

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 08 2020

S.C. SUPREME COURT

Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

REBECCA SMOAK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001607

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 to petitioner the sentencing consequences attached to her guilty pleas.

STATEMENT OF CASE

Petitioner Rebecca Smoak pled guilty to voluntary manslaughter¹ and possession of a weapon during the commission of a violent crime during the July 2018 term of the Pickens County General Sessions Court before Judge Edward W. Miller, who sentenced her to an aggregate twenty-year prison term. App. 1-13. Attorney John M. Gravlee represented petitioner at the plea proceeding and Assistant Solicitor Baker Cleveland appeared on behalf of the state. Petitioner did not appeal her convictions and sentences.

On October 18, 2018, petitioner filed a PCR application with the Pickens County Office of the Clerk of Court. App. 16-22. On December 21, 2018, the respondent filed a Petition and Partial Motion to Dismiss. App. 23-31.

A PCR hearing was convened on April 16, 2019, at the Pickens County Courthouse before Judge Alex Kinlaw, Junior. App. 33-87. Petitioner was present at the hearing and represented by Dan A. Thompson, and Assistant Attorney General Taylor Z. Smith appeared on behalf of the state. On July 19, 2019, Judge Kinlaw signed an Order of Dismissal, which was filed on July 25, 2019, therein denying and dismissing petitioner's PCR allegations of ineffective assistance of counsel in the case. Appl 89-103.

Petitioner appealed Judge Kinlaw's Order of Dismissal filed in the case. This petition follows.

¹ Petitioner was indicted on the offense of murder. App. 105-106.

ARGUMENT

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences attached to her guilty pleas.

According to the state's indictment, petitioner shot one James Brazeal on September 10, 2016, in Pickens County. App. 106. App. 8. Petitioner stated at the plea proceeding that she "never intended to hurt anybody." App. 6, l.11-18; App. 7, l.5-9. The negotiated sentence was for a twenty-year prison term to be given in exchange for the voluntary manslaughter guilty plea. App. 12, l.13, App. 13, l.18-22.

During the PCR hearing held in the case, petitioner stated that she understood the concept of a lesser offense from her murder charge, but that she did not understand that she could or would receive the maximum twenty-year sentence in the case. App. 49, l.1-8. Apparently, petitioner knew of the manslaughter two-to-twenty-year sentencing range, but was unaware of the fact that the maximum statutory sentence was also the negotiated sentence as well. Petitioner believed that a sentence below the twenty-year maximum sentence was available as an option to her despite the negotiated twenty-year sentence agreed upon in the case.

Trial counsel testified during the PCR hearing and stated that petitioner understood that she would receive a twenty-year sentence in exchange for her pleas. App. 78, l.8-p.79, l.10.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, trial counsel failed to explain to petitioner that although there was a sentencing range attached to the offense of voluntary manslaughter; nonetheless, her negotiated sentence was the same as the maximum sentence for the offense, which

was twenty years. Counsel's error in failing to explain sentencing consequences to petitioner violated petitioner's right to competent legal representation at her plea proceeding, and the resulting prejudice was that petitioner pled guilty without an understanding of the sentencing consequences in her case. Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error in this regard, a reasonable probability exists that petitioner might have pled not guilty and exercised her right to a trial by jury in the case, especially since her negotiated sentence was the maximum sentence allowed for the offense.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant this petition and allow full briefing on the above-raised issue in the case.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rebecca Smoak 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 Alex Kinlaw, which was held on April 16, 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 Rebecca Smoak.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of April, 2020.

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."

s/Wanda H. Carter

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