

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Aug 12 2020**

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Certiorari to Chesterfield County

S.C. SUPREME COURT

Honorable Brooks P. Goldsmith, Circuit Court Judge

\_\_\_\_\_  
THOMAS JEFFREY STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002005

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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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Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to explain to petitioner the actual charge for which he was pleading guilty and the consequences of his guilty plea.

## STATEMENT OF FACTS

Petitioner Thomas Jeffrey Stewart was convicted of murder and possession of a weapon during the commission of a violent crime per jury trial held during the December 2012 term of the Chesterfield County General Sessions Court before Judge J. Michael Baxley. Casey Secor and S. Boyd Young represented petitioner at trial, and Assistant Solicitors Kinard Redmond and Adam Foard appeared on behalf of the state. App. 85-777. Petitioner was sentenced to life imprisonment.

Petitioner's case was reversed on appeal per a Batson<sup>1</sup> violation. See State v. Stewart, 373 S.C. 404, 645 S.E.2d 904 (2007). App. 779-787. Petitioner was represented an appeal by Jarrett O'Conner Coco, of Nelson Mullins Riley and Scarborough, LLP, and Donald J. Zelenka appeared on behalf of the state.

On remand, petitioner pled guilty to murder at the June 2017 term of the Chesterfield County General Sessions Court before Judge Paul M. Burch who sentenced petitioner to a period of thirty years imprisonment. App. 788-900. Petitioner appealed, but the appeal was dismissed for failure to provide a sufficient explanation for an appeal as required by Rule 203(d)(1)(B)(iv) SCACR. App. 902. Petitioner was represented at the plea proceeding by James Matthew Rivers, and Assistant Solicitor Kinard Redmond appeared for the state.

On December 7, 2017, petitioner filed a PCR application with the Chesterfield County Office of the Clerk of Court. App. 903-911. The respondent filed a Return requesting that a PCR hearing be held in the case. App 912-917.

A PCR hearing was convened on August 21, 2019, at the Chesterfield County Courthouse before Judge Brooks P. Goldsmith. App. 918-963. Petitioner was present at the

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<sup>1</sup> 476 U.S. 79 (1986).

hearing and represented by L. Sherril Alford and Assistant Attorney General Jacob A. Isenberg appeared on behalf of the state.

On September 19, 2019, Judge Goldsmith issued an Order of Dismissal denying and dismissing petitioner's PCR action in the case. App. 965-976.

Petitioner appealed. This petition for writ of certiorari follows.

### ARGUMENT

Trial counsel erred in failing to explain to petitioner the actual charge for which he was pleading guilty and the consequences of his guilty plea.

This case involved an attack on petitioner by one Bellany Clyburn, who accosted him with a knife, whereinafter a struggle ensued between the two and Clyburn died from her stab wounds. During the PCR hearing held in the case, petitioner testified that he thought he was entering a plea to manslaughter in the case rather than to the offense of murder. Petitioner believed that a manslaughter conviction would give him parole eligibility. App. 929, l. 10 – p. 931, l. 11; App. 935, lines 9-15; App. lines 3-11. Also, petitioner testified that he was led to believe that his guilty plea would not waive an appeal of the plea judge's denial of his motion to suppress his videotaped statement, which was raised at a hearing before he pled guilty to murder. In other words, petitioner was led to believe that he could plead guilty per the plea bargain and still receive appellate review on the merits of the suppression hearing, which was denied, but learned later that this issue was not preserved for appellate review. App. 931, l. 15- p. 932, l. 23; App. 935, l.16 – p. 937, l. 1.15. Petitioner stated in effect that he pled guilty only because he thought he was pleading to manslaughter and that his appellate right to appeal the denial of his suppression motion would survive the appeal and be reviewed on appeal. App. 937,

l. 10 – p. 938, l. 17; App. 932, lines 10-23.

Note at the plea proceeding, the solicitor explained that this case fell within the murder versus manslaughter category and defense counsel agreed. App. 879, l.21 – p. 882, l.8.

Trial counsel testified during the PCR hearing and explained that he believed the case against petitioner was a voluntary manslaughter case, but he advised petitioner to take the murder plea offer with the accompanying thirty-year sentence under Alford in order to avoid a possible life sentence in the event of a murder conviction per the jury trial option; and he explained that Alford meant he didn't admit to murder. App. 945, l.8-p. 957, l. 25.

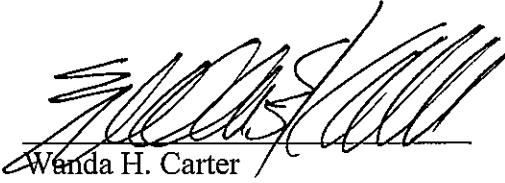
Clearly, there was confusion here. Somewhere between counsel advising petitioner that he was not pleading guilty to or admitting to murder because it was an Alford plea and advising that the case was a classic voluntary manslaughter case, petitioner was under the impression that he was actually pleading guilty to voluntary manslaughter under an Alford plea where he in effect did not admit to committing murder. In order for a plea to be voluntary there must be a showing that a defendant had a full understanding of the consequences of his pleas and the charges against him. Roddy v. State, 339 S.C.29, 528 S.E.2d 418 (2000).

Also, petitioner did not understand that his guilty plea would waive his right to appeal on the merits of the unfavorable result of his suppression motion, which was denied immediately prior to his plea. Other than jurisdictional defects, constitutional claims are waived upon entering a guilty plea. Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975).

The validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternate courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25(1970). Petitioner's guilty plea entered in the case at bar was given sans an understanding of the consequences of the plea and alternate courses of action.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this petition be granted and full briefing allowed 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 12th day of August, 2020.

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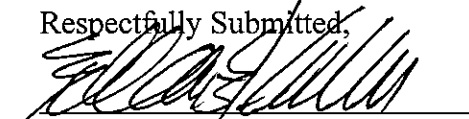
RESPONDENT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Thomas Jeffrey Stewart 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 Brooks P. Goldsmith, which was held on August 21, 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 Thomas Jeffrey Stewart.

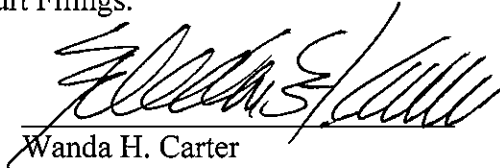
Respectfully Submitted,

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of August, 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."



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