

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**May 11 2022**

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

\_\_\_\_\_  
TE'QUAN PERRY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000175

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

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Deputy Chief Appellate Defender

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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR judge erred in denying petitioner’s allegation that his  
guilty pleas were given involuntarily because he was coerced into  
pleading guilty to a reduced charge. ....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL .....6

**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily because he was coerced into pleading guilty to a reduced charge.

## STATEMENT OF CASE

Petitioner Te'Quan Perry was indicted for murder and criminal conspiracy, and his case proceeded to trial during the June 2017 term of the Charleston County General Sessions Court before Judge R. Roger Couch. Petitioner was represented by Tamara Van Pala Skrobacki, Esquire, and Assistant Solicitors David Osborne and Ted Corvey appeared on behalf of the state. App. 1-1022. At mid-point through the trial, petitioner elected to enter guilty pleas to voluntary manslaughter and conspiracy pursuant to North Carolina v. Alford, 400 U.S. 25(1970). Petitioner was sentenced to imprisonment for an aggregate period of thirty years. App. 1023-1050. Petitioner did not appeal his guilty pleas or sentences.

Petitioner filed a PCR application on February 7, 2018, with the Charleston County Office of the Clerk of Court. App. 1082-1088. On April 23, 2018, the Respondent filed a Return requesting that an evidentiary hearing be held in the case. App. 1089-1093.

A PCR hearing was convened on December 9, 2021, at the Charleston County Courthouse before Judge Jennifer B. McCoy. App. 1095-1138. Petitioner was present at the hearing and represented by Tommy A. Thomas, and Assistant Attorney General Samantha J. Weidauer appeared on behalf of the state. On February 9, 2022, Judge McCoy issued an Order of Dismissal in the case. App. 1140-1155.

Petitioner appealed Judge McCoy's Order. This petition follows.

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that his guilty pleas were given involuntarily because he was coerced into pleading guilty to a reduced charge.

In this case, the state alleged that petitioner and co-defendant Devin Middleton (who was tried jointly with petitioner and also pled guilty at mid-trial) met up with Brandon Washington at an alley near Norman and Ashton Streets in Charleston, and that a gunshot was fired pursuant to a fight that commenced between them in the alley. Brandon Washington was shot during that gunfire and died thereafter.

At trial, Hugo Paredes testified that on March 23, 2015, he was stopped in his vehicle at a red light at an intersection near Aston and Norman Streets when he noticed an individual in a tan jacket in the area, and then heard a gunshot fired. Paredes stated that he reported this immediately to a police officer that he found nearby. App. 448, l.2 - p. 463, l.11.

State's witness Clayton Smalls testified that he was present at the crime scene (alley) earlier on that date, and that he talked to a male there dressed in khakis pants and a camouflaged jacket, but was unsure about whether the male possessed a gun. App. 677, l.2 - p. 89, l.16.

Note that the city of Charleston surveillance cameras captured footage leading up to the shooting.

Petitioner pled guilty to a reduced charge during the middle of the jury trial.

During the PCR hearing, petitioner testified that he was not in effect literate (9<sup>th</sup> grade education only), and that he was confused about pleading guilty even though his counsel told him it was in his best interest to do so as this option was favorable to him. App. 1115, l. 5 – p. 1119, l.11; App. 1126, l. 12 – p. 1127, l.6. Petitioner stated that he told his counsel that he was innocent and did not want to plead guilty. App. 1121, l. 14 - p. 1123, l.3. Petitioner declared that

he wanted to continue with his trial and call more witnesses, such as his mother and others, and that he didn't understand his counsel's advice regarding pleading guilty. App. 1123, l. 14 – p. 1125, l.4. Petitioner's PCR testimony follows:

Q: Now for you to have your plea, it has to be freely given. Do you think your plea was freely given?

A: No, Sir.

Q: Did you voluntarily do this (plea)?

A: No, Sir.

App. 1125, l. 23 - p. 1126, l.11.

Petitioner stated that counsel wanted him to plead guilty with no concern of what he wanted to happen in the case. App. 1131, lines 2-5.

Trial counsel testified at the PCR hearing and stated that petitioner appeared to have understood everything that was happening in his case. App. 1107, l.24 - p. 1108, l.9. Trial counsel stated that petitioner's girlfriend and mom had planned to testify that petitioner told them there was a gun under the toilet bowl in their house, which he asked them to hide; and that this is what ultimately led to a discussion about whether it was best to enter pleas that included one reduced charge. App. 1112, lines 11-15. Note that petitioner stated that his mom would not have testified in such a manner. PCR hearing Tr. 1117, l.14 - p.1118, l.1.

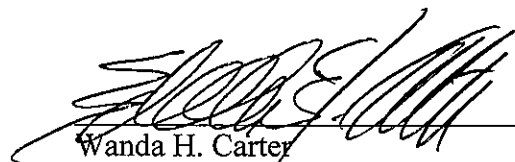
The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, 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 felt coerced by counsel into pleading guilty to the charges despite his position that he wanted to continue with his trial in the case. Clearly, petitioner desired a jury trial and he did not believe that his mother and girlfriend would have testified according to what counsel believed their testimony would have been. Per the circumstances in the instant case, petitioner did not plead guilty voluntarily, but rather was coerced into pleading guilty by counsel’s summary of pending potentially incriminating testimony that he (petitioner) believed to be untrue, which in turn meant that counsel’s misreading of the case led to petitioner’s coerced guilty pleas. This misadvice by counsel violated petitioner’s right to effective assistance from counsel as guaranteed under the Sixth Amendment to the United States Constitution (See Hill v. Lockhart, 484 U.S. 52 (1985) and Strickland v. Washington, 466 U.S. 668 (1984)), such that but for the coercion outlined above, petitioner would have continued on with his jury trial that was already in progress in the case and not interrupted the trial to enter guilty pleas.

### **CONCLUSION**

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



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of May, 2022.

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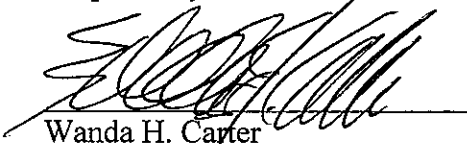
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Te'Quan Perry states:

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 Judge Jennifer B. McCoy, which was held on December 9, 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 Te'Quan Perry.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of May, 2022.

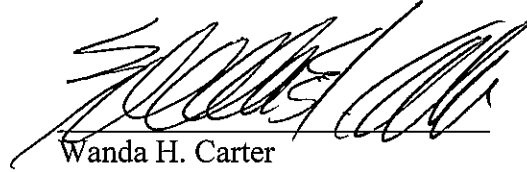
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CERTIFICATE OF COUNSEL

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 11th day of May, 2022.