

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable William H. Seals, Circuit Court Judge

CHADWICK CRIBB,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000522

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Appellate Defender

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR Court erred in finding that plea counsel had no duty to inform petitioner of his right to file a motion to reconsider his sentence?

STATEMENT

On May 27, 2015, a Georgetown County grand jury indicted petitioner for multiple enhanced counts of financial transaction card fraud, malicious injury to personal property, and forgery. On October 1, 2015, petitioner plead guilty before the Honorable Steven H. John. App. 1. Alicia A. Richardson represented the State. App. 1. Wyn Bessent represented petitioner. App. 1. Petitioner plead guilty to financial transaction card fraud (value of more than \$500.00), two counts of malicious injury to property (value of \$2,000.00 or less), malicious injury to personal property (value of \$10,000.00 or less), and forgery (less than \$10,000.00). App. 3, 1. 3 - 4, 1. 18. His remaining charges were nolle prossed. App. 3, 1. 3 - 4, 1. 19. Judge John sentenced petitioner to concurrent terms of five years' imprisonment on each charge. App. 14, 1. 13 - 15, 1. 7. Judge John, however, ran his sentences consecutive to convictions on which petitioner was already imprisoned in the Department of Corrections. App. 14, 1. 13 - 15, 1. 7. On August 31, 2016, petitioner filed a PCR application. App. 17. On November 29, 2017, The Honorable William H. Seals held a hearing on petitioner's application. App. 30. Steven W. Fowler represented petitioner. App. 30. Johnny E. James, Jr. represented the State. App. 30. On March 13, 2018, Judge Seals denied petitioner's application. App. 56. This petition follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The Court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Id. The Court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

The PCR Court erred in finding that plea counsel had no duty to inform petitioner of his right to file a motion to reconsider his sentence.

Plea counsel admitted she never filed a motion to reconsider petitioner's sentence. App. 53, ll. 6-13. She also testified at the PCR hearing that, "As a matter of course, I do not tell our clients that they have ten days to file a motion to reconsider. Generally there is no basis for the motion to reconsider. So it has always been my practice to not say, you have ten days to file a motion to reconsider." App. 51, ll. 3 - 12.

It was undisputed that the first and only time plea counsel met with petitioner was the day of his guilty plea. App. 48, ll. 11 - 21. Plea counsel testified at the PCR hearing that petitioner called her office "indicating that he wanted to plead guilty and that he did not want it to run consecutive." App. 48, ll. 22 - 25. The only time plea counsel discussed petitioner's discovery was in "courtroom lockup" immediately before his plea. App. 49, ll. 1 - 9. Plea Counsel stated that petitioner's "only concern" was that his sentence not run consecutive to a prior sentence he was already serving. App. 49, ll. 8 - 22.

At the plea hearing, counsel told Judge John that a consecutive sentence would not "do him anymore good." App. 12, ll. 14 - 17. She asked the court to run his sentences concurrent and told the court petitioner needed drug and alcohol treatment. App. 12, l. 14 - 13, l. 5. The solicitor argued for a consecutive sentence based on petitioner's criminal record. App. 13, ll. 11 - 23. Judge John agreed with the state and gave petitioner a consecutive sentence. App. 14, l. 13 - 15, l. 7.

Even though plea counsel knew that receiving a concurrent sentence was petitioner's "only concern," she neither informed him of his right to ask the court to reconsider the sentence nor filed a motion on his behalf. The PCR court, citing no authority, held that no such duty exists. App. 61. The court found that plea counsel was not deficient and that petitioner failed to prove prejudice. App. 61.

The PCR court erred. Criminal defendants must knowingly and voluntarily waive their right to appeal. White v. State, 236 S.C. 110, 208 S.E.2d 35 (1974). Trial counsel must make a criminal defendant "fully aware of his appeal rights." Smith v. State, 309 S.C. 413, 416, 424 S.E.2d 480, 482 (1992). Similarly, PCR applicants are entitled to be informed of their right to appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

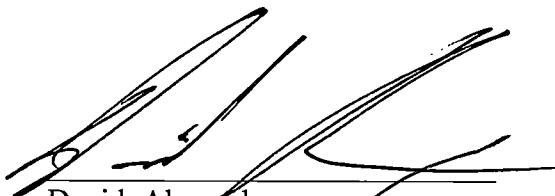
The right to seek reconsideration of a sentence can be compared to the right to appeal of a criminal defendant or a PCR applicant. Defendants are frequently taken immediately to the Department of Corrections following sentencing. Appellate courts give great deference to the sentence given by a circuit judge and will rarely alter a sentence that is within the statutory limits. "A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come." State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). "[W]hether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Given the great deference to a trial judge's sentence, petitioner's only realistic option to obtain obtaining concurrent sentences was to file a motion to reconsider. Here, plea counsel

knew the importance of receiving concurrent sentences to petitioner, yet did nothing to protect his rights. The PCR court erred in finding no duty to inform petitioner about his right to have the plea judge reconsider his sentence. This Court should grant certiorari with the remedy of a remand to the circuit court to reconsider petitioner's sentences.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and ultimately remand for resentencing.

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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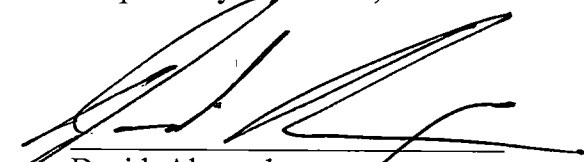
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Chadwick Cribb states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge William H. Seals, which was held on November 29, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Chadwick Cribb.

Respectfully Submitted,

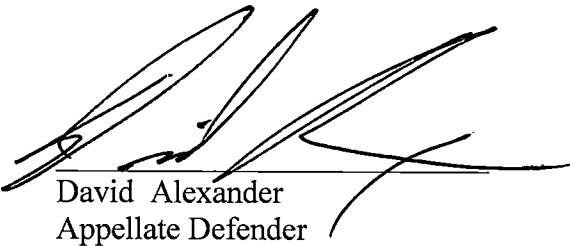


David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of November, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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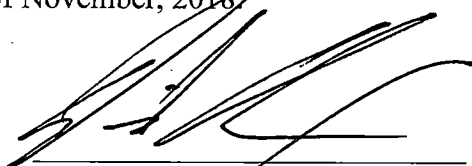
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RESPONDENT

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 Johnny Ellis James, Jr., 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 Chadwick Cribb, #290362, at Palmer Pre-Release Center, 2012 Pisgah Road, Florence, SC 29501, this 9th day of November, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of November, 2018.

Country Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.