

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Appeal from Greenville County
The Court of Common Pleas

The Honorable Edward W. Miller, Trial Court Judge
The Honorable Eugene C. Griffith, Jr., PCR Court Judge

Case No. 2019-CP-23-4648

Angelo Horace Taylor, #377773.....Respondent,

v.

State of South Carolina Petitioner.

NOTICE OF APPEAL

The State (“Petitioner”) appeals the order of the Honorable Eugene C. Griffith, Jr., dated August 17, 2022, and filed on September 14, 2022, granting post-conviction relief to Angelo Horace Taylor (“Respondent”), as well as Judge Griffith’s order issued on October 11, 2022, and filed on October 18, 2022, denying Petitioner’s motion to alter or amend the judgment, made pursuant to Rule 59(e), SCRPC. Petitioner received written notice of the entry of the order granting relief when it was hand-delivered to the parties by the Greenville County Clerk of Court on September 14, 2022, the same day on which it was filed. Petitioner received written notice of the entry of the order denying the motion to alter or amend the judgment on October 18, 2022,

when the Clerk of Court forwarded a filed copy of it to the parties by email. Copies of both orders on appeal are attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
S.C. Bar # 103282

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(803) 734-3737

By:


Attorneys for the Petitioner

Columbia, South Carolina
November 7, 2022

Other attorney of record:
Susannah Conyers Ross, Esquire
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(864) 242-0029
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Angelo H. Taylor, #377773)
) Applicant,)
 v.)
)
 State of South Carolina,)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2019-CP-23-4648

**ORDER GRANTING
 POST-CONVICTION RELIEF**

This matter is before me by way of Application for post-conviction relief (PCR) filed August 9, 2019. An evidentiary hearing was held March 21, 2022, via the WebEx platform. Susannah Ross represented Mr. Taylor and Assistant Attorney General Taylor Z. Smith represented the State. Testimony was presented by the Applicant and trial counsel Carlyle Steele, Esquire. Before me was the transcript of the September 18, 2018, partial trial and guilty plea, records of the South Carolina Department of Corrections, the Application, the State's Return, related documents filed at the Greenville County Clerk of Court, indictments, and sentencing sheets.

PROCEDURAL HISTORY

The Applicant was charged with attempted armed robbery (2016-GS-23-2379), murder, and possession of a weapon during the commission of a violent crime (2016-GS-23-2378) on December 5, 2015. He was indicted by the February 2018 Greenville County Grand Jury. On September 18, 2018, the Applicant proceeded to trial before the Honorable Edward W. Miller. Carlyle Steele, Esquire, represented the Applicant and Assistant Solicitor Elizabeth Major prosecuted the case. Following an *Allen* charge during jury deliberation the Applicant pled guilty to attempted armed robbery and involuntary manslaughter pursuant to *North Carolina v. Alford*.¹

¹ 400 U.S. 25 (1970)

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He was sentenced to consecutive terms of five years imprisonment for involuntary manslaughter and twenty years for attempted armed robbery. The applicant did not appeal his guilty plea.

ALLEGATIONS

The original application alleged ineffective assistance of counsel and violations of the Sixth and Fourteenth Amendments of the United States Constitution. An Amended Application added allegations of ineffective assistance of counsel for advising the applicant the attempted armed robbery was a charge that maxed out at sixty-five percent (65%) when it maxed out at eighty-five percent (85%) and Due Process violations because the plea was not knowingly and voluntarily made due to the Applicant's not understanding the maximum sentence he faced when he plead guilty.

SUMMARY OF HEARING TESTAMONY

Applicant's Testimony

The Applicant testified that Carlyle Steele represented him in his murder and attempted armed robbery trial. He said that he testified truthfully at that trial and then after the jury could not reach a verdict he took a plea deal. He admitted that he took the offer to plead guilty to involuntary manslaughter to avoid the thirty years to life sentence he could get if he was convicted of murder. He said that while the jury was sent back to deliberate for a second time the attorneys approached the judge and he was offered a plea to involuntary manslaughter and attempted armed robbery. He said he knew he faced five years on the involuntary manslaughter and up to twenty on the attempted armed robbery charge. He said Mr. Steele told him he could get probation or less than twenty on the attempted armed robbery and that he would max out at 65% on that charge. The Applicant testified that if he had known the attempted armed robbery

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was an 85% charge he would not have plead guilty and would have waited for a verdict in his trial.

