

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

JAMAAD DREQWAN THOMAS,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

ORIGINAL

RECEIVED
NOV 19 2018
S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2018-000196

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

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR judge erred in denying petitioner’s allegation that his plea was not given voluntarily because counsel failed to reveal all of the state’s evidence against him and therefore his decision to plead guilty was not an informed decision.3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that his plea was not given voluntarily because counsel failed to reveal all of the state's evidence against him and therefore his decision to plead guilty was not an informed decision.

STATEMENT

Petitioner Jamaad Dreqwan Thomas pled guilty to voluntary manslaughter during the April 2014 term of the Florence County General Sessions Court before Judge D. Craig Brown, and was sentenced to imprisonment for a period of twenty-eight years. App. 1-47. Joshua Bailey represented petitioner at the plea proceeding and Assistant Solicitor Ed Clements appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On March 9, 2015, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 49-55. The respondent filed a return dated January 19, 2017, requesting that a hearing be held in the case. Ap. 56-62.

A PCR hearing was convened on August 31, 2017, at the Florence County Courthouse before Judge Thomas A. Russo. App. 64-101. Petitioner was present at the hearing and represented by Johnathan Waller and Assistant Attorney General Lindsey A. McCallister appeared on behalf of the state.

On January 22, 2017, Judge Russo issued an Order of Dismissal denying and dismissing petitioner's allegations raised in the PCR action. App. 103-112. Petitioner appealed Judge Russo's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that his plea was not given voluntarily because counsel failed to reveal all of the state's evidence against him and therefore his decision to plead guilty was not an informed decision.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, witnesses were set to testify that petitioner rode up on a bicycle to the house of the deceased and that others rode up on bicycles to the house also, but that it was the petitioner who shot the deceased. App. 13, l. 7 – p. 15, l. 25.

During the PCR hearing, petitioner complained that trial counsel did not make all of the statements made by potential witnesses in the case available to him. App. 67, l. 9 – p. 76, l. 20.

Trial counsel testified at the PCR hearing and explained that there were fifty witnesses subpoenaed by the state, and thirteen audio/video state's exhibits in existence (the majority of which petitioner did not view), and that petitioner only saw transcripts of three or four of some of the audios and videos; but counsel added that he reviewed the contents of the audio/video exhibits with petitioner. App. 82, l. 5- p. 84, l. 20; App. 88, l. 6-9; App. 89, l. 22- p.90, l. 4; App. 92, l. 17 p. 94, l. 23.

Petitioner testified at the PCR hearing and stated that there were "a lot of statements [that he had not] even seen including a CD disk containing statements/interviews," and that he had not seen any of the audio/visual exhibits in his case. App. 69, l. 8-p. 71, l. 3; App. 73, l. 11- p. 75, l.

5. Petitioner stated as follows:

Q. But you hadn't seen any of the evidence against you?

A. I ain't seen no evidence. Especially, the main three that led to my arrest , including my co-defendants. I never seen those.

Q. Have you seen some of the stuff now since you been in the department of corrections?

A. No, sir.

Q. You still haven't seen it?

A. No, sir.

Q. You ever asked Mr. Bailey for a copy of your file?

A. Talking about other statements?

Q. Yes, sir.

A. Yes, sir. I had wrote him one time.

Q. Okay. Did he ever send you a copy?

A. No, sir.

Q. Okay. If you'd seen some of those statements or all of the statements really, would that have ---

A. I could have made a better decision of whether to pled guilty or not.

Q. Okay. So ---

A. I ain't want to go to trial in a blind with things I ain't never seen.

Q. Okay. So you couldn't make a decision because you hadn't seen any of the statements?

A. Yes, sir.

Q. Okay. If you had seen them, would you have gone to trial?

A. Depends on what they said in the statement. App. 75, l. 2- p. 76, l. 4.

The PCR judge ruled that counsel's assistance was not ineffective with respect to the statements because "[petitioner] was aware [of] witness[es'] statements he had not seen when he entered his guilty plea and [that] the plea waived his right to challenge those statements. App.

110.

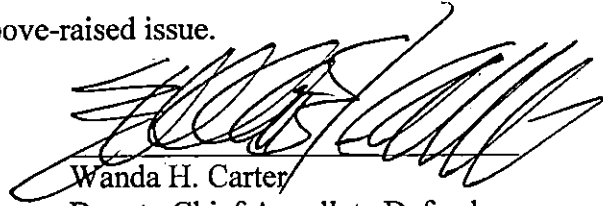
The prosecution must prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979). Here, petitioner could not make an informed decision about whether he should choose a trial by jury and require proof beyond a reasonable doubt or plead guilty because he was not privy to all of the state's evidence, particularly with respect to all audios and videos that existed in the case. Therefore, petitioner's pleas were not given voluntarily in the case. The test to determine the validity of a guilty plea is if it represents an intelligent choice among the alternative causes of action open to the defendant. Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011); North Carolina v. Alford, 400 U.S. 25 (1970).

Here, petitioner's pleas were submitted without a review of all of the state's evidence against him. Counsel erred in failing to arrange for petitioner to view all of the videos/audios and transcripts before he decided to plead guilty to the offense charged. Counsel stated that he advised petitioner to plead guilty (App. 86, l. 4-7) and petitioner testified that counsel advised that it was best to take the plea (App. 74, l. 9-10), but petitioner's decision to plead guilty was not an informed decision. A defendant who enters a plea on the advice of counsel may attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there was a reasonable probability that but for counsel's error, the defendant would not have pled guilty and would have insisted on a trial. Holden v. State, *supra*, citing to Rolen v. State, 384 S.C. 409, 683 S.E.2d 47 (2009).

Counsel's omission in not allowing petitioner an opportunity to review all of the state's evidence against him in this regard constituted ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution (See Hill v. Lockhart, 484 U.S. 52 (1985)), such that but for the error, a reasonable probability exists that petitioner would have opted for a trial by jury and not pled guilty as charged.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

JAMAAD-DREQWAN THOMAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

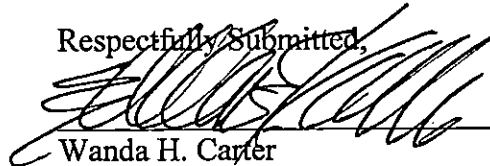
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamaad Dreqwan Thomas 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 August 31, 2017, 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 Jamaad Dreqwan Thomas.

Respectfully Submitted,

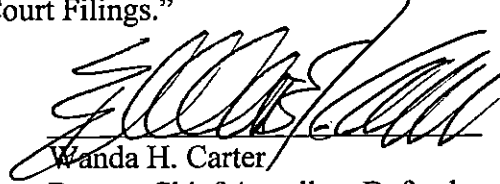


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of November, 2018.

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."



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

This 19th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

JAMAAD DREQWAN THOMAS,

PETITIONER

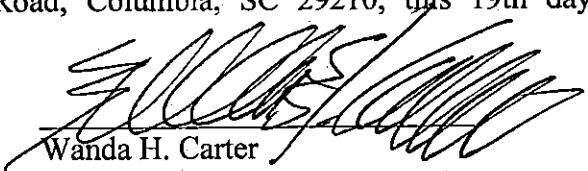
V.

STATE OF SOUTH CAROLINA,

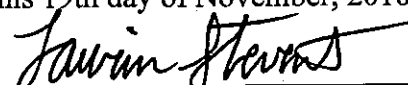
RESPONDENT

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 Lindsey McCallister, 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 Jamaad Dreqwan Thomas, #359532, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of November, 2018.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of November, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.