

2010-155926

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

CHRISTOPHER J. FRANCIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

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Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to consult sufficiently with petitioner prior to the plea proceeding.

STATEMENT

Petitioner Christopher Francis pled guilty to armed robbery and possession of a weapon during the commission of a violent crime during the October 2002 term of the Lancaster County General Sessions Court before Judge Kenneth Goode. Petitioner was sentenced to imprisonment for an aggregate period of ten years. App. 1-37. Petitioner was represented by Ross Burton at the plea proceeding.

On May 22, 2003, petitioner filed a PCR application with the Lancaster County Office of the Clerk of Court. App. 39-56. The respondent filed a return requesting that a hearing be held in the case. App. 57-60. A hearing was convened on February 28, 2007, at the Lancaster Courthouse before Judge Brooks Goldsmith. App. 62-116. Petitioner was represented by William R. Sims at the PCR hearing. On April 20, 2007, Judge Goldsmith issued an order of dismissal denying petitioner's first PCR action. App. 118-127.

On August 25, 2008, petitioner requested a belated PCR appeal by filing a second PCR action with the Lancaster County Office of the Clerk of Court. App. 129-145. A return and motion to dismiss and conditional order of dismissal were subsequently filed on January 23, 2009, and April 3, 2009, respectively. App. 146-155.

On February 9, 2010, a hearing was held at the Lancaster County Courthouse before Judge Goldsmith. Petitioner was represented by Charles Brooks at that hearing. App. 156-171. On March 9, 2010, Judge Goldsmith issued an order granting petitioner an Austin appeal as requested. App. 172-177.

Petitioner appealed the Austin order. This Austin petition follows.

ARGUMENT

Trial counsel erred in failing to consult sufficiently with petitioner prior to the plea proceeding.

The state alleged that petitioner committed armed robbery at the Health Springs Telephone Company in Lancaster on March 13, 2002. App. 10, l. 12 – p. 11, l. 12. At the plea proceeding, the solicitor stated that petitioner entered the telephone company, pointed a gun at the female cashier, demanded money, got the money, and then fled. Petitioner was captured by police on the same day. App. 18, l. 4 – p. 19, l. 15.

During the PCR hearing, petitioner testified that counsel met with him only twice before he pled guilty. App. 67, l. 20 – p. 68, l. 10. Also, petitioner stated that counsel spoke with him only thirty minutes prior to the plea. App. 69, ll. 6-22. Petitioner surmised that had counsel consulted with him adequately prior to the plea proceeding, then he (counsel) would have been able to correct certain factual errors the solicitor made in summarizing the case, and more importantly, counsel would have been able to argue that there was no probable cause for his arrest and that the search and seizure in his case were illegal in violation of the Fourth Amendment. App. 73, l. 18 – p. 74, l. 16; App. 77, l. 4 – p. 92, l. 2.

Clearly, the fact that petitioner faced charges as serious as armed robbery and possession of a weapon meant that his case required more time than three meetings before the guilty pleas were actually entered. Undoubtedly, trial counsel needed more time in which to consult with petitioner about the case. In Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991), the Court reversed where the defendant, who pled guilty to 29 indictments involving various counts of grand larceny, burglary, and petit larceny, only spoke with this 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 hand shake 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 discussed petitioner's case with him in a mere three meetings prior to the plea.

As a result, counsel's representation of petitioner in the case constituted deficient legal assistance in violation of Hill v. Lockhart, 484 U.S. 52 (1985), and the Sixth Amendment. But for counsel's deficient representation in this regard, a reasonable probability exists that petitioner might have opted for a trial in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LANCASTER COUNTY
BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher J. Francis 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 records and transcript of petitioner's post-conviction relief hearing which was held on February 28, 2007. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Christopher J. Francis.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of June, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

CHRISTOPHER J. FRANCIS,

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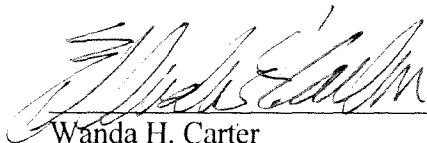
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

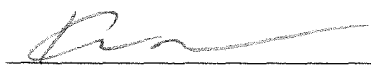
I certify that a true copy of the Johnson petition for writ of certiorari pursuant to Austin v. State in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Christopher J. Francis, this 27th day of June, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of June, 2011.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.