

STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Roger E. Henderson, Circuit Court Judge

TRAVIS FORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001299

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR judge erred in dismissing petitioner’s first PCR
action because his pleas were given involuntarily as he was
coerced into pleading guilty in the case.....3

CONCLUSION.....4

PETITION TO BE RELIEVED AS COUNSEL.....5

ISSUE PRESENTED

The PCR judge erred in dismissing petitioner's first PCR action because his pleas were given involuntarily as he was coerced into pleading guilty in the case.

STATEMENT

Petitioner Travis Ford pled guilty to trafficking in cocaine, second offense, and possession of cocaine with intent to distribute within proximity of a school during the July 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young, Sr., and was sentenced to an aggregate sixteen-year prison term. App. 1-17. Petitioner did not appeal his guilty pleas and/or sentences.

On October 29, 2009, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. The respondent filed a return dated January 25, 2010, requesting that a hearing be held in the case. In response to petitioner's PCR filing, a PCR hearing was convened on July 20, 2010, at the Charleston County Courthouse before Judge Deadra L. Jefferson. On August 6, 2010, Judge Jefferson filed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 26-34. However, because PCR counsel failed to file a PCR appeal of Judge Jefferson's PCR Order of Dismissal, petitioner did not enjoy the benefit of an appeal of his first PCR action.

On May 1, 2012, petitioner filed a second PCR application requesting a belated PCR appeal of his first PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S. E.2d 395 (1991). App. 19-25. A PCR hearing was held in the matter on July 22, 2015, at the Charleston County Courthouse before Judge Roger E. Henderson. App. 35-44. On May 16, 2017, Judge Henderson issued an "Order Granting Austin Review." App. 46.

Unfortunately, a record of petitioner's first PCR hearing was unavailable. As a result, a petition to reconstruct the record of petitioner's first PCR hearing was filed on September 13, 2017. Per an Order granting the petition to reconstruct the record of petitioner's first PCR hearing, a reconstruction PCR hearing was convened before Judge Jefferson on March 21, 2018,

at the Charleston County Courthouse during which time all parties were present, and the record of petitioner's first PCR hearing was successfully reconstructed. App. 47-71.

Petitioner appealed. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in dismissing petitioner's first PCR action because his pleas were given involuntarily as he was coerced into pleading guilty in the case.

The solicitor apprised the plea judge of the facts of the case during the plea proceeding. On June 13, 2008, Officer Fetters was patrolling the Cannon Street Apartment Complex area in Charleston, South Carolina, when he noticed certain people loitering there and went to check on resident Clifton Jenkins, and that upon entering Jenkins' apartment, he found petitioner, a female, and Jenkins inside and cocaine and cocaine based in the kitchen area. This was not petitioner's apartment and petitioner denied drug ownership . App. 9 – 15 – p. 11, l. 23.

During petitioner's reconstructed PCR hearing, evidentiary proof was presented that in effect established that petitioner was coerced into pleading guilty on the instant drug charges because he had two previous strikes against him, which meant he faced LWOP exposure. Also, there was evidentiary proof that counsel "highly advised him to take the plea." App. 58, l. 13-16; App. 62, l. 21-24. App. 63, l. 4-8. The solicitor submitted a sixteen-year plea offer to petitioner and petitioner was under pressure to accept the offer in order to avoid sentencing under LWOP rather than exercise his right to a jury trial. App. 64, lines 9-21; App. 68, lines 19-25; App. 11, line 24 – p. 12, l. 4.

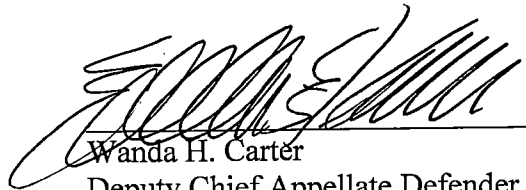
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and

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, petitioner felt forced by the circumstances and by counsel to plead guilty to the plea offer presented in the case (sixteen years imprisonment) in order to avoid LWOP sentencing. Clearly, petitioner desired a jury trial. However, per these circumstances in the instant case, petitioner did not plead guilty voluntarily. Additionally, the coercive measure counsel used (threat of harsh sentencing to obtain petitioner’s pleas) violated petitioner’s right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case (See Hill v. Lockhart, 484 U.S. 52 (1985)), particularly since petitioner would have opted for a jury trial in the case but for the coercion.

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 19th day of October, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Roger E. Henderson, Circuit Court Judge

TRAVIS FORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

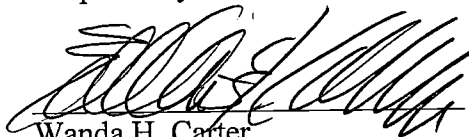
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Ford 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 Deadre Jefferson, which was held on March 21, 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 Travis Ford.

Respectfully Submitted,

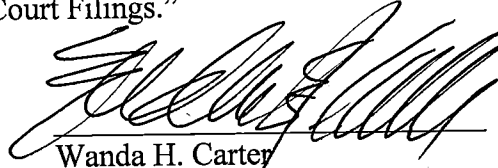


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th 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

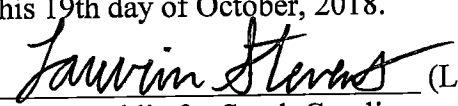
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari pursuant to Austin v. State in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari pursuant to Austin v. State have been served on Travis Ford, #285740, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 19th day of October, 2018.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of October, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: July 5, 2027.