

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MITCHELL LEON HAMES,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000614

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT
PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to explain fully to petitioner sentencing (parole) consequences.

STATEMENT

Petitioner Mitchell Leon Hames pled guilty to two counts of PWID methamphetamine (both third offenses) during the March 2016 term of the Cherokee County General Sessions Court before Judge J. Mark Hayes, III, and received two concurrent fifteen-year prison terms. App. 1-15. Dan Thompson represented petitioner at the plea proceeding and Assistant Solicitor Christopher Bain appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On May 8, 2017, petitioner filed a PCR application with the Cherokee County Office of the Clerk of Court. App. 17-23. The respondent filed a Return and Partial Motion to Dismiss dated November 22, 2017. App. 24-30.

A PCR hearing was convened on January 29, 2018, at the Spartanburg County Courthouse before Judge Grace Gilchrist Knie. App. 32-67. 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 27, 2018, Judge Knie signed an Order of Dismissal in the case. App. 69-79. Petitioner appealed Judge Knie's Order of Dismissal. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred in failing to explain fully to petitioner sentencing (parole) consequences.

The solicitor apprised the plea judge of the facts of the case at the guilty plea proceeding. On May 26, 2015, an undercover officer with the Cherokee County Sheriff's Office made a controlled buy of methamphetamine from petitioner. On May 16, 2015, officers stopped petitioner as he walked and recovered methamphetamine from his possession. App. 9, l. 19- p. 10, l. 25.

During the plea proceeding, petitioner testified that he understood counsel's sentencing advice to mean that he would be eligible for parole after serving 65% of his sentence after pleading guilty to the charges, but later learned that his PWID methamphetamine offenses required that he serve 85% of his sentence (See 44-53-375 (b)), and that had he been aware of the correct parole eligibility requirements for his crimes, then he would not have pled guilty in his case. App. 38, l. 3- p. 40, l. 12. Trial counsel testified at the hearing and stated that he did not recall discussing parole eligibility matters with petitioner. App. 48, l. 24- p. 49, l. 15; App. 53, l. 14- p. 54, l. 9.

The PCR judge found "[petitioner's] testimony not credible that he was misadvised about parole eligibility." App. 74-75.

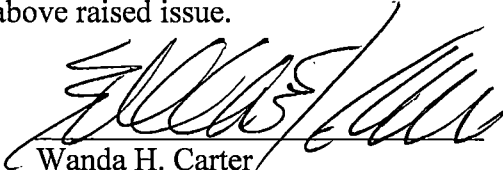
As a rule, if misinformation is given to a defendant regarding parole eligibility and the defendant relies on the same, then post-conviction relief is allowed. Frasier v. State, 351 S.C. 385, 570 S.E. 2d 172 (2002).; Coats v. State, 352 S.C. 500, 545 S.E. 2d 557 (2003). Clearly, counsel's parole eligibility advice given to petitioner was erroneous advice; and clearly, petitioner relied on counsel's misadvice in deciding to plead guilty as evidenced by his dismay

upon finding out about the 85% versus 65% parole eligibility misunderstanding. Note that petitioner relied on counsel's erroneous parole advice to petitioner when he decided to plead guilty, and then pled guilty to his detriment based on the same. Hence, the resulting prejudice.

S.C. Code Ann. Section 24-13-150 (2010) requires an inmate who has been convicted of a no-parole offense to serve 85% of his sentence before becoming parole eligible. Also, see S.C. Section 16-3-600 (B); Compare also S.C. Code Ann. Section 24-13-100 and S.C. Code Ann. Section 16-1-20. Undoubtedly, counsel's misadvice regarding sentencing (parole) consequences in this case constituted ineffective assistance of counsel in violation of the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985); and but for counsel's misadvice in question, a reasonable probability exists that petitioner would not have accepted the negotiated sentencing offer in the case and not pled guilty.

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.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of October, 2018.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mitchell Leon Hames states that:

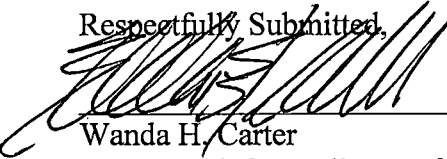
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

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 Mitchell Leon Hames.

Respectfully Submitted,

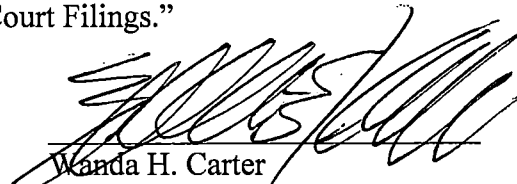


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 5th 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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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 Mitchell Leon Hames, #282238, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 5th day of October, 2018.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of October, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.