

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

S.C. SUPREME COURT

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ADRIAN KEITH NEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000149

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO AUSTIN V. STATE

\_\_\_\_\_

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to meet and consult sufficiently with petitioner prior to his plea proceeding in the case.

## STATEMENT

Petitioner Adrian Keith Neal pled guilty to murder during the July 2012 term of the Greenwood County General Sessions Court before Judge D. Garrison Hill and was sentenced to imprisonment for a period of thirty years. App. 1-16. Janna Nelson represented petitioner at the plea proceeding, and Deputy Solicitor Andrew Hodges appeared on behalf of the state. Petitioner did not appeal his conviction or sentence.

On June 21, 2013, petitioner filed a PCR application with the Greenwood County Office of the Clerk of Court. App. 18-25. The respondent filed a return dated March 27, 2014 requesting that a hearing be held in response to petitioner's PCR action. App. 26-30. A PCR hearing was convened on October 17, 2016, at the Greenwood County Courthouse before Judge R. Ferrell Cothran, Junior. App. 31-65. Petitioner was present at the hearing and represented by Laura Saunders, and Assistant Attorney General Justin Hunter appeared on behalf of the state.

On November 1, 2017, Judge Cothran issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 67-75. Thereafter, petitioner did not enjoy the benefit of a direct appeal of this first PCR action.

On March 27, 2018, petitioner filed a second PCR action with the Greenwood County Office of the Clerk of Court. App. 76-82. A return and an amended return and motion to dismiss were filed on June 12, 2018, and November 1, 2018, respectively. A second PCR hearing was not held, but rather petitioner's first PCR counsel submitted an affidavit admitting that she did not appeal petitioner's first PCR case. On November 5, 2018, Judge Hocker issued an Order that granted petitioner's right to a belated PCR appeal, but denied the allegations raised in his second PCR action as successive. App. 100-105.

Petitioner appealed Judge Hocker's Order. This Austin petition follows.

## ARGUMENT

Trial counsel erred in failing to meet and consult sufficiently with petitioner prior to his plea proceeding in the case.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On September 19, 2011, petitioner fired a gunshot at the mother of his child while they both rode in a vehicle pursuant to an argument they were having at the time. App. 8, l. 1 – p. 9, l. 16.

During the PCR hearing, petitioner testified that trial counsel only met with him two times: once prior to the plea proceeding in order to convince him to accept the state's thirty-year plea offer, and then again on the date of the guilty plea proceeding. App. 37, l.18-p.41, l.9; App. 47, lines 20-21.

Trial counsel testified at the hearing and explained that the state's evidence in the case would have led to an unfavorable outcome for petitioner in the event of a trial (life sentence) if he had not accepted the thirty-year-year prison term plea deal. App. 52, l.21-p. 30, l.11.

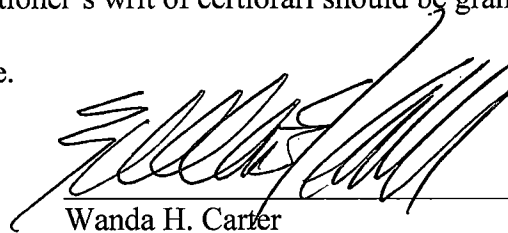
With respect to petitioner's allegation that trial counsel failed to meet with him sufficiently prior to his plea proceeding, the PCR judge ruled as follows:

Applicant alleged that Counsel did not communicate or visit him prior to the plea. Applicant testified that Counsel only met him twice prior to the plea. This Court finds that Counsel provided credible testimony that she met with Applicant many times prior to the plea to review discovery and discuss many aspects of Applicant's case. This Court finds that Counsel also properly relayed the State's plea offer to Applicant. This Court finds that Applicant has failed to show that Counsel's performance was deficient or fell below the standard of reasonableness. Applicant has also failed to show that he was prejudiced by Counsel's actions as he has shown that any additional communication or visitation would benefit Applicant. Accordingly, this allegation must be dismissed. App. 73-74.

This was a murder case. Therefore, the fact that counsel met with petitioner only twice, one of which was the day of the plea proceeding and only once before the plea proceeding, constituted ineffective assistance of counsel in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). Compare Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991), where the Court reversed when the defendant, who pled guilty to 29 indictments involving various counts of grand larceny, burglary, and petit larceny, only spoke with his court appointed attorney three times for a total of less than thirty minutes. In Dover, counsel's initial interview lasted five to ten minutes, the second meeting was a handshake and a greeting, and the third meeting was on the day the pleas were entered in the case. Likewise, in the case at bar, trial counsel could not have adequately prepared for petitioner's case with only two meetings with him; and but for counsel's deficient representation in this regard, a reasonable probability exists that petitioner might have elected to exercise his right to a jury trial in his case and not pled guilty as charged.

### CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the above-raised issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

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ADRIAN KEITH NEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Adrian K. Neal 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 Donald B. Hocker, which was held on October 17, 2016, 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 Adrian K. Neal.

Respectfully Submitted,



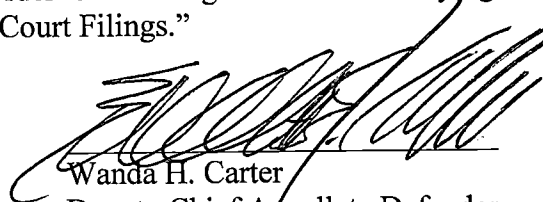
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th 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."



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Defense  
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ATTORNEY FOR PETITIONER

This 6th day of August, 2019.

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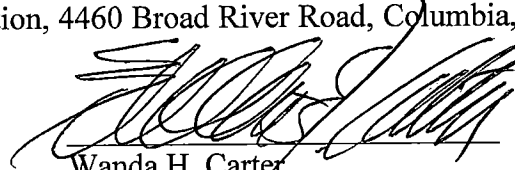
RESPONDENT

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CERTIFICATE OF SERVICE

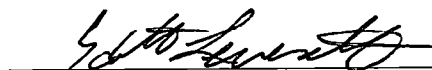
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the Appendix have been served on Adrian K. Neal, #351553, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of August, 2019.



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6th day of August, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: September 27, 2028.