

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Larry B. Hyman, Circuit Court Judge

WALLACE GLOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001987

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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Trial counsel erred in failing to advise the plea judge at sentencing
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ISSUE PRESENTED

Trial counsel erred in failing to advise the plea judge at sentencing that per the 2010 amendment to S.C. Code Ann 44-53-375, a distribution of crack cocaine (third offense) conviction now qualifies as a parole eligible offense and a suspendable offense.

STATEMENT

Petitioner Wallace Glover pled guilty to distribution of crack cocaine, third offense, during the March 2017 term of the Aiken County General Sessions Court before Judge Doyet A. Early, III, and was sentenced to imprisonment for a period of ten years. Attorney Grant Gibbons represented petitioner and Assistant Solicitor Elizabeth Young appeared on behalf of the state. App. 1-15. Petitioner did not enjoy the benefit of a direct appeal in the case.

On September 5, 2017, petitioner filed a PCR action alleging ineffective assistance of trial counsel in his case. App. 17-23. On July 6, 2018, the respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 24-29.

A PCR hearing was convened on August 27, 2018, at the Aiken County Courthouse before Judge Larry B. Hyman. App. 31-73. Petitioner was present at the hearing and represented by Arthur K. Aiken, and Assistant Attorney General Julie A. Coleman appeared on behalf of the state.

On October 1, 2018, Judge Hyman issued an Order of Dismissal denying petitioner's ineffective assistance of counsel claims alleged in the case. App. 80-88. Petitioner appealed Judge Hyman's Order of Dismissal. This petition follows:

ARGUMENT

Trial counsel erred in failing to advise the plea judge at sentencing that per the 2010 amendment to S.C. Code Ann 44-53-375, a distribution of crack cocaine (third offense) conviction now qualifies as a parole eligible offense and a suspendable offense.

On February 1, 2016, an undercover narcotics officer made a controlled purchase of crack cocaine from petitioner. App. 12, 1.7- p.13, 1.11. Petitioner filed a timely PCR action attacking the sentence he received in the case.

During the plea proceeding, trial counsel apprised the plea judge regarding sentencing as follows:

THE COURT: [Is his] plea is an 85% no parole sentence?

DEFENSE COUNSEL: [I] would like to put something on the record, if I could, if I may. Your Honor, I'm going to hand up to Mr. Glover a copy of the statute, 44-53-375. At the end of B, subsection 3, which deals with third offense, there is a provision that says if all the priors are possessions, they may be eligible for parole. I told him I can't guarantee that, that's up to Corrections, but I am going to provide him with that statute and a copy of his rap sheet to take with him to deal with that on the other side. I told him I couldn't promise him anything, but that's what the law said and I was going to provide him with that today.

THE COURT: And if it's applicable to him, then it would not be an 85-percent sentence?

DEFENSE COUNSEL: Correct; that's something Corrections will need to figure out. I'm going to give him the tolls he needs to talk with them about that right here today.

THE COURT: All right. Have you also advised him this is also a serious offense and this would constitute his first strike under South Carolina's three-strike law?

DEFENSE COUNSEL: Yes, sir.

THE COURT: And have you also advised him it is a mandatory ten-year sentence?

DEFENSE COUNSEL: I have.

THE COURT: Up to 30?

DEFENSE COUNSEL: Correct. App. 4, 1.14-p.5, 1.19

Petitioner's prior record as summarized at the plea proceeding follows:

Your Honor, he has a prior record as follows: From South Carolina, 1987, carrying a pistol; 1995, possession of less than one gram of crack; 1996, armed robbery; 2009, possession of less than one gram of meth or cocaine base. And the following convictions that he received federally: in 1990, conspiracy to possess or distribute cocaine, two counts; 1994, probation violation; 1996, forgery. Those are all within the federal system App. 13, 1.17-25.

During the PCR hearing, petitioner testified that he qualified as parole eligible and that his sentence qualified as suspendable because his priors were possession convictions only, and that the no parole, 85% sentencing did not apply to him and that as a result, trial counsel in effect erred in neglecting to advise the trial judge of the same and in failing to enter a motion on the same, particularly in light of the plea judge's statement that he was **required** to sentence petitioner to a minimum of ten years. App. 39, 1.20 - p.47, 1.9; App. 50, 1.12-22; App. 52, 1.5 - p.53, 1.14. Petitioner stated that trial counsel failed also to adequately explain to him the new parole eligible and suspended sentencing rules. App. 46, 1.17-p.47, 1.14.

Trial counsel testified at the hearing and explained that petitioner was possibly parole eligible and that he laid the foundation for this by submitting a copy of the statute (S.C. Code Ann. 44-53-375) to the plea judge at the plea proceeding. App. 59, 14 - p.61, 1.20. However, the record did not reflect a sentencing request made by counsel or motion from counsel asking the plea judge for a suspended sentence for petitioner and/or a sentence reflecting his parole eligible status in the case.

The PCR judge ruled that the record did not indicate that the plea judge was unaware that petitioner's sentence could be suspended and thus counsel was not ineffective in failing to request a suspended sentence in the case, and also that counsel gave petitioner the "tools he needed to give to SCDC to become parole eligible." App. 84-88.

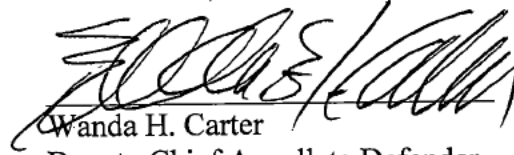
S.C. Code Ann. 44-53-375(B) (Supp. 2016) reads as follows:

For a third or subsequent offense, it says (As read):
"Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offense were for possession of a controlled substance, pursuant to Subsection (A) may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good-conduct credits,"

In 2010, the legislature adopted the Omnibus Crime Reduction and Sentencing Reform Act of 2010, Act. No. 273, 2010 S.C. Acts 1937, which altered the definition of a no parole offense as codified in 44-53-375 (B), which allowed petitioner's instant conviction to be treated as a parole offense and a suspendable offense since petitioner's priors were for possession only, rather than be subjected to the no parole, unsuspendable, and ten-year required sentencing rules that the plea judge labored under at the sentencing phase of the plea proceeding. See Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (S.C. Ct. App. 2016). Therefore, counsel's error in failing to enter a motion for the plea judge to sentence petitioner under S.C. Code Ann. 44-53-375 (B) as amended constituted ineffective legal assistance in violation of the Sixth Amendment. See Hill v. Lockhart, 474 U.S. 52 (1985). Also, but for the error, a reasonable probability exists that the sentence petitioner received in the case would have been different.

CONCLUSION

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

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of July, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Larry B. Hyman, Circuit Court Judge

WALLACE GLOVER,

PETITIONER

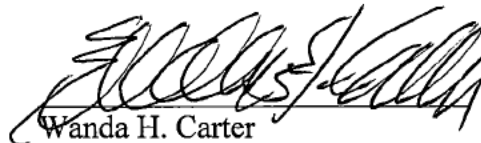
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

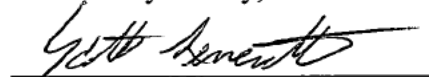
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Wallace Glover, #231429, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 3rd day of July, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.