

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
Honorable J. Mark Hayes, Circuit Court Judge

WILLIAM BOLT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001117

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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S.C. SUPREME COURT

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Trial counsel erred in failing to communicate to petitioner the state’s plea offer for a straight-up plea sans any motivating sentencing incentives or recommendations on the ground that such an offer was not legally advantageous; because nonetheless, counsel had a duty to at least convey the offer (whether good or bad) to petitioner and allow him an opportunity to accept or reject the offer. 3

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ISSUE PRESENTED

Trial counsel erred in failing to communicate to petitioner the state's plea offer for a straight-up plea sans any motivating sentencing incentives or recommendations on the ground that such an offer was not legally advantageous; because nonetheless, counsel had a duty to at least convey the offer (whether good or bad) to petitioner and allow him an opportunity to accept or reject the offer.

STATEMENT

Petitioner William Bolt was convicted of first degree criminal sexual conduct with a minor and lewd act on a minor under age sixteen per jury trial held during the September 2013 term of the Greenwood County General Sessions Court before Judge Donald B. Hocker. Petitioner was sentenced to imprisonment for an aggregate eighteen-year term. App. 1-451. Petitioner appealed, but his convictions and sentences were affirmed. Appellate Defender David Alexander of the Office of Appellate Defense represented petitioner on direct appeal. See State v. Bolt, Op. No. 2015-UP-477 (S.C.Ct. App. filed October 7, 2015).

On January 24, 2017, petitioner filed a PCR application with the Greenwood County Office of the Clerk of Court. App. 453-459. The respondent filed a Return dated May 18, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 460-464. An Amended PCR application was filed on September 27, 2017. App. 465-473.

A PCR hearing was convened on February 27, 2018, at the Greenwood County Courthouse before Judge J. Mark Hayes. App. 474-506. Petitioner was present at the PCR hearing and represented by Ashley McMahan, and Assistant Attorney General Justin Hunter appeared on behalf of the state. App. 474-506. On April 20, 2018, Judge Hayes issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case.

Petitioner appealed Judge Hayes' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to communicate to petitioner the state's plea offer for a straight-up plea sans any motivating sentencing incentives or recommendations on the ground that such an offer was not legally advantageous; because nonetheless, counsel had a duty to at least convey the offer (whether good or bad) to petitioner and allow him an opportunity to accept or reject the offer.

At trial, the minor testified that she stayed at her sister's husband's mother and stepfather's home during the summer of 2006, (when she was eleven years old), and that petitioner, who was the stepfather, rubbed her breasts and put his finger in her vagina during that time period over the summer. App. 180, l. 4-p. 196, l. 25).

Petitioner testified at trial and explained that he was not guilty of the charges because he didn't do anything and that he just gave the statements telling the police what they wanted to hear so he could go home and be released. App. 303, l. 13 – p. 321, l. 3.

During the PCR hearing held in this case, petitioner testified that his trial counsel never discussed any plea offers with him. App. 485, l. 12-16.

Trial counsel testified during the PCR hearing and explained that there was a plea offer that "would have been communicated to [petitioner]," but that "it was to plead straight up [on the charge]" and it (plea offer) was "a bad offer" with no "incentive to plead." App. 497, l. 2-14.

The PCR judge ruled that petitioner failed to meet his burden of proving that trial counsel was ineffective in failing to communicate the plea offer to him and also found that "no meaningful plea offers were made by the state" in the case. App. 511-512.

Note that counsel stated that this “bad” offer “would have been communicated to petitioner” in effect via procedure, but counsel did not state unequivocally whether the “bad” offer in fact was actually and definitely conveyed to petitioner.

