

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DEMETRIUS SUMMERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002183

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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ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to fully explain to petitioner the
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ISSUE PRESENTED

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences of his pleas.

STATEMENT

Petitioner Demetrius Terrell Summers pled guilty to trafficking in crack cocaine (second offense), manufacturing crack cocaine (second offense) and distribution of crack cocaine (second offense) during the April 2017 term of the Lexington County General Sessions Court before Judge Jocelyn Newman. App. 1-18. Attorney Todd Rutherford represented petitioner at the plea proceeding and Assistant Solicitor Gill Bell appeared on behalf of the state. Petitioner received concurrent eight-year sentences. Petitioner did not appeal his convictions and sentences.

On October 2, 2017, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App. 21-27. The respondent filed a Return dated December 4, 2017, requesting that a hearing be held in the case. App. 28-32. Petitioner filed an amended PCR Application on July 16, 2018. App. 33-34.

A PCR hearing was convened on November 7, 2018, at the Lexington County Courthouse before Judge Walton J. McLeod, IV. App. 35-59. Petitioner was present at the hearing and represented by Ashley McMahan, and Assistant Attorney General Kelly Oppenheimer appeared on behalf of the state.

On November 26, 2018, Judge McLeod signed an Order of Dismissal in the case. App. 61-73. Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences of his pleas.

A confidential informant purchased crack cocaine from petitioner on several dates. App. 5, l. 2 – p. 7, l. 1.

During the PCR hearing, petitioner testified that trial counsel advised that he would receive a five-year sentence if he pled guilty, and that he (petitioner) did not learn of the maximum sentence of thirty years on the charges until immediately prior to the plea proceeding. App. 39, l.1-p.42, l.24.

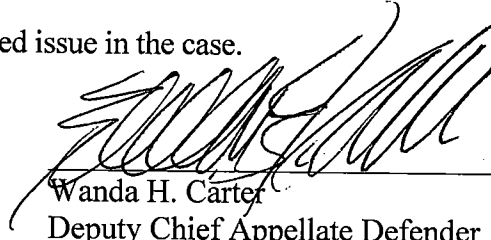
Trial counsel testified during the PCR hearing and stated that he informed petitioner of the sentencing consequences of his pleas. App. 53, l.25-p. 54, l.1.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's promise of a five-year sentence and counsel's failure to explain to petitioner the maximum sentencing consequences in the case violated petitioner's right to competent legal representation by counsel at his plea proceeding. As a result, petitioner pled guilty without an understanding of the sentencing consequences in his case.

Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner would have pled not guilty and instead exercised his right to a trial by jury in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue in the case.

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 3rd day of July, 2019.

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IN THE SUPREME COURT

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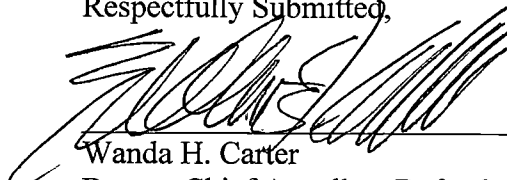
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Demetrius Summers states:

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 Walton J. McLeod, IV, which was held on November 7, 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 Demetrius Summers.

Respectfully Submitted,

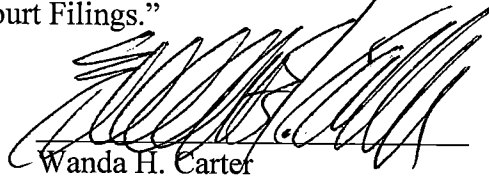


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of July, 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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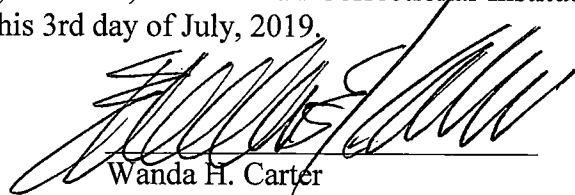
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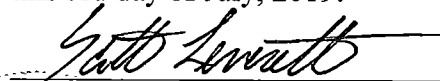
CERTIFICATE OF SERVICE

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 Taylor Z. Smith, 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 Demetrius Summers, #372191, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 3rd day of July, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.

