

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County

J. Michael Baxley, Circuit Court Judge

S.C. Supreme Court

MARQUES ANTHONY DURANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212964

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to advise petitioner of the expiration dates attached to the state's plea offers because this meant that petitioner pled guilty without understanding sentencing consequences in the case.

STATEMENT

Petitioner Marques Anthony Durant pled guilty to voluntary manslaughter during the January 2010 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to imprisonment for a period of twenty-two years. App. 1-18. C. Timothy Sullivan represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

Petitioner filed a PCR application and a supplemental PCR application with the Greenville County Office of the Clerk of Court on November 22, 2010, and July 11, 2012, respectively. App. 20-28. The respondent filed a return dated March 7, 2011, requesting that a hearing be held in response to petitioner's PCR applications. App. 29-32.

A PCR hearing was held on July 30, 2012, at the Greenville County Courthouse before Judge Michael J. Baxley. App. 34-76. Petitioner was present at the hearing and represented by Matthew P. Head. On August 9, 2011, Judge Baxley issued an order of dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 78-86.

Petitioner appealed Judge Baxley's order of dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to advise petitioner of the expiration dates attached to the state's plea offers because this meant that petitioner pled guilty without understanding sentencing consequences in the case.

During the plea proceeding, the solicitor apprised the trial judge of the events that led to the charges levied against petitioner in the case. According to the state's version of the facts, on the night of August 28, 2008, petitioner and co-defendant Robert Moore were present at Club Casablanca in Greenville where they ultimately became engaged in a late night brawl with Christopher Duckett, who later died from injuries sustained during the fight. App. 6, l. 9 – p. 7, l. 1.

During the PCR hearing, petitioner testified that counsel advised him that the state offered a twenty-year plea deal in the case, but yet he received a twenty-two year sentence in the case. Petitioner stated that he “would have withdrawn [his] plea” and proceeded to trial if he had known that the twenty-year plea deal was not in effect in his case. Petitioner expected a twenty-year sentence. At the very least, petitioner stated that he understood counsel's advice to mean that he would receive a sentence of no more than twenty years. 63, l. 15-p. 65, l. 16. App. 69, lines 3-5; App. 70, l. 2-7; App. 71, lines 5-23.

Trial counsel testified that the state presented two plea offers: one offer containing a twenty-two-year cap and another offer containing a twenty-year cap. Counsel explained that petitioner rejected both plea offers and chose rather to try and “talk [the sentence] down” instead. App. 47, l. 12-p. 48, l. 18.

The PCR judge ruled that petitioner failed to meet his burden of proving that counsel was ineffective with respect to issues surrounding the plea offers and the discussions and strategies in connection with the plea offers in the case. App 83-84.

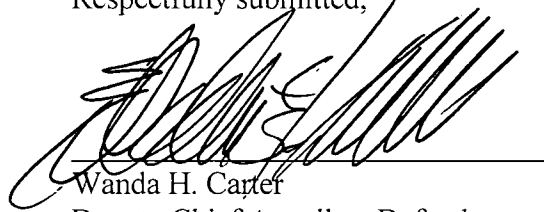
Undoubtedly, petitioner understood counsel's advice to mean that the twenty-year plea offer extended indefinitely in the case, and that it remained a viable option regardless of his acceptance or rejection of the same. Apparently, petitioner was unaware of the fact that expiration dates are attached to plea offers and mistakenly labored under the false impression that the state's twenty-year plea offer remained open indefinitely.

As a rule, the state may withdraw a plea offer if the defendant has not yet pled guilty or relied detrimentally on the state's offer. Reed v. Becka, 333 S.C. 676, 511 S.E. 2d 396 (1999). Trial counsel has a duty to discuss the state's plea offer and the time limits to respond to the plea offer. Davie v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009), citing to Harris v. State, 875 S.W. 2d 662 (Tenn. 1994). Here, counsel erred in failing to explain to petitioner that plea offers do not remain open indefinitely, but rather will expire at some point in time. Counsel's failure to explain the anatomy of a plea offer to petitioner constituted deficient legal representation in violation the Sixth and Fourteenth Amendments to the United States Constitution. See also Hill v. Lockhart, 484 U.S. 52 (1985). Counsel's ineffective assistance in this regard prejudiced petitioner because he pled guilty in ignorance of sentencing consequences; and but for counsel's error in this regard, petitioner would have accepted the twenty-year plea offer and received a lesser sentence or elected to exercise his option of a trial by jury in the case. Counsel erred in failing to fully explain sentencing consequences in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

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 17th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE

MARQUES ANTHONY DURANT,

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V.

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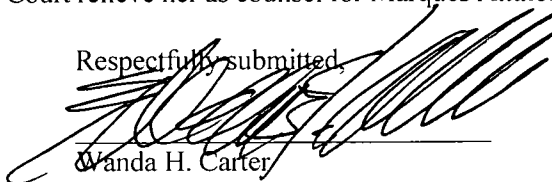
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marques Anthony Durant states:

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 records and transcript of petitioner's post-conviction relief hearing which was held on July 30, 2012. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Marques Anthony Durant.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of April, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

J. Michael Baxley, Circuit Court Judge

MARQUES ANTHONY DURANT,

PETITIONER,

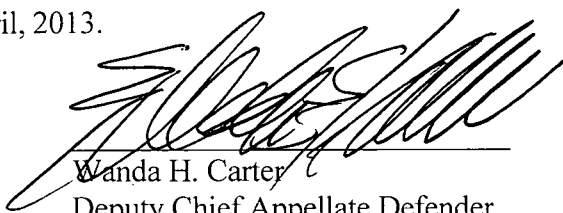
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Marques Anthony Durant, #319613, at Lee Correctional Institution this 17th day of April, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of April, 2013.



(I.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.