

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

JOHNNY JAMES HEMPHILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000514

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to explain fully to petitioner the sentencing consequences in his case.

STATEMENT

Petitioner Johnny James Hemphill pled guilty (Alford pleas)¹ to discharging a firearm into a dwelling, assault and battery in the first degree, and stalking during the March 2016 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II, and was sentenced to an aggregate twenty-year prison term. App. 1-33. Roger Poole represented petitioner at the plea proceeding and Assistant Solicitor Derek Balsa appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed by the South Carolina Court of Appeals on August 11, 2016, under Rule 203(d)(1)(B)(iv), SCACR.

On March 27, 2017, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 35-82. The respondent filed a Return and Partial Motion to Dismiss dated October 5, 2017. App. 83-91.

A PCR hearing was convened on January 29, 2018, at the Spartanburg County Courthouse before Judge Grace Gilchrist Knie. App.92-212. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney General Valerie Giovanoli appeared on behalf of the state. On March 16, 2018, Judge Knie issued an Order of Dismissal in petitioner's PCR case. App. 123-133.

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

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

ARGUMENT

Trial counsel erred in failing to explain fully to petitioner the sentencing consequences in his case.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, one Lisa McCray tried to end her relationship with petitioner and as a result, petitioner retaliated according to the state by appearing in Spartanburg where she had moved and fired shots into her home. App. 17, l. 3- p. 20, l. 22.

During the PCR hearing, petitioner testified that he pled guilty after discussing sentences with trial counsel, who advised that he would get “probation or leg monitor” and/or “concurrent” sentences. App. 98, l. 12-21; App. 100, l. 24- p. 101, l. 2; Tr. 102, l. 20-22.

Trial counsel testified at the hearing and explained the matter of whether he mentioned a probation sentence as a possibility as follows:

Q. Okay. Did you get his hopes up in anyway that he would get probation for all these charges?

A. I tried not to get anybody’s hopes up because that can be devastating to them. I say we can do this, we can ask for this and that, and all that.

Q. Did you tell him that probation was likely or even guaranteed?

A. I don’t remember that type of language.

App. 113, l.22- p. 114, l. 4

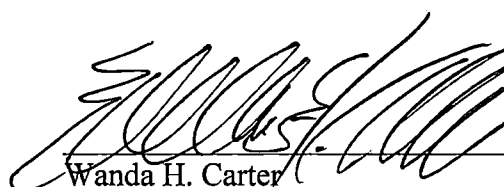
Clearly, a sentence of probation was not a likely option in petitioner’s case. Petitioner was sentenced to a ten-year sentence and a concurrent five-year sentence on the assault and stalking convictions, respectively, but received a ten-year consecutive sentence on the firearm conviction. In other words, petitioner did not understand the nature of the crimes and the prison

time exposure attached to the crimes in relation to sentencing, and it was counsel's error in failing to adequately explain sentencing consequences to petitioner's level of understanding.

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 to petitioner that his sentences would not include probation or automatic concurrent terms violated petitioner's right to competent legal representation by counsel at his plea proceeding because petitioner plead guilty without an understanding of the sentencing consequences in his 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 would have pled not guilty and exercised his right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition on the above-raised issue in the case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of October, 2018.

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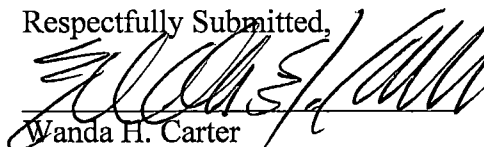
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Johnny James Hemphill 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 Grace Gilchrist Knie, which was held on January 29, 2018, 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 Johnny James Hemphill.

Respectfully Submitted,



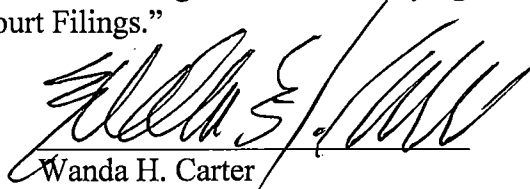
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 1st day of October, 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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ATTORNEY FOR PETITIONER

This 1st October, 2018.

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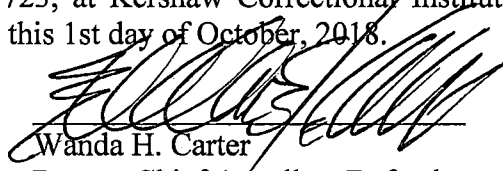
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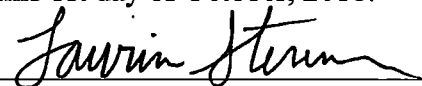
CERTIFICATE OF SERVICE

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 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 Johnny James Hemphill, #141723, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 1st day of October, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2018.

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