

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

JOSEPH CHRISTOPHER WALKER,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

RESPONDENT

APPELLATE CASE NO 2018-000752

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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The PCR judge erred in denying petitioner’s allegation that his
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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that his pleas were given involuntarily because he was not aware of the rights he waived upon pleading guilty to the offenses charged against him.

STATEMENT

Petitioner Joseph Christopher Walker plead guilty to voluntary manslaughter and three counts of distribution of cocaine base within proximity of a school during the June 2013 term of the Greenville County General Sessions Court before Judge D. Garrison Hill and was sentenced to imprisonment for an aggregate thirty-year term. C. Lance Sheek represented petitioner at the plea proceeding, and Assistant Solicitors L. Mark Moyer and Jennifer A.R. Tessitore appeared on behalf of the state. App. 1-35. Petitioner did not appeal his convictions and sentences.

On June 17, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 37-43. The respondent filed a Return and Motion to Dismiss dated August 15, 2014, and an Amended Return dated January 7, 2015. App. 45-46.

A PCR hearing was convened on December 11, 2017, at the Greenville County Courthouse before Judge Robin B. Stilwell. App. 78-115. Petitioner was present at the hearing and represented by R. Mills Ariail, and Assistant Attorney General DeShawn H. Mitchell appeared on behalf of the state. On March 21, 2018, Judge Stilwell issued an Order of Dismissal in the case. App. 201-209.

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

ARGUMENT

The PCR judge erred in denying petitioner's allegation that his pleas were given involuntarily because he was not aware of the rights he waived upon pleading guilty to the offenses charged against him.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner was involved in a verbal altercation with a male and ultimately petitioner shot the male, and also petitioner was indicted on drug charges stemming from a controlled undercover drug sale and purchase. App. 20, l. 14 – p. 30, l. 8.

During the PCR hearing, petitioner testified that his pleas were given involuntarily because he was unaware of the rights he waived by pleading guilty in the case and that he should have opted for a jury trial in his case. App. 92, lines l. 1-14; App. 96, lines 9-11; App. 98, l. 3- p. 99, l. 6.

Trial counsel stated in effect that petitioner was aware of the consequences of his pleas. App. 110, l. 8-p. 111, l. 10. The PCR judge ruled that petitioner failed to prove that his guilty pleas were involuntarily given and he failed to prove that his pleas were induced by ineffective assistance of trial counsel. App. 206-207.

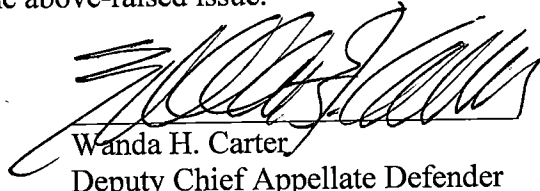
In Boykin v. Alabama, 395 U.S. 238 (1969), the Court address the waiver connected to guilty plea as follows:

Several federal constitutional rights are involved in a waiver that takes place when plea of guilty is entered in state criminal trial: first is privilege granted against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to states by reason of Fourteenth, second is right to trial by jury, and third is right to confront one's accusers; [and] a waiver of these three important federal rights cannot be presumed from a silent record. U.S.C.A. Const. Amends. 5, 14.

In the case at bar, the record established that petitioner's pleas were given involuntarily because he was unaware of the rights he waived upon entering his guilty pleas at the plea proceeding. Also, counsel erred in allowing petitioner to enter his guilty pleas without explaining the waivers involved, which violated petitioner's right to competent legal counsel at his plea proceeding as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the forgoing 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 10th day of December, 2018.

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JOSEPH CHRISTOPHER WALKER,

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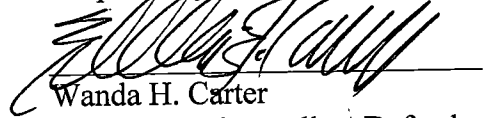
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Christopher Walker 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 11, 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 Joseph Christopher Walker.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of December, 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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This 10th day of December, 2018.

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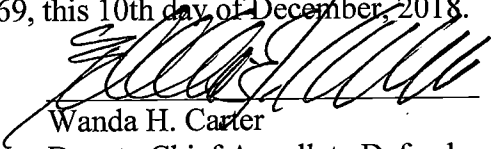
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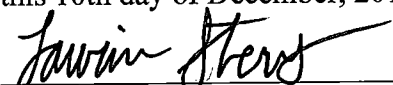
CERTIFICATE OF SERVICE

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 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 Joseph Christopher Walker, #285497, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 10th day of December, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 10th day of December, 2018.



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