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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

SEQUOIA MCKINNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000398

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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ISSUE PRESENTED

Trial counsel erred in failing to fully explain sentencing consequences to petitioner in the case.

STATEMENT OF CASE

Petitioner Sequoia McKinnon pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime during the June 2016 term of the Charleston County General Sessions Court before Judge Deadra L. Jefferson and was sentenced to an aggregate thirty-year prison sentence. App. 1-22. C. Andrew Carroll represented petitioner at the plea proceeding and Assistant Solicitor Stephanie Linder appeared on behalf of the state.

Petitioner did not enjoy the benefit of a direct appeal in the case.

On March 9, 2016, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 24-35. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 36-40. An amended PCR application was filed on May 11, 2018. App. 42-43.

A PCR hearing was convened on December 4, 2018, at the Charleston County Courthouse before Judge G. Thomas Cooper. App. 44-105. Petitioner was present at the hearing and represented by Rodney D. Davis, and Assistant Attorney General Benjamin H. Limbaugh appeared on behalf of the state.

On February 8, 2019, Judge Cooper issued an Order of Dismissal in the case. App. 107-117. Petitioner appealed Judge Cooper's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to fully explain sentencing consequences to petitioner in the case.

The state's indictment charged petitioner with the crime of shooting and killing Rhakym Capers (murder) on November 12, 2013 in Charleston County. App. 119-120.

During the PCR hearing, petitioner testified that trial counsel did not explain the definition of a most serious offense or the definition of a no parole offense. App. 56, lines 2-16. Trial counsel admitted this at the PCR hearing by stating in effect that he only discussed with petitioner the elements of the offenses charged against him. App. 84, l.23- p. 86, l.12.

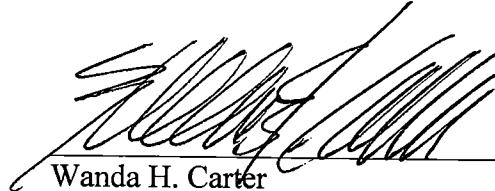
The PCR judge ruled that trial counsel was not deficient in his representation of petitioner in this case. App. 116.

As a rule, a defendant must have a full understanding of the consequences of his plea and the charges against him before his plea is considered voluntarily and knowingly given Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007). Here, petitioner did not know that his voluntary manslaughter plea would constitute a plea on a most serious offense. See S.C. Code Ann. {17-25-45 and {16-3-50. Thus, petitioner did not know or understand sentencing consequences because of counsel's failure to adequately explain sentencing consequences. This omission by counsel constituted deficient legal representation. An applicant may attack the voluntary and knowing character of a plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard and reasonableness and the ineffective representation affected the outcome of the plea. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006); Hill v. Lockhart, 474 U.S. 52 (1985).

In the case at bar, petitioner's manslaughter plea was given involuntarily because he was not apprised by counsel of the sentencing consequences of that plea.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that the petition on the above raised issue be granted 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 18th day of October, 2019.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sequoia McKinnon 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 G. Thomas Cooper, Jr., which was held on December 4, 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 Sequoia McKinnon.

Respectfully Submitted,



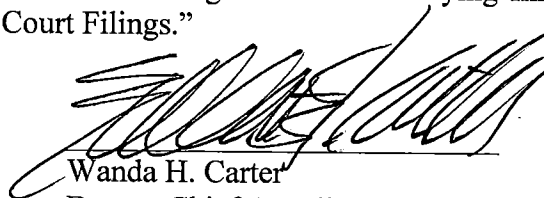
Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of October, 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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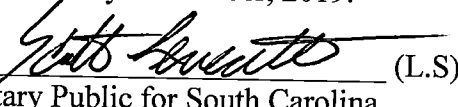
CERTIFICATE OF SERVICE

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 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 Sequoia McKinnon, #368688, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 18th day of October, 2019.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2019.



Notary Public for South Carolina

(L.S)

My Commission Expires: September 27, 2028.