

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Feb 12 2021**

**S.C. SUPREME COURT**

\_\_\_\_\_  
Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge  
\_\_\_\_\_

RUSTY T. EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000946  
\_\_\_\_\_

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 explain fully how the sentence for his petty larceny conviction was enhanced due to prior property convictions.

## STATEMENT

Petitioner Rusty T. Evans pled guilty to petty larceny (third or subsequent offense) during the October, 2018 term of the Florence County General Sessions Court before Judge Thomas A. Russo, who sentenced petitioner to a prison term of seven years per the state's recommended cap. App-1-15. Elizabeth Neyle represented petitioner at the plea proceeding and Assistant Solicitor Angel Daniels appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On August 5, 2019, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 17-25. A PCR hearing was convened on December 19, 2019, at the Florence County Courthouse before Judge D. Craig Brown. App. 33-51. Petitioner was present at the hearing and represented by Jonathan Waller, and Assistant Attorney General Samuel Key appeared on behalf of the state.

On June 19, 2020, Judge Brown filed an Order of Dismissal in the case therein denying petitioner's PCR allegations. Petitioner appealed. This petition follows.

## ARGUMENT

Trial counsel erred in failing to explain fully how the sentence for his petty larceny conviction was enhanced due to prior property convictions.

The state alleged that petitioner removed a four-wheeler from the residence of a deceased man who lived in Florence County between January 11, 2018 and February 20, 2018. App. 12, lines 1-11. The state added petitioner's three prior (2007) property convictions for breach of trust to elevate the instant case to a third or subsequent property offense, which resulted in enhanced sentencing. App. 13, lines 5-8.

During the PCR hearing held in the case, petitioner disputed the fact that he had prior property convictions and alleged that trial counsel was ineffective in failing to explain sentencing consequences to him. Petitioner testified at the hearing and explained that he and counsel did not discuss his prior property convictions as they related to the enhanced sentencing, and that he did not consider the breach of trust offenses for which he was arrested as property crimes, and that he was not actually convicted of the breach of trust offenses that resulted in his arrests, and furthermore, that the prior breach of trust charges were not applicable since those charges originated in different counties (Georgetown and Williamsburg) rather than in Florence County where he plead guilty in the instant case. App. 39, 1.4-p.44, 1.21. Trial counsel testified that she explained that a third or subsequent property crime meant enhanced sentencing and that breach of trust was a property crime. App. 46, 1.6-p.48, 1.25.

Although counsel's position was that she explained the property crime enhancement rule and how it was applicable to his case; apparently it was not explained fully and adequately because petitioner did not understand the impact of his prior property convictions or the applicability of his prior property convictions with respect to sentencing in the instant case.

Petitioner did not believe that he was convicted of the prior breach of trust offenses in question, and he also did not understand that a breach of trust offense was a property crime, and finally, he did not understand the applicability of the prior property convictions to his case despite that fact that they occurred in different counties.

The PCR judge ruled that petitioner failed to prove that counsel misadvised him regarding the property charge and enhancement consequences. App. 58.

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); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain to petitioner that his larceny offense would result in an enhanced sentence due to his prior property convictions violated petitioner's right to competent legal representation by counsel at his plea proceeding because petitioner plead guilty without an understanding of the sentencing consequences in his 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 counsel's error in this regard, a reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury in the case.

**CONCLUSION**

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

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

ATTORNEY FOR PETITIONER

This 12th day of February, 2021.

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Counsel for Rusty Timmy Evans 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 D. Craig Brown, which was held on December 19, 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 Rusty Timmy Evans.

Respectfully Submitted,

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

This 12th day of February, 2021.

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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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This 12th day of February, 2021.