

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 04 2020

Certiorari to Georgetown County

S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

JOSEPH SKINNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000559

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 meet and consult sufficiently with petitioner before his plea proceeding commenced.

STATEMENT

Petitioner Joseph Skinner pled guilty to first degree burglary during the July 2017 term of the Georgetown County General Sessions Court before Judge Benjamin H. Culbertson and was sentenced to imprisonment for a period of seventeen years. Wyn Bessent represented petitioner at the plea proceeding and Assistant Solicitor Richard D. Todd appeared on behalf of the state. App. 1-25. Petitioner did not appeal his conviction or sentence.

On December 11, 2017, petitioner filed a PCR application with the Georgetown County Office of the Clerk of Court. App. 27-33. The respondent filed a Return dated February 9, 2018. App. 34-41.

A PCR hearing was convened on November 12, 2019, at the Georgetown County Courthouse before Judge George M. McFadden, Junior. Petitioner was present at the PCR hearing and represented by Steven W. Fowler, Esquire, and Assistant Attorney Johnny James appeared on behalf of the state. App. 42-105.

On January 28, 2020, Judge McFadden issued an Order of Dismissal in the case. App. 107-123. Petitioner appealed the Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to meet and consult sufficiently with petitioner before his plea proceeding commenced.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, on September 3, 2016, petitioner was found at a Georgetown County subdivision residence inside an attached pool room. App.19, 1.7-p.21, 1.7.

During the PCR hearing held in the case, petitioner testified that trial counsel never had contact with him before the plea and described the legal contact with counsel as minimal to “no” contact for six to ten months. App. 74, 1.15-p. 75, 1.3; App.44, lines 9-20. Petitioner stated he had no clue as to what was going on in his case. App. 74, lines 21-22.

Trial counsel testified at the PCR hearing and explained that she met with petitioner with petitioner “probably half a dozen” times. App. 88, 1.19-p. 89, 1.7.

The PCR judge ruled that petitioner did not establish any ineffectiveness by counsel that would require a grant of post-conviction relief in the case. App. 107-123.

Clearly, trial counsel failed to meet properly with petitioner during the early months of her representation of him, which constituted ineffective assistance of counsel in violation of the right to competent counsel in a criminal case under the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). Compare Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991), where the Court reversed when the defendant, who pled guilty to 29 indictments involving various counts of grand larceny, burglary, and petit larceny, only spoke with his court appointed attorney three times for a total of less than thirty minutes. In Dover, counsel's initial interview lasted five to ten minutes, the second meeting was a handshake and a greeting, and the third meeting was on the day the pleas were entered in the case. Likewise, in the case at bar, trial counsel could not have adequately

prepared for petitioner's case with such few meetings and consultations with him in the beginning of the case. As a result, it would have been difficult to assess the case and develop defenses on petitioner's behalf; and but for counsel's deficient representation in this case, a reasonable probability exists that petitioner's plea proceeding might have ended differently or he would have elected to exercise his right to a trial on the charge against him.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the above-raised issue.

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

ATTORNEY FOR PETITIONER

This 4th day of December, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Skinner 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 George M. McFaddin, which was held on November 12, 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 Joseph Skinner.

Respectfully Submitted,

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

This 4th day of December, 2020.

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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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Deputy Chief Appellate Defender

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This 4th day of December, 2020.