

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

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SAMUEL BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002208

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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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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S.C. SUPREME COURT

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Trial counsel erred in failing to develop the matter of the illegal search that occurred in the case as a possible issue on behalf of petitioner’s defense in the event of a trial because the police search in the instant case violated the state’s express privacy protection found under article 1, section 10 of the South Carolina State Constitution..... 3

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### **ISSUE PRESENTED**

Trial counsel erred in failing to develop the matter of the illegal search that occurred in the case as a possible issue on behalf of petitioner's defense in the event of a trial because the police search in the instant case violated the state's express privacy protection found under article 1, section 10 of the South Carolina State Constitution.

## STATEMENT

Petitioner Samuel Brown pled guilty to possession with intent to distribute marijuana during the May 2014 term of the Berkeley County General Sessions Court before Judge Kristi L. Harrington, who sentenced him to imprisonment for a period of three years. App. 1-10. Chad Shelton represented petitioner at the plea proceeding, and Assistant Solicitor Michael Patterson appeared on behalf of the state. Petitioner did not appeal his conviction or sentence in the case.

On November 20, 2014, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 12 -19. The respondent filed a return dated August 31, 2015, and an amended return dated September 16, 2018, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 20-33.

A PCR hearing was convened on October 1, 2018, at the Berkeley County Courthouse before Judge Michael G. Nettles. Petitioner was present at the hearing and represented by Rodney D. Davis, and Assistant Attorney Johnny E. James appeared on behalf of the state. App.34-90.

On November 9, 2018, Judge Nettles signed an Order of Dismissal in the case. App. 94-106. Petitioner appealed Judge Nettles' Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to develop the matter of the illegal search that occurred in the case as a possible issue on behalf of petitioner's defense in the event of a trial because the police search in the instant case violated the state's express privacy protection found under article 1, section 10 of the South Carolina State Constitution.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner's vehicle was stopped at an alcohol public safety check point on June 25, 2013, and upon smelling the scent of marijuana emanating from the vehicle, the police searched the car and found marijuana inside. App. 7, 1.22-p.8, 1.4.

During the PCR hearing, petitioner testified that he asked counsel in a letter written to him to review the matter of the vehicle search per his belief that the search was illegal to the extent that the officer searched extensively into all of his personal bags and even into a vacuum sealed bag. Petitioner stated in effect that he asked counsel to file a suppression motion based on the illegal search and that if counsel had done so, then he would have opted for a jury trial believing that the search was illegal and pled not guilty in the case. App. 47, 1.8-25; App. 50, 17, 1.22-p.55, 1.11; App. 58, 1.11-p. 59, 1.23.

Trial counsel testified at the PCR hearing and admitted that petitioner did not give full consent for police to search his vehicle, but rather limited permission for certain things only to have been searched. App. 76, 1.8-22;

The PCR judge ruled that the legality of the stop, search, and seizure were properly investigated and analyzed by trial counsel, and that petitioner made no showing of ineffective assistance of counsel with respect to the Fourth Amendment issues. App. 98-105.

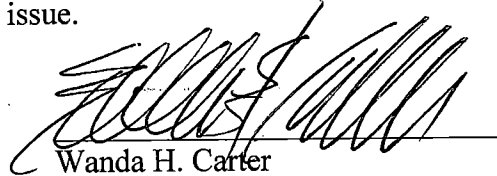
In the case at bar, the police search of petitioner's vehicle exceeded the scope of the alleged consent given, which if given, was given with limitations; and as a result, the search in this case was unreasonable and thus illegal. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001), where the Court held that the South Carolina Constitution offers an express right to privacy provision regarding searches included in article 1, section 10 that carries a higher level of privacy protection than the Fourth Amendment prohibition against unreasonable searches and seizures. In Forrester, the Court held as follows:

Forrester's response to the request to search her purse was not to surrender possession of the purse for an unrestricted search, but instead she provided a limited view of the purse's interior, obviously with the hope that [the officers] suspicions would be satisfied and she would escape detection. The difference between her reaction and handing over possession of the purse or granting verbal permission to search her purse is obvious. If this Court held that Forrester's consent, clearly limited by her actions, opened her purse up to the unlimited consent in police searches...such a result would ignore a citizen's right under our constitution to limit the scope of their consent in government searches.

Had counsel argued for the suppression of the drugs found in petitioner's vehicle via the theory that his consent, if given, was given with limitations per the holding in Forrester, then a reasonable probability existed that there might have been measure of success on the merits of the suppression of the marijuana issue, and the outcome of the case would have been different. Counsel's omission in this regard constituted deficient legal representation in violation of the Sixth Amendment. See Hill v. Lockhart, 474 U.S. 52 (1985), and Strickland v. Washington, 466 U.S. 668 (1984).

**CONCLUSION**

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

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

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of August, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

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SAMUEL BROWN,

PETITIONER

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PETITION TO BE RELIEVED AS COUNSEL

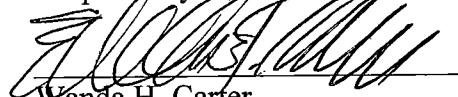
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Counsel for Samuel Brown states that:

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 Michael G. Nettles, which was held on October 1, 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 Samuel Brown.

Respectfully Submitted,



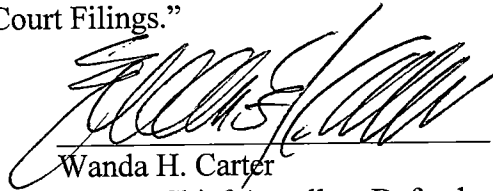
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 2nd day of August, 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."



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
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ATTORNEY FOR PETITIONER

This 2nd day of August, 2019.

STATE OF SOUTH CAROLINA

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Honorable Michael G. Nettles, Circuit Court Judge

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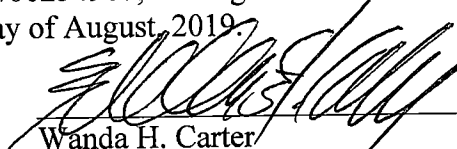
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STATE OF SOUTH CAROLINA,

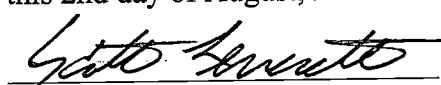
RESPONDENT

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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 Johnny Ellis James, Jr., 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 Samuel Brown, #00254907, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 2nd day of August, 2019.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 2nd day of August, 2019.

 (L.S)  
Notary Public for South Carolina

My Commission Expires: September 27, 2028.

