

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable William A. McKinnon, Circuit Court Judge

GERALD LADON SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001467

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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Apr 28 2022

S.C. SUPREME COURT

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The PCR court erred in denying petitioner’s claim that his guilty plea was given involuntarily because trial counsel erroneously led him to believe that his conviction would not be final after the plea and that counsel could continue to build a case for him.3

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ISSUE PRESENTED

The PCR court erred in denying petitioner's claim that his guilty plea was given involuntarily because counsel erroneously led him to believe that his conviction would not be final after the plea and that counsel could continue to build a case for him.

STATEMENT OF FACTS

Petitioner Gerald Sanders pled guilty to second degree criminal sexual conduct with a minor during the August 2019 term of the Cherokee County General Sessions Court before Judge R. Keith Kelly and was sentenced to a negotiated sentence of sixteen years imprisonment. App. 1-11. Assistant Solicitor Matt Kendall appeared on behalf of the state at the plea proceeding, and Public Defender Richard Whelchel appeared on behalf of petitioner. Petitioner did not enjoy the benefit of a direct appeal in the case.

On May 2020, petitioner filed a PCR application with the Cherokee County Office of the Clerk of Court. App. 14-21. The respondent filed a return dated September 24, 2020, requesting that a hearing be held in response to petitioner's PCR action. App. 22-33.

A PCR hearing was held on September 15, 2021, at the Spartanburg County Courthouse before Judge William A McKinnon. App. 35-77. Petitioner was present at the PCR hearing and represented by Rodney W. Richey, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

On October 13, 2021, Judge McKinnon issued an Order of Dismissal in the case denying petitioner's PCR action. App. 79-90. Petitioner appealed. This petition follows.

ARGUMENT

The PCR court erred in denying petitioner's claim that his guilty plea was given involuntarily because counsel erroneously led him to believe that his conviction would not be final after the plea and that counsel could continue to build a case for him.

The state's allegation against petitioner was that he impregnated his granddaughter. Petitioner pled guilty and received a negotiated sixteen-year prison sentence. App. 1-11.

During the PCR hearing, petitioner testified that he "did not want to take the plea bargain" and that he "wanted to fight it," but that he pled guilty because counsel told him "he (counsel) needed more time to build a case," and that he would get more evidence later (for an appeal) and that "[they] could beat this." Tr. 70, l.12-p. 75, l.11. Trial counsel testified that petitioner understood the plea agreement. App. 60, l.12-19.

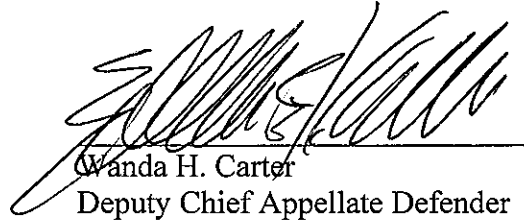
In the case at bar, there was very little likelihood of the possibility of a reversal on an appeal of petitioner's guilty plea. The plea proceeding was devoid of any objections raised by counsel to any legal matter in the case. Moreover, counsel made no mention during the plea proceeding regarding additional evidence that would have been forthcoming in the case. There was nothing in petitioner's case that would have been grounds for an appeal under Rule 203(d)(1)(B)(iv), SCACR, which states that "if the appeal is from a guilty plea, the appellant must file a written explanation showing there is an issue which can be reviewed on appeal." No such issue(s) appeared in petitioner's case. Petitioner's conviction and sentence were final. The plea was final with no additional evidence promised for re-do or do over in circuit court regarding the case. A sentence is the final judgement in a criminal case. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986).

Clearly, petitioner was coerced into pleading guilty based on false information given to him about the finality of his case once the guilty plea was entered. The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). The long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, *supra*.

In the case at bar, petitioner pled guilty involuntarily because he did not understand the finality of his guilty plea at both the circuit court level and on appeal. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily. Counsel's misadvice given to petitioner in his case violated his right to effective assistance of legal counsel guaranteed under the Sixth Amendment to the United States Constitution in a plea case, (see Hill v. Lockhart, 484 U.S. 52 (1985)), such that but for counsel's erroneous advice, petitioner would not have pled guilty.

CONCLUSION

Based on the foregoing argument, petitioner requests 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. The signature is fluid and cursive.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of April, 2022.

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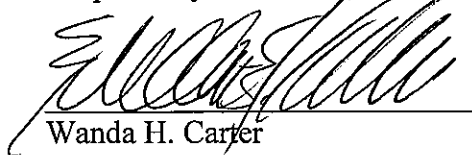
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gerald Ladon Sanders 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 record of petitioner's post-conviction relief hearing before William A. McKinnon, which was held on September 15, 2021, 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 Gerald Ladon Sanders.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of April, 2022.

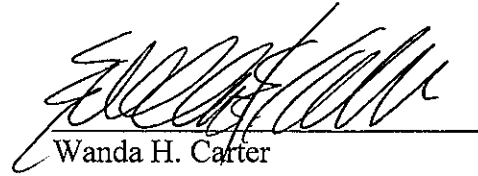
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CERTIFICATE OF COUNSEL

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."



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This 28th day of April, 2022.