

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

APR 29 2013

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Certiorari to Florence County  
Thomas A. Russo, Circuit Court Judge  
\_\_\_\_\_

**S.C. Supreme Court**

TERRENCE A. BAKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213324  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel provided ineffective assistance in derogation of petitioner's Sixth Amendment rights by failing to move to withdraw petitioner's guilty plea after the sentencing judge failed to sentence petitioner within the State's recommendation?

## STATEMENT

On September 29, 2011, petitioner was indicted in Florence County for four counts of forgery. App. 49 – 51. On October 4, 2011, petitioner pled guilty to three counts of forgery before the Honorable William H. Seals, Jr. App. 1. Patricia S. Parr represented the State. App. 1. Michael Bell represented petitioner. App. 1. Judge Seals sentenced petitioner to time served on one count and three years' imprisonment on each of the other two counts to be served consecutively. App. 9, l. 23 – 10, l. 8. Petitioner did not appeal.

On February 9, 2012, petitioner filed a PCR application. App. 12 – 17. On October 16, 2012, a hearing was held before the Honorable Thomas A. Russo. App. 22. Charles T. Brooks represented petitioner. App. 22. Tyson Andrew Johnson, Sr. represented the State. App. 22. Judge Russo denied petitioner's PCR application at the hearing. App. 41, ll. 10 – 13. On October 29, 2012, an order of dismissal was filed. App. 43 – 47. This petition follows.

## ARGUMENT

Plea counsel provided ineffective assistance in derogation of petitioner's Sixth Amendment rights by failing to move to withdraw petitioner's guilty plea after the sentencing judge failed to sentence petitioner within the State's recommendation.

The State agreed to a three-year cap on defendant's sentence. App. 3, ll. 3 – 9. It also recommended restitution. App. 3, ll. 3 – 9. The State's recommendation was for concurrent sentences. App. 8, ll. 1 – 7. The trial judge departed from the State's recommendation and gave petitioner consecutive sentences. App. 10, ll. 3 – 8. Plea counsel failed to make any motion to reconsider the sentence or withdraw petitioner's guilty plea after the trial judge gave petitioner double the amount of time he was expecting. At the PCR hearing, plea counsel erroneously stated there were no grounds to object to the sentence. App. 33, l. 22 – 34, l. 8.

At the PCR hearing, petitioner testified that trial counsel should have asked the plea to be withdrawn because the judge did not accept the State's recommendation. App. 27, ll. 13 – 22. The PCR court erred in holding that plea counsel was not ineffective. App. 46. Plea counsel's performance was constitutionally deficient and prejudiced petitioner. See Strickland v. Washington, 466 U.S. 668 (1984). "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a

Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012).

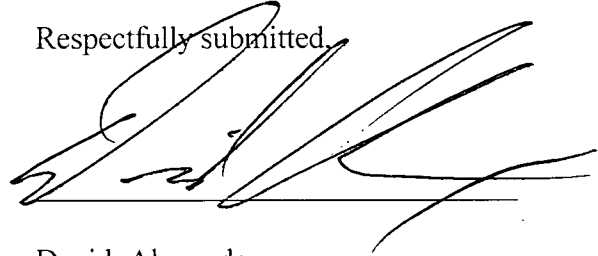
“While plea agreements are a matter of criminal jurisprudence, most courts have held they are subject to contract principles.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). The Reed court stated the general rule that a defendant’s acceptance of the offer of a plea bargain is his guilty plea. See id. at 688, 511 S.E.2d at 402. Until a defendant’s plea is accepted by the court, the plea bargain does not bind the State. See id. However, the Reed court held that the contract-based principle of a defendant’s detrimental reliance is an exception to this general rule. See id.; see also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007) (confirming the Court of Appeals’ recognition of the detrimental reliance exception).

Petitioner detrimentally relied on the State’s recommendation of three-year sentences to be served concurrently. His detrimental reliance was his plea of guilty. When petitioner did not receive the benefit of his bargain with the State, plea counsel should have realized that petitioner had grounds to withdraw his plea. Petitioner clearly testified that he wanted to withdraw his plea and be put back in the position he occupied before sentencing. App. 28, l. 7 – 30, l. 4. Under these circumstances, petitioner demonstrated both deficient performance and prejudice under Strickland and this Court should reverse.

CONCLUSION

For the foregoing reasons, the Court should grant the petition with the ultimate relief of allowing petitioner to withdraw his guilty plea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of April, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO FLORENCE COUNTY  
THOMAS A. RUSSO, CIRCUIT COURT JUDGE

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TERRENCE A. BAKER,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2012-213324

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PETITION TO BE RELIEVED AS COUNSEL

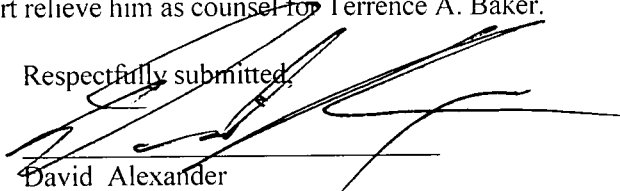
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Counsel for Terrence A. Baker states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on October 16, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Terrence A. Baker.

Respectfully submitted,



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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 29th day of April, 2013

STATE OF SOUTH CAROLINA

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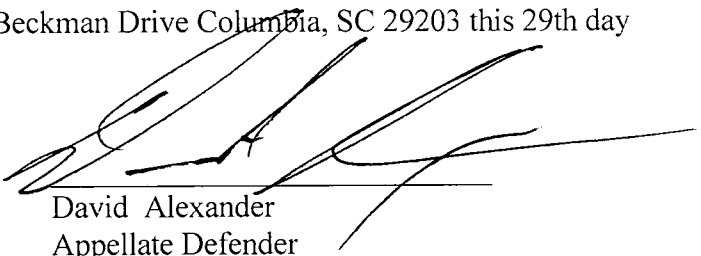
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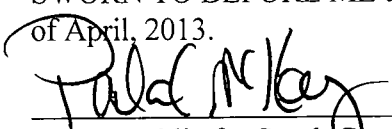
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CERTIFICATE OF SERVICE  
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Tyson Andrew Johnson, Sr., Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Terrence A. Baker, # 302932, at Manning Correctional Institution 502 Beckman Drive Columbia, SC 29203 this 29th day of April, 2013.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day  
of April, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022 .