

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable D. Craig Brown, Circuit Court Judge

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AUG 21 2019

S.C. SUPREME COURT

IZELL D. HAIR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000039

JOHNSON PETITION FOR WRIT OF CERTIORARI

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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Trial counsel erred in failing to disclose the state’s evidence in its entirety to petitioner prior to the plea proceeding because this deprived petitioner of the option of properly assessing his case as a whole and making an intelligent choice (trial or plea) among alternative actions available to him.....3

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ISSUE PRESENTED

Trial counsel erred in failing to disclose the state's evidence in its entirety to petitioner prior to the plea proceeding because this deprived petitioner of the option of properly assessing his case as a whole and making an intelligent choice (jury trial or plea) among alternative actions available to him.

STATEMENT

Petitioner Izell D. Hair entered an Alford¹ plea to second degree criminal sexual conduct with a minor during the August 2016 term of the Orangeburg County General Sessions Court before Judge Edgar W. Dickson and was sentenced to imprisonment for a term of eighteen years. App. 1-22. Belinda Davis-Branch represented petitioner at the plea proceeding, and Assistant Solicitor Ashley Cornwell appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed by the South Carolina Court of Appeals on October 26, 2016, per SCAR Rule 203(d)(1)(B)(iv).

On January 9, 2017, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 24-33. The Respondent filed a Return dated April 20, 2018, requesting that a hearing be held in the case. App. 34-40.

A PCR hearing was convened on October 3, 2018, at the Orangeburg County Courthouse before Judge D. Craig Brown. App. 41-67. Petitioner was present at the hearing and represented by Jonathan Waller, and Assistant Attorney General Christian Saville appeared on behalf of the state.

On December 6, 2018, Judge Brown signed an Order of Dismissal in the case. App. 69-79. Petitioner appealed Judge Brown's Order of Dismissal. This petition follows.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

ARGUMENT

Trial counsel erred in failing to disclose the state's evidence in its entirety to petitioner prior to the plea proceeding because this deprived petitioner of the option of properly assessing his case as a whole and making an intelligent choice (trial or plea) among alternative actions available to him.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, the state alleged that petitioner performed anal sex on his biological daughter. App. 11, l.14-p.13, l.17.

During the PCR hearing held in the case, petitioner testified that trial counsel did not discuss his right to challenge the state's evidence, but rather was informed instead by counsel that he might not win at trial. App. 51, l.10-12; App. 54, l.1-2. Petitioner stated that he was not afraid of a jury trial, which implied that he would have been open to the option of a trial by jury after a review and proper assessment of all of the evidence in the case. App. 56, lines 17-19.

Trial counsel testified at the PCR hearing and stated in effect that the videotapes of the minor and the psychologist, and of the mother as well was part of the state's case against petitioner, but admitted that petitioner never saw the video because of the detention center rules that prohibited any such viewing of the same. Counsel added that the videotapes were shown to petitioner's brother. App. 63, lines 2-22; App 60, lines 10-21.

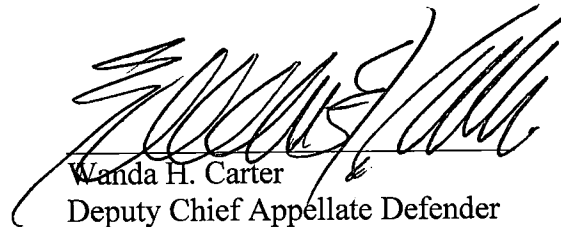
The PCR judge ruled that trial counsel reviewed with petitioner the state's evidence against him and that there was no deficiency on counsel's behalf in response to the allegation that counsel did not share or explain the evidence. App. 74-75.

A guilty plea must represent a voluntary and intelligent choice among alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25 (1970). Here, petitioner's

plea was not given knowingly because he could not make an intelligent choice about pleading guilty or exercising his right to a trial by jury because he did not receive and review the state's evidence in its entirety, i.e. the videotapes in question, prior to the plea proceeding. Counsel's failure to supply all of the state's evidence to petitioner in the case prior to the plea proceeding constituted deficient representation in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced because but for the omission, he might have elected to plead not guilty and chosen to exercise his right to a jury trial 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 21st day of August, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable D. Craig Brown, Circuit Court Judge

IZELL D. HAIR,

PETITIONER

V.

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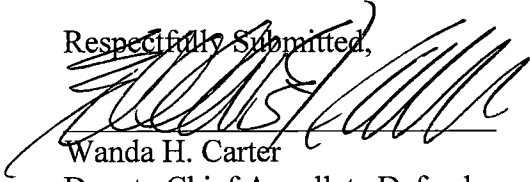
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Izell D. Hair 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 D. Craig Brown, which was held on October 3, 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 Izell D. Hair.

Respectfully Submitted,

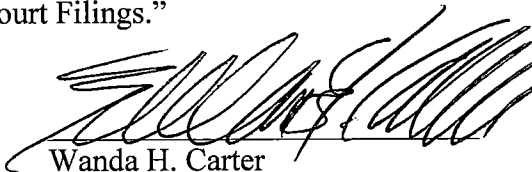


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 21st 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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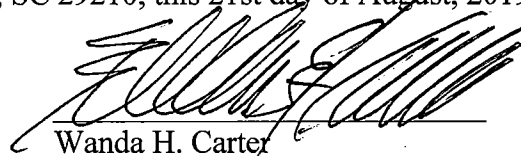
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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 Benjamin Limbaugh, 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 Izell D. Hair, #311486, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of August, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2019.

 (L.S)
Notary Public for South Carolina

My Commission Expires: September 27, 2028.

