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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Thomas A. Russo, Circuit Court Judge

RONNIE JOE BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000767

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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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in failing to move for a reconsideration of petitioner's sentence.

STATEMENT OF CASE

Petitioner Ronnie Joe Blackwell pled guilty to resisting arrest, reckless driving, failure to stop a motor vehicle, possession of cocaine base, two counts of possession of a stolen vehicle, three counts of breaking into a motor vehicle, and four counts of petit larceny during the May 2017 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II. Petitioner was sentenced to imprisonment for a period of twenty years and five years probation. Beverly Jones represented the petitioner at the plea proceeding, and Assistant Solicitor Spenser Smith appeared on behalf of the state. App. 25-47.

Petitioner did not appeal his convictions and sentences. On January 18, 2018, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 49-55. The respondent filed a Return dated March 26, 2018, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 56-61.

A PCR hearing was convened on March 4, 2019, at the Spartanburg County Courthouse before Judge Thomas A. Russo. App. 63-108. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney Generals Jacob A. Isenburg and Johnny E. James appeared on behalf of the state. On April 26, 2019, Judge Russo issued an Order of Dismissal in the case. App. 110-123.

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

ARGUMENT

Trial counsel erred in failing to move for a reconsideration of petitioner's sentence.

In the case at bar, the solicitor recommended a sentence of twenty-five years, suspended upon the service of fifteen years and five years probation. The trial judge issued an aggregate twenty-year prison sentence. App. 26, lines 12-17.

During the PCR hearing, petitioner testified that he desired a sentencing reconsideration hearing to address the topic of sentencing to the extent that a fifteen-year active sentence was recommended by the state, but he received a twenty-year active sentence instead. App. 68.1-p.71, l.16.

Trial counsel admitted that she did not move for a sentencing reconsideration hearing in the case, primarily because she knew that such an action would have most likely yielded a harsher sentence for petitioner. App. 90, l. 4 – p. 91, l. 23.

The PCR judge ruled that there would have been in effect no argument to make within a reconsideration motion or hearing in that there was no claim that the sentence needed to be constitutionally or statutorily corrected. App. 119-121.

Clearly, the PCR judge's finding that petitioner's sentence was neither constitutionally nor statutorily incorrect and thus no resentencing was needed was not the issue here in this case. Furthermore, the issue was not whether petitioner would receive a harsher sentence in the event of a sentencing reconsideration action. The instant issue put forth by petitioner was that he had the right to have a sentencing reconsideration motion raised and/or heard in the form of a post-trial motion under Rule 29 SCRCrimP, and that the merit of any post trial motion, including a sentencing reconsideration on that ground that the sentencing recommendation was not followed or should have been followed in his case, would have been for the post-trial judge to decide.

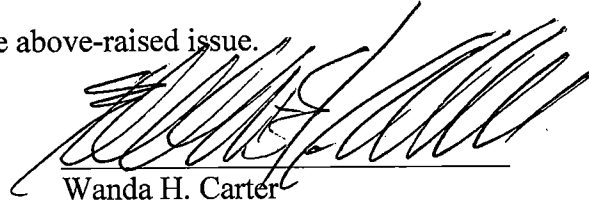
Rule 29 allows for such a request. Rule 29, SCRCrimP follows:

Except for motions for new trials on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. In cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after receipt of written notice of entry of the order of judgement disposing of the appeal. The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

Here, petitioner desired a reconsideration motion and/or hearing and ruling on the issue of the sentencing recommendation from his case for an active fifteen-year prison term because the sentence handed down was five years greater than the recommendation. Counsel's failure to move for and secure a sentencing reconsideration action per Rule 29, SCRCrimP constituted deficient legal representation in violation of the Sixth Amendment; and but for the omission, a reasonable probability exists that petitioner would have received the benefit of a lesser active sentence (by five years) in the case. See Hill v. Lockhart, 474 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full 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 26th day of November, 2019.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronnie Joe Blackwell 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 March 4, 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 Ronnie Joe Blackwell.

Respectfully Submitted,



Wanda H. Carter

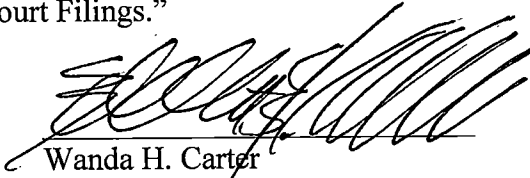
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 26th 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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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 Johnny Ellis James, Jr., 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 Ronnie Joe Blackwell, #319549, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 26th day of November, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 26th day of November 2019.



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

