

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Brooks P. Goldsmith, Circuit Court Judge

TRAVIS KENARD WALTERS,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001066

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Appellate Defender

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SC SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in failing to honor petitioner's request for a correct listing of his prior charges during the plea proceeding.

STATEMENT

Petitioner Travis Walters pled guilty to three counts of distribution of crack cocaine (third offenses) during the November 2016 term of the Richland County General Sessions Court before Judge R. Knox McMahon, who sentenced him to imprisonment for a period of fourteen years. App. 1-9. Robert Kneece represented petitioner at the plea proceeding and Assistant Solicitor V. Cato appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On May 11, 2017, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 11-17. The respondent filed a return dated February 15, 2018, requesting that a PCR hearing be held in the case. App. 19-24. A PCR hearing was convened on March 19, 2018, at the Richland County Courthouse before Judge Brooks P. Goldsmith. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General Rasheeda Cleveland appeared on behalf of the state. App. 26-74. On May 7, 2018, Judge Goldsmith issued an Order of Dismissal in the case. App. 76-84.

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

ARGUMENT

Trial counsel erred in failing to honor petitioner's request for a correct listing of his prior charges during the plea proceeding.

Apparently, petitioner was videotaped exchanging crack cocaine for money (presumably controlled buys), which led to his arrest in the case. App. 55, l. 17- p. 57, l. 2.

During the PCR hearing, petitioner explained that a proper summation of his record was not given at the plea proceeding. Petitioner's PCR testimony explains as follows:

Q: As to the subject matter jurisdiction, you said the Court did not stay with -- you say stay with matter at hand, used a dropped prior case. What dropped prior case did the Court use?

A: Well, the solicitor had brought up my last drug charge in 2013, but that charge was dismissed. That's all.

Q: Okay. So as to your prior record, the solicitor misstated your prior record?

A: Yes. He brought up the dismissed charge. I don't have a charge in 2013.

Q: And you felt like Mr. Kneece should have objected to that?

A: Yes, he should have. Well, I did tell him and he said that the Court knows -- Ms. Walker the one that let the Court know that -- he didn't say it -- he just used me, Ms. Walker said -- Ms. Walker going to let the Court know that that charge been dropped. He did say that.

App. 46, l. 23-p. 47, l. 15.

Trial counsel testified at the PCR hearing and explained the situation as follows:

Q: -- I think you heard the testimony where you stated to the Court or you tried to correct the record and you said [applicant] would like the Court to know as far as his prior record. Could you explain why you said [applicant]?

A: I did because it was a negotiated 14-year sentence, so there was going to be no impact by what the solicitor had said about his prior record at that -- at the plea. Judge McMahon was either going to give him a 14-year sentence or he was going to allow us to continue on with the trial.

And so when he said that, I think my recollection was Travis leaned over and said, He's wrong about that, so and so. That's when I said -- I think I said, Travis -- I might have said Travis, that doesn't matter since we've negotiated a 14-year sentence. But I went to the point where it was important to Travis, so I said Judge, [applicant], wants you to know that one of the charges that the solicitor has referenced was actually dismissed or something like that.

App. 65, l. 6-25

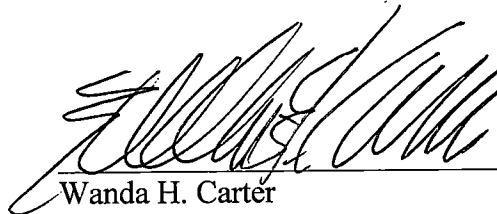
In State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976), the Court cited to Townsend and Burke, 334 U.S. 736 (1948), for the rule of law that a sentence cannot be predicated on false information, and went on to hold as follows:

If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. If a defendant's record, as publicly disclosed, is incorrectly reported, defendant should have an opportunity to explain any discrepancy and inform the court concerning the alleged errors.

Trial counsel erred in violation of the Sixth Amendment in failing to handle petitioner's prior charges properly regardless of the fact that the unnegotiated sentence was imposed, and the error constituted deficient representation. See Hill v. Lockhart, 474 U.S. 52 (1985).

CONCLUSION

Based on the forgoing argument, counsel for petitioner would request that this Court allow briefing on the above raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of January, 2019.

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IN THE SUPREME COURT

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PETITIONER

V.

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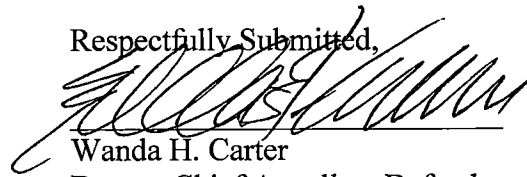
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Kenard Walters 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 Brooks P. Goldsmith, which was held on March 19, 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 Kenard Walters.

Respectfully Submitted,

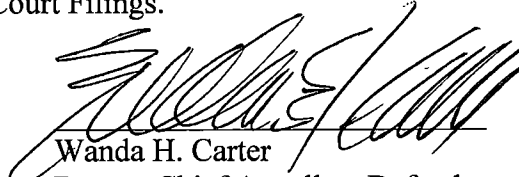


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of January, 2019.

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 22nd day of January, 2019.

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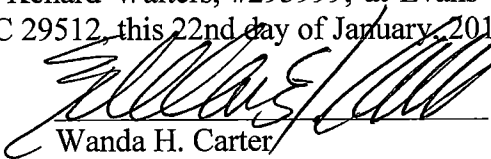
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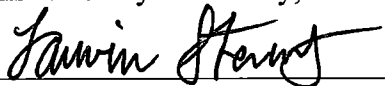
CERTIFICATE OF SERVICE

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 Lindsey McCallister, 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 Travis Kenard Walters, #293999, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 22nd day of January, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of January, 2019.

 (L.S)

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