

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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KELLY E. BRUTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001739

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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  
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ATTORNEY FOR PETITIONER

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**May 13 2020**

**S.C. SUPREME COURT**

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**ISSUE PRESENTED**

Trial counsels erred in coercing petitioner to plead guilty in exchange for the state's withdrawal of its LWOP notice because petitioner desired a jury trial in the case.

## STATEMENT OF CASE

Petitioner Kelly Emmanuel Bruton pled guilty to attempted first degree burglary, petit larceny, and breaking into a motor vehicle during the August 2018 term of the Spartanburg County General Sessions Court before Judge Grace Gilchrist Knie, who sentenced him to an aggregate fifteen-year prison term. App. 1-25. Attorneys James Cheek and Monier Abusoft represented petitioner at the plea proceeding and Assistant Solicitor Elizabeth McFarland appeared on behalf of the state. Petitioner did not appeal his convictions and sentences.

On January 14, 2019, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 27-43. The respondent filed a Return and Motion to Dismiss dated March 20, 2019. App. 44-54.

A PCR hearing was convened on July 15, 2019, at the Spartanburg County Courthouse before Judge J. Derham Cole. App. 56-88. Petitioner was present at the hearing and represented by Rodney W. Richey, and Assistant Attorney General Brianna L. Schill appeared on behalf of the state.

On September 20, 2019, Judge Cole signed and filed an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 90-101. Petitioner appealed Judge Cole's Order of Dismissal from the case. This petition follows.

## ARGUMENT

Trial counsels erred in coercing petitioner to plead guilty in exchange for the state's withdrawal of its LWOP notice because petitioner desired a jury trial in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner was captured on a video surveillance camera taking a package from the porch of a particular residence; and in another case petitioner was found at the scene where entry via the homeowner's bathroom window was attempted and attributed to petitioner as well as the confiscation of a package from a vehicle parked at that same residence.

During the PCR hearing held in the case, petitioner testified in effect that he agreed with the state's facts and pled guilty only because they "hand[ed] down on [him what...was] a life sentence," i.e., LWOP, if he did not accept the negotiated plea bargain in the case. App. 66, 1.18-25. At the plea proceeding, the following colloquy took place.

Solicitor: The defendant, and his counsel, were both served with a Notice of Intent to Seek a Life Sentence. When he enters his plea today, we will be withdrawing that, and there's a recommendation of 15 to 20 years. And, for the charges—for the breaking into motor vehicles and petty larceny, just concurrent.

The Court: Is the recommendation of 15 to 20 or negotiated 15 to 20?

Defense Counsel: Negotiated.

Solicitor: It's negotiated, but I believe that is checked as a recommendation on there, but I can change it.

Defense Counsel: It's a negotiation for 15 to 20. App. 3, 1.15-p.4, 1.2

Both trial counsels testified at the PCR hearing and admitted in effect to advising petitioner that going to trial and risking a LWOP sentence would be a "wrong decision," and that petitioner "would not outlive a life sentence." App. 77, 1.12-p.78, 1.4; App. 85, 1.20-p.87, 1.18.

Clearly, the circumstances of this case involved petitioner being double-teamed by not one, but both of the assigned lawyers, who clearly coerced him to plead guilty; and as a result, petitioner coerced into pleading guilty to the charges in order to avoid the LWOP sentence.

The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, *supra*.

In the case at bar, petitioner felt coerced by counsels into pleading guilty to the charges in order to avoid LWOP despite his position that he was not guilty of the charges. Clearly, petitioner desired a jury trial instead. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily. Additionally, the coercive measure counsels used (threat of harsh sentencing via LWOP to obtain petitioner's pleas) violated petitioner's right to effective legal assistance guaranteed under the Sixth Amendment to the United States Constitution in a plea case (See Hill v. Lockhart, 484 U.S. 52 (1985)), particularly since petitioner would rather have opted for a jury trial in the case but for the coercion.

**CONCLUSION**

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

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

ATTORNEY FOR PETITIONER

This 13th day of May, 2020.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Kelly Emmanuel Bruton 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 J. Derham Cole, which was held on July 15, 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 Kelly Emmanuel Bruton.

Respectfully Submitted,

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

This 13th day of May, 2020.

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**May 13 2020**

S.C. SUPREME COURT

**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  
Wanda H. Carter  
Deputy Chief Appellate Defender

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