Counsel's Testimony

Mr. Steele testified that he was appointed on the case and represented Mr. Taylor at trial. He said at trial there were issues of witness credibility and that Mr. Taylor testified in his own defense against advice of counsel. He said that the case was always a trial, and a plea was never considered until following an *Allen* charge after the jury had stated it could not reach a verdict for the second time. At that point the State offered to reduce the murder to involuntary manslaughter. Mr. Steele said Mr. Taylor then decided to plead guilty involuntary manslaughter and attempted armed robbery under *Alford*. Mr. Steele said that it was his normal practice to discuss maximum sentences with clients who were considering plea but Mr. Taylor had insisted on a trial so Mr. Steele could not say for certain that he discussed the minimum and maximum sentences Mr. Taylor faced on the attempted armed robbery prior to the trial. He recognized that the attempted armed robbery charge was apparently a no-parole offense but said the focus of discussion at the many meetings prior to the Applicant's trial was on trial preparation. He conceded that the timing for the plea was hurried because the jury was out. While Mr. Steele said he did not recall discussing with Mr. Taylor parole eligibility for the attempted armed robbery charge, he could not say for certain that he had not advised Applicant that he would serve 65% of his sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Strickland v. Washington established a two-prong test for evaluating claims of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The first prong of the test requires that a defendant prove his counsel's deficiency by

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demonstrating counsel's performance fell below an objective standard of reasonableness. *Bennett v. State*, 371 S.C. 198, 203, 638 S.E.2d 673, 675 (2006) (citing *Strickland*). The second part of the test requires a defendant to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*

A defendant who pleads guilty on the advice of counsel may attack the voluntariness of his plea by showing that counsel was ineffective and that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997). The Applicant testified that based on the advice of counsel he misunderstood the maximum sentence he faced believing it to be parole eligible based on erroneous advice of counsel. Mr. Steele could not recall whether or not he had advised Mr. Taylor that attempted armed robbery was a 65% sentence admitting he may have given this erroneous sentencing advice on the potential maximum sentence the Applicant faced. As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advice from counsel to be convincing.

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991); *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). While information conveyed by the plea judge

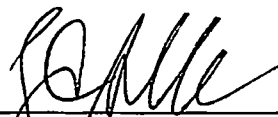
during the guilty plea hearing can cure error made by counsel, the error here was not cured by the plea colloquy as evidenced by the transcript of the Applicant's guilty plea hearing. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998); *Burnett v. State*, 352 S.C. 589, 576 S.E.2d 144 (S.C. 2003); Transcript pp. 358-9. Review of trial and guilty plea transcript fails to demonstrate to this Court that the Applicant's plea was knowingly and intelligently made.

As to the "prejudice" requirement of the *Strickland* test, the Applicant's uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea. This is the only evidence in the record on this point, and I find that it demonstrates prejudice to the Applicant. See *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (S.C. 1991). It is the finding of this Court that the Applicant demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief.

IT IS THE ORDER OF THIS COURT that the applicant's sentence and convictions be vacated and his case remanded be remanded to General Sessions.

AND IT IS SO ORDERED this 17 day of August, 2022 .

Copy mailed to
Attorney <u>General/Suamahross</u>
on <u>9 / 14 / 2022</u>



Judge Eugene C. Griffith
Seventh Judicial Circuit
Presiding Judge

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_____, South Carolina.

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IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

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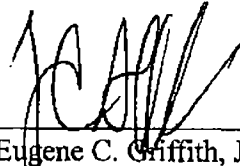
**Order Denying Respondent's Motion to Alter
or Amend the Judgment**

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200 Williams Street, Columbia, SC 29201

This matter came before the court on the Respondent's Motion to Alter or Amend the Judgment. Taylor Smith, Esquire, represents the Respondent. Susannah C. Ross, Esquire, represents the Applicant.

After careful consideration of the issues addressed with particularity in the State's Motion to Alter or Amend the Judgment, the motion is respectfully denied.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge

October 11th, 2022
Newberry, South Carolina

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