

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Kristi Lea Harrington, Circuit Court Judge

FREDRICK B. MOSLEY, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-0001113

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to advise petitioner of the sentencing consequences and elements of the offenses charged against him.

STATEMENT

Petitioner Frederick B. Mosley, Jr. pled guilty to trafficking in cocaine (10-28 grams) first-offense, and possession of a weapon during the commission of a violent crime during the September 2015 term of the Dorchester County General Sessions Court before Judge Edgar W. Dickson, and was sentenced to two concurrent five-year prison terms. App. 1-23. John Loy represented petitioner at the guilty plea proceeding, and Assistant Solicitor Kyle Ward appeared on behalf of the state.

On August 11, 2016, petitioner filed a PCR application with the Dorchester County Office of the Clerk of Court. App. 25-32. The respondent filed a Return and Partial Motion to Dismiss on July 26, 2017. App. 33-39. A PCR hearing was convened on December 11, 2017, at the Dorchester County Courthouse before Judge Kristi Harrington. App. 40-86. Petitioner was present at the hearing and represented by Rodney D. Davis, and Assistant Attorney General Ruston W. Neely appeared on behalf of the state. On April 23, 2018, Judge Harrington issued an Order of Dismissal denying petitioner's PCR allegations in the case. App. 88-95.

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

ARGUMENT

Trial counsel erred in failing to advise petitioner of the sentencing consequences and elements of the offenses charged against him.

During a traffic stop conducted by police on April 11, 2014, petitioner, who was a passenger, surrendered to police a weapon and cocaine, both of which were in his possession at that time. App. 14, l. 25-p. 16, l. 4.

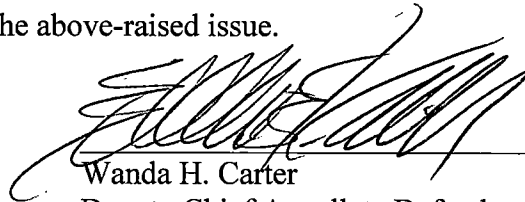
During the PCR hearing held in the case, petitioner testified that trial counsel did not inform him of the elements of the crimes or the penalties attached to them; and that had he known that his five-year weapon sentence could not have been suspended, then he would not have entered guilty pleas in the case. App. 54, l. 23-p. 62, l. 4. Trial counsel testified that his standard course of procedure is to advise clients of the nature of the charges and the sentencing penalties also. App. 68, l. 1- p. 73, l. 1.

In the case at bar, it appeared that counsel's testimony referenced his general course of conduct in representing all of his clients rather than any specific recollection of conversations with petitioner regarding the sentencing consequences and nature of the offenses charged against him. As a rule, a guilty plea is voluntarily and knowingly entered into only if the defendant has full understanding of the consequences of his plea and the charges against him. See Dalton v. State, 376 S.C. 130, 654, S.E.2d 870 (2007), and Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), citing to Boykin v. Alabama, 395 U.S. 238 (2000). Clearly, in the case at bar, petitioner's guilty pleas were not given voluntarily because he was unaware of the nature (elements) of the charges and the attached sentencing consequences. Counsel's error in these omissions constituted deficient legal representation in petitioner's case in violation of the Sixth Amendment (See Hill

v. Lockhart, 474 U.S.52 (1985), and but for counsel's ineffectiveness in this regard, petitioner would not have pled guilty in the lower court.

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.

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 19th day of February, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

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FREDRICK B. MOSLEY, JR.

PETITIONER

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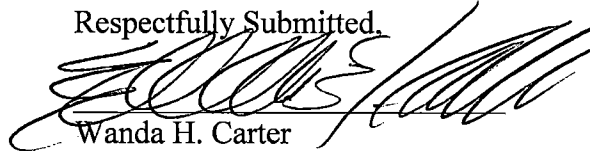
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Fredrick B. Mosley 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 Kristi Lea Harrington, 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 Fredrick B. Mosley.

Respectfully Submitted,

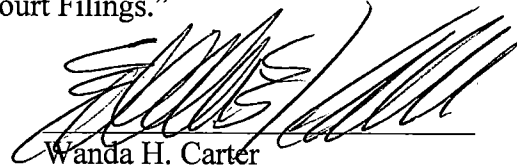


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of February, 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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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 Benjamin Limbaugh, 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 Fredrick B. Mosley, #359640, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 19th day of February, 2019.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.