

From: Christopher E. Russell #0929
Greenville County Detention Center
20 McCree Street
Greenville S.C. 29601

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DEC 29 2022

SC SUPREME COURT

TO: THE SOUTH CAROLINA SUPREME COURT
1231 Genvais Street
Columbia S.C. 29201

RE: Appellate No 2017-020826, Lower Court NO
2016-CP-23-3282: Finding of facts and Conclusion
of law, S.C. Code Ann. Sec 17-27-80(2003) NEW
SENTENCING HEARING / Ineffective Assistance
of Counsel - Failure to convey Plea offer.

At the PCR hearing defendant learned of the
state's plea offer extended during his trial
February 13, 2013. The plea offer was (straight-up
with the mandatory minimum (10) ten years.
Trial Counsel never told defendant about the (10)
ten years imprisonment extended prior to the
jury's verdict

Trial Counsel testified at the PCR hearing,
presented (straight-up with the mandatory
minimum (10) ten years plea offer, but failed
to protect Client interest regarding this
significantly lower sentence.

As a general Rule, defense counsel has a duty to communicate formal offers from prosecution to accept a plea on terms and conditions that may be favorable to the accused, but the difference between the sentence defendant received, life without parole, and the plea offer, extended before the verdict: (10) ten years imprisonment, was proof of prejudice.

Defendant would have accepted the state of South Carolina, ~~proposed~~ (10) ten year plea offer and defendant would have benefited from the offer.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence, at the PCR hearing.

Documents in writing of the proceeding trial transcript February 13, 2013 and PCR hearing April 19, 2017, both of record in the above referenced case.

The action of sending ~~the~~ transcripts of records in the above reference case back from an Appellate Court to a lower Court, the notice for doing so: NEW SENTENCING HEARING, could not be construed as excusable neglecting the (10) ten years plea agreement extended during trial, which was lost and renegeed in process of the jury's verdict.

NEW SENTENCING HEARING, weighing evidence and substituting its own interpretation in relief of discretionary specification of a remedy for an unconstitutional criminal conviction.

Transcript of records legitimately before NEW SENTENCING HEARING facts in issues far from curing the error, as a matter of law in excluding (10) ten years extended during trial, ignoring this significantly lower sentence was ineffective, in effort to bolster a lapsed expiration (20) twenty years dated 2011 verse this NEW plea offer (10) ten years extended dated 2013: trial.

A remedy for the Sixth Amendment Constitutional Deprivation should be neutralize and tailored to the injury suffered from this Constitutional violation.

Our Supreme Court recognizing that NEW SENTENCING HEARING would not be bound by the state's original sentencing recommendation. A proper beginning point is to discuss terms and conditions that may result in a lesser sentence, a conviction on legally charges or both the end result of the criminal process would have been more favorable by reason of a plea to a equally

Charge, same crimes as Antonias Williams principal offender caught on scene RED HANDED refused to identify the second suspect.

Arraigned on all charges has a prior criminal history and could have been facing a lengthy prison term admitted that he expects to receive a benefit from ~~the~~ state in exchange for avoiding a mandatory prison term of more than three times the duration he would face in his plea court hearing.

Constitutes critical evidence of potential bias that principal offender was charge with the same crimes as Co-Conspirator implicated Christopher Russell a month later in a coerive tainted statement.

Examination of record in the above reference case reveals: Prosecution failed to disclose an alleged promise of leniency made to principal offender Antonias Williams, state extended an recommendation/Negotiation (13) thirteen years imprisonment a more favorable plea.

Supreme Court found error in testifying Co-defendant's had not yet plead guilty or reached a plea agreement with the state, no plea material disclosed to defendant during his trial.

Indicating differential treatment, a failure to treat defendant's equally both charge same crimes: criminal liability, accomplice liability, criminal intent, both punishable for a felony, both committed this unlawful act and both on one hand & all, when no reasonable distinction can be found between principal offender Antonias Williams and Co-conspirator Christopher Russell criminally responsible.

There is evidence in the record supporting this finding, other cases & excluded evidence of possible sentence or potential sentence, if convicted of same crimes as defendant's. Supreme