

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

Honorable Thomas A. Russo, Circuit Court Judge

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JAVONTE ANTONIO WALLS,

**ORIGINAL**  
**RECEIVED**  
NOV 01 2019  
S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000565

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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  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

Trial counsel erred in misinforming petitioner about the sentencing  
consequences of the offenses charged against him because this led  
petitioner to reject an extremely favorable plea offer by the state..... 3

CONCLUSION ..... 5

PETITION TO BE RELIEVED AS COUNSEL ..... 6

**ISSUE PRESENTED**

Trial counsel erred in misinforming petitioner about the sentencing consequences of the offenses charged against him because this led petitioner to reject an extremely favorable plea offer by the state.

## STATEMENT

Petitioner Javonte Antonio Walls pled guilty to attempted armed robbery and criminal conspiracy during the July 2017 term of the York County General Sessions Court before Judge John C. Hayes III.<sup>1</sup> App 8-33. On September 13, 2017, Judge Hayes sentenced petitioner to imprisonment for an aggregate nine-year term. Petitioner was represented by Geoffrey Mark Dunn at the plea proceeding and Assistant Attorney General Matthew W. Shelton appeared at the plea proceeding on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On November 3, 2017, petitioner filed a PCR application with the York County Office of the Clerk of Court. App. 35-42. The respondent filed a Return dated March 14, 2018, requesting that a hearing be held in response to petitioner's PCR action. App. 43-48.

A PCR hearing was held on January 29, 2019, at the York County Courthouse before Judge Thomas A. Russo. App. 50-87. Petitioner was present at the hearing and represented by Nathan James Sheldon, and Assistant Attorney General Janell H. Gregory appeared on behalf of the state. On February 22, 2019, Judge Russo issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 89-98.

Petitioner appealed Judge Russo's Order of Dismissal. This petition follows.

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<sup>1</sup> Previously, on June 8, 2017, a brief pretrial hearing was held before Judge Hayes placing on the record petitioner's rejection of a three-year YOA plea offer from the state. App. 1-6.

## ARGUMENT

Trial counsel erred in misinforming petitioner about the sentencing consequences of the offenses charged against him because this led petitioner to reject an extremely favorable plea offer by the state.

During the plea proceeding, the solicitor apprised the circuit court judge of the facts of the case. Apparently, two codefendants who wore masks and carried a weapon entered the Catawba Express gas station in York County around 10:00 pm on November 2, 2016, and held two female employees at gun point, ushered them to the back of the gas station, and took money from the registers. Petitioner was the third codefendant (“lookout”) who stood watch at the door of the gas station. App. 17-18.

During the PCR hearing, petitioner testified that he rejected the state’s “three-year YOA” deal in the case because counsel advised that he could get a better deal, i.e., a one-year YOA deal, and that his understanding was that if he turned down the three-year YOA deal, then he would get the one-year YOA deal instead. Later, petitioner learned that the one-year YOA plea deal was impossible, and the three-year deal was not available. App. 57, 1.14-p.60, 1.15.

Trial counsel testified at the PCR hearing and stated that he negotiated a three-year YOA sentence, but explained that he told petitioner that he “would **attempt** to” get a one-year-YOA. Counsel added that petitioner did not understand the severity of the charges and rejected the deal because he (petitioner) thought he could get a better offer. App 70, 1.11-p.74, 1.15. Counsel admitted that he did not explain to petitioner that a one-year YOA plea deal was not possible and certainly not guaranteed. App. 78, 1.24-p. 80, 1.12.

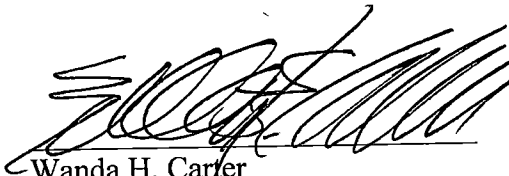
The PCR judge ruled that counsel’s failure to explain the various sentencing offers was cured by the plea judge’s colloquy regarding sentencing at the plea proceeding. App. 96-97.

Clearly, petitioner misinterpreted counsel's comments regarding the expirations of plea offers; but more importantly, counsel failed to advise regarding the benefits of accepting a favorable offer rather than risk losing the same (never to be resurrected once rejected) for a sentence offer that was neither possible nor an offer in existence in the case. Clearly, but for the misleading information given by counsel, petitioner would have accepted the three-year YOA plea bargain. A guilty plea is not voluntary if the defendant is unaware of the sentencing consequences in a case. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), citing to Benjamin v. Alabama, 395 U.S. 238 (1969).

Counsel's failure to explain fully the sentencing consequences, i.e., that a three-year offer was as good as it would get, was deficient legal representation in violation of the Sixth Amendment because the result was petitioner's rejection of a favorable plea deal. Hence the prejudice. See Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), where the South Carolina Supreme Court held that the Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process, and further held that ineffective assistance of counsel would occur if counsel advised a defendant to reject a plea offer without evaluating the "merits of the case and the risks borne by the defendant." State v. Judge, supra, was overruled on other grounds by State v. Jackson, 342 S.C. 95, 535 S.E.2d 926 (2000), to the extent that the complainant's statement that he was prejudiced by counsel's deficient performance at the plea proceeding can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. Here, counsel's error with regard to the failure to explain the benefits of the state's the plea offer constituted ineffective assistance of counsel in violation of Hill v. Lockhart, 474 U.S. 52 (1985), and the Sixth Amendment.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request 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 1st day of November, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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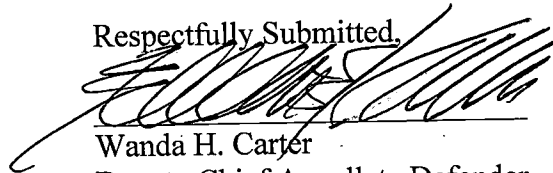
RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Javonte Antonio Walls 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 Thomas A. Russo, which was held on January 29, 2019, 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 Javonte Antonio Walls.

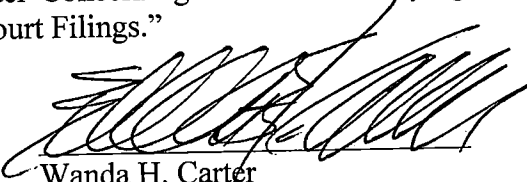
Respectfully Submitted,

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st day of November, 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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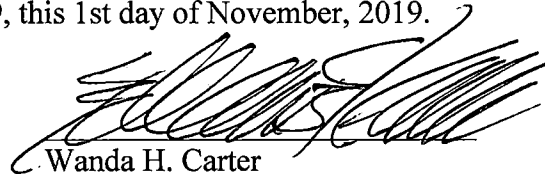
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RESPONDENT

\_\_\_\_\_  
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 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 Javonte Antonio Walls, #374056, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 1st day of November, 2019.



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 1st day of November, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.