

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**May 20 2020**

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Aiken County

Honorable J. Cordell Maddox, Circuit Court Judge

\_\_\_\_\_  
RAYMOND E. BURNS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001137

\_\_\_\_\_  
JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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

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**ISSUE PRESENTED**

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences in his case.

## STATEMENT

Petitioner Raymond E.A. Burns pled guilty to reckless homicide and failure to stop and render aid at the scene of an accident resulting in death during the August 2017 term of the Aiken County General Sessions Court before Judge Doyet A, Early, III, and was sentenced to imprisonment for an aggregate period of fifteen years. App. 1-60. Petitioner did not enjoy the benefit of a direct appeal in the case.

On July 31, 2018, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 62-71. The respondent filed a Return dated October 29, 2018. App. 72-78. An amended PCR application was filed on January 17, 2019. App. 80-81.

A PCR hearing was convened on May 13, 2019, at the Aiken County Courthouse before Judge J. Cordell Maddox. Petitioner was present at the hearing and represented by Nancy Fennell, and Assistant Attorney General Janell Gregory appeared on behalf of the state. App. 83-113.

On June 12, 2019, Judge Maddox issued an Order of Dismissal in the case. App. 115-126. Petitioner appealed the Order of Dismissal. This petition follows.

## ARGUMENT

Trial counsel erred in failing to fully explain to petitioner the sentencing consequences in his case.

Petitioner was charged in connection with the death of a young male on January 3, 2016, when he (petitioner) drove his vehicle into the path where the young male was walking. App. 11, 1.17-p.15, 1.24.

During the PCR hearing, petitioner testified that it was his understanding that he was supposed to have received a 5-to-10 year sentence complete with parole eligibility in exchange for his pleas, but that he received a fifteen-year sentence instead. Petitioner added that had he known that his sentence would have been that high, then he would have opted for a trial by jury. App. 91, 1.6-p. 93, 1.9. Clearly, petitioner was coerced into pleading guilty to avoid a fifty-year sentence. App. 96, 1.4-13.

Trial counsel testified at the hearing and explained that she informed petitioner of the fact that there was an 85% no parole service time on his convictions in the case. App. 101, 1.19-23. However, counsel admitted in effect that she informed petitioner that he faced a total of fifty years for felony DUI and hit and run with death if he did not plead guilty. App. 101, 1. 1-12; App. 105, lines 2-7. App. 100, 1.23-p. 101, 1.5; App. 105, 1.2-p.106, 1.3.

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). Here, petitioner apparently believed that his sentence would have been no more than ten years, which was a belief not founded in reality because he faced a maximum twenty-five-year sentence for the hit and run offense at the plea proceeding. It was the reckless homicide that carried a ten year sentence, but the hit and run sentence was greater than ten.

Moreover, petitioner did not plead guilty to felony DUI at the plea proceeding, so two twenty-five year terms, i.e, a fifty-year sentence, would not have been possible to have received at the plea proceeding. Therefore, counsel failed to adequately explain sentencing consequences to petitioner and threw out a fifty-year sentence possibility to frighten him into pleading guilty in the 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 this error by counsel, a reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury in the case.

Also, petitioner's pleas were coerced. 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 pressured to plead guilty to avoid a fifty-year sentence, which was not a possible sentence he faced at the plea proceeding. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964).

**CONCLUSION**

Based on the foregoing argument, counsel for 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 20th day of May, 2020.

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Counsel for Raymond Edward Burns 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. Cordell Maddox, which was held on May 13, 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 Raymond Edward Burns.

Respectfully Submitted,

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20<sup>th</sup> day of May, 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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