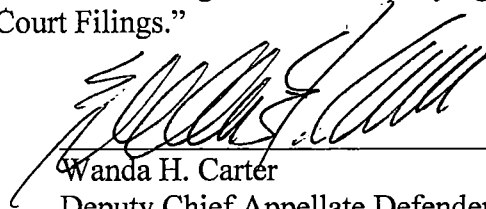
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 20th day of September, 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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Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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(803) 734-1330

ATTORNEY FOR PETITIONER

This 20th day of September, 2018.

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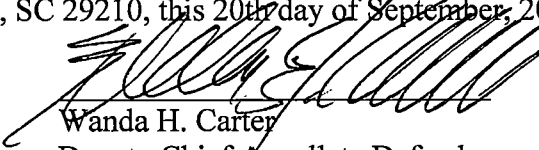
RESPONDENT

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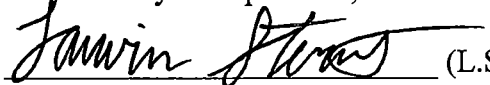
CERTIFICATE OF SERVICE

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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 William Coaxum, #327616, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20<sup>th</sup> day of September, 2018.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 20<sup>th</sup> day of September, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.