

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable Brian M. Gibbons, Circuit Court Judge

BRANDON BARTLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000140

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
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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ISSUE PRESENTED

Trial counsel erred in coercing petitioner in effect to plead guilty in order to receive lenient sentencing in the case.

STATEMENT

Petitioner Brandon D. Bartley pled guilty to trafficking in methamphetamine (first offense), possession with intent to distribute methamphetamine (first offense), receiving stolen goods (\$2,000-\$10,000), simple possession of marijuana, giving false information to law enforcement, and carrying a pistol unlawfully during the June 2017 term of the Greenwood County General Sessions Court before Judge Frank R. Addy, Junior. Petitioner received an aggregate ten-year prison sentence. App. 1-19. Attorney Elizabeth Able represented petitioner at the plea proceeding, and Assistant Solicitor Josh Thomas appeared on behalf of the state. Petitioner did not appeal his convictions and sentences.

On November 30, 2017, petitioner filed a PCR application with the Greenwood County Office of the Clerk of Court. App. 21-29. The respondent filed a Return dated April 11, 2018. App. 30-35. Petitioner filed an amended PCR application on October 12, 2018. App. 36-37. A PCR hearing was convened on October 17, 2018, at the Greenwood County Courthouse before Judge Brian M. Gibbons. App. 38-79. Petitioner was present at the PCR hearing and represented by Ashley A. McMahon, and Assistant Attorney General Janell Gregory appeared on behalf of the state.

The PCR judge issued an Order of Dismissal dated January 14, 2019, therein denying and dismissing petitioner's PCR allegations of ineffective assistance of counsel. App. 85-99.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in coercing petitioner in effect to plead guilty in order to receive lenient sentencing in the case.

Petitioner pled guilty to avoid the threat by the solicitor to conduct consecutive prosecutions on each of the drug charges and the substantial and lengthy sentences that would result from the same.

At the PCR hearing, petitioner testified that he was fearful of receiving a twenty-five year sentence or LWOP as consecutive sentences on a trafficking charge via a subsequent trial after a prior trial on the PWID charge, which meant he (petitioner) was coerced into pleading guilty to all charges out of fear. App. 48, l.19 - p. 49, l.3; App. 52, lines 5 – 9.

Trial counsel testified during the PCR hearing and admitted that the solicitor's intent was to try petitioner consecutively on each of the drug charges, which would have resulted in substantial and lengthy sentences in comparison to the ten-year negotiated plea deal. App. 64, l.23 - p. 65, l.9; App. 76, l. 14 – p. 77, l.24. Petitioner had a total of nineteen charges, thirteen of which were nolle prossed as part of the plea deal. App. 71, l. 3 - p. 72, l.11.

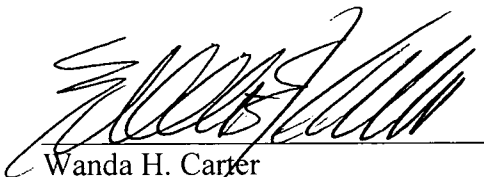
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997),

citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, “the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty.” See Gustine v. State, *supra*.

In the case at bar, petitioner felt coerced into pleading guilty to the charges. Therefore, per these circumstances, clearly petitioner did not plead guilty voluntarily within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964). Additionally, counsel’s explanation regarding sentencing consequences constituted in effect the added coercion (threat of harsh sentencing to obtain petitioner’s pleas) that violated petitioner’s right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case (See Hill v. Lockhart, 484 U.S. 52 (1985)). Also, but for the coercive measures used by trial counsel in effect to secure petitioner’s involuntary pleas, petitioner would probably have exercised his right to a jury trial on the charges filed against him in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests 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 29th day of July, 2019.

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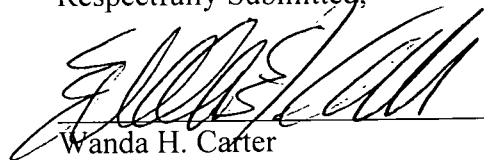
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon Bartley 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 Brian M. Gibbons, which was held on October 17, 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 Brandon Bartley.

Respectfully Submitted,

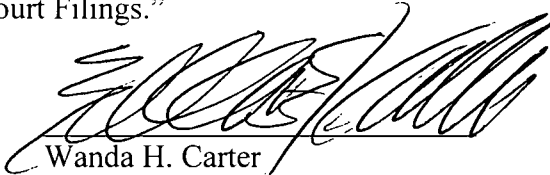


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 29th 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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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 Brandon Bartley, #372964, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 29th day of July, 2019.

[Handwritten signature of Wanda H. Carter]

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 29th day of July, 2019.

[Handwritten signature] (L.S)

Notary Public for South Carolina
My Commission Expires: September 27, 2028.

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