A defendant has a right to effective assistance of counsel during the plea bargaining process. See Lafler v. Cooper, 132 S.Ct. 1376 (2012). In Lafler v. Cooper, *supra*, the Supreme Court held that counsel was ineffective in advising the defendant to reject a plea offer. Lafler was charged under Michigan law with assault with intent to murder and three other offenses and the prosecution offered to dismiss two of the charges, and to recommend a 51-to-85-month sentence on the other two, in exchange for a guilty plea, and Lafler expressed a willingness to accept the offer, but he rejected the offer per his attorney’s advice on the ground that the prosecution would be unable to establish intent to murder because the victim had been shot below the waist. Lafler was convicted on all counts at trial and received a mandatory minimum 185-to-360-month sentence. The rule applies in South Carolina as well. See also Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), where the Court held that the Sixth Amendment protects defendants against ineffective assistance of counsel during the plea bargaining process. State v. Judge, *supra*, was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner’s statement that he was prejudiced by counsel’s deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Judge, the issue was whether counsel was ineffective in advising the defendant to reject a plea offer and opt for a trial by jury. In Jackson, *supra*, the Court held that counsel was ineffective in failing to advise the defendant that the crime he was pleading to was a felony and that but for that omission, the defendant would not have plead guilty in his case.

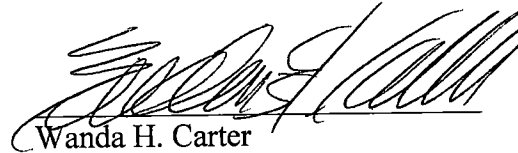
Specifically, with respect to plea offers, the Sixth Amendment right to effective assistance of counsel extends to this area also. See Missouri v. Frye, 132 S.Ct. 1399 (2012). In Missouri v. Frye, counsel did not communicate the plea offer to the defendant and as a result, the plea offer expired. Note also Missouri v. Frye, 132 S.Ct. 1399 (2012), where the court held that counsel was ineffective in allowing a plea offer to a defendant to lapse, which resulted in nonacceptance of the offer and “further proceedings led to a less favorable outcome” for the defendant. Compare Davie v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009), where the Court held that counsel’s failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (mail snafu after counsel moved to another office) until after the plea offer had expired, and because he would have accepted that plea offer had it been communicated to him. See also Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (2014), where the Court held that counsel was ineffective in failing to extend the state’s plea offer of ten years to the defendant prior to sentencing (which was when he first time he heard of the offer) and that the defendant was prejudiced by counsel’s deficient performance as he received a twenty-year sentence instead. In Bell, the case had been transferred to counsel and there was note in the previous attorney’s file indicating that a plea offer of ten years had been made, but a review of the file revealed no notes or any indication showing that the plea offer was conveyed to the client by either counsel who represented the client.

Here, it was obvious that counsel did not approve of the plea offer made in the case, but nonetheless, said offer should have been communicated to petitioner. Counsel’s deficient performance regarding the plea offer in petitioner’s case violated the Sixth Amendment. See Hill v. Lockhart 474 U.S.52 (1985). Moreover, but for counsel’s error, a reasonable likelihood

existed that petitioner would have accepted the offer and received a different sentence than the sentence handed down in his case.

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 18th day of March, 2019.

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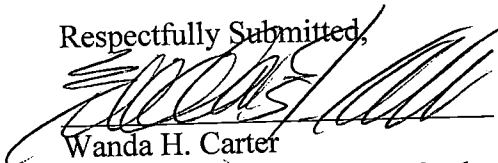
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Donald Bolt 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 J. Mark Hayes, which was held on February 27, 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 William Donald Bolt.

Respectfully Submitted,

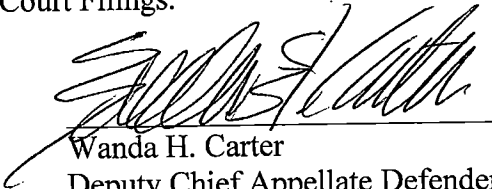


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of March, 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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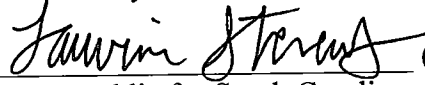
CERTIFICATE OF SERVICE

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 Janell Gregory, 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 William Donald Bolt, #356942, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 18th day of March, 2019.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of March, 2019.

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