

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

\_\_\_\_\_  
CHARLES BENJAMIN PROFFITT, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000598

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Deputy Chief Appellate Defender

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

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NOV 14 2018

S.C. SUPREME COURT

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**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily at the plea proceeding because he was mentally incompetent at that time.

## STATEMENT

Petitioner Charles Benjamin Proffitt pled guilty to failure to stop for a blue light, carjacking, possession of a weapon during the commission of a violent crime, two counts of shoplifting, two counts of armed robbery, two counts of kidnapping, and two counts of conspiracy during the January 2016 term of the Greenville County General Sessions Court before Judge Edward W. Miller. App. 1-22. Petitioner was sentenced to an aggregate twenty-five-year prison term. Petitioner was represented at the plea proceeding by Caroline Horlbeck and Assistant Solicitors Christine Sustakovitch and Andrew Culbreath appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On December 28, 2016, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 24-30. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action filed in the case. App. 31-36. A PCR hearing was convened on December 12, 2017, at the Greenville County Courthouse before Judge Robin B. Stilwell. App. 40-67. Petitioner was present at the hearing and represented by Rodney Richey, and Assistant Attorney General Deshawn Mitchell appeared on behalf of the state. On March 21, 2018, Judge Stilwell signed an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 69-77.

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

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily at the plea proceeding because he was mentally incompetent at that time.

During the guilty plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner while armed took a vehicle from the owner, and took money and a cell phone from another individual, and shoplifted as well. App. 5, l. 18 – p. 8, l. 9.

During the PCR hearing, petitioner testified that during the plea proceeding, he was under the highest dose of medication that they were able to give him and that he was “comatose,” and that the whole proceeding was a haze to [him], and that [he] would have never pled guilty if [he] wouldn't have been on that medication. App. 46, l. 7-20; App. 48, l. 7-10; App. 53, l. 1-24. It was a mystery as to why petitioner was medicated when the mental health evaluator found him competent to stand trial as criminally liable. App. 52, l. 10-17; App. 61, l. 8-17.

Trial counsel testified that plea negotiations went from 40 years to 30 years to LWOP and then to 25 years, and that petitioner agreed to plead guilty to the 25-year plea offer. App. 57, l. 10-25; App. 62, l. 13-p. 63, l. 11.

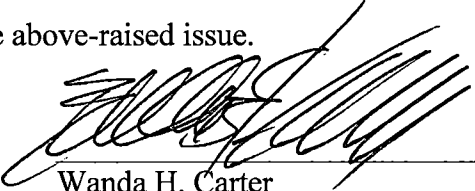
The PCR judge found that trial counsel provided effective assistance in petitioner's case and that petitioner's pleas were entered voluntarily and intelligently. App. 74-76.

Since petitioner was found competent to stand, then there was no need for the medication he was forced to take prior to his plea proceeding. This scenario would tend to suggest that to the contrary, i.e., that petitioner was not competent to stand trial; and therefore, his guilty pleas were given involuntarily. Due process prohibits the conviction of a person who is mentally incompetent and the right cannot be waived by a guilty plea; and the test of competency to plead is whether the defendant had sufficient capacity to consult with his lawyer with a reasonable

degree of rational understanding and had a rational as well as factual understanding of the proceeding against him. Jeter v. State, 388 S.C. 230, 417 S.E.2d 594 (1992). Here, the petitioner met his burden of proof that he was not competent to plead guilty as charged.

**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 14th day of November, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Honorable Robin B. Stilwell, Circuit Court Judge

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CHARLES BENJAMIN PROFFITT, JR.

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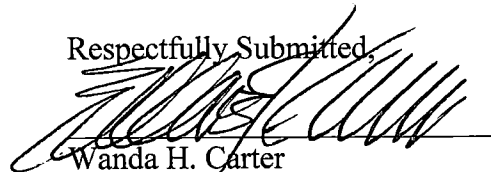
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Charles Benjamin Proffitt 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 Robin B. Stilwell, which was held on December 12, 2017, 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 Charles Benjamin Proffitt.

Respectfully Submitted,

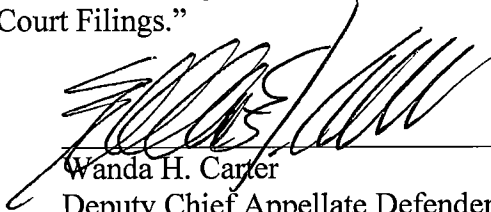


Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 14th day of November, 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

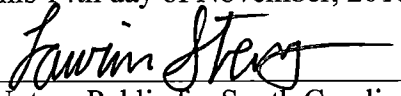
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly 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 Charles Benjamin Proffitt, #260785, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 14th day of November, 2018.

  
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 14th day of November, 2018.

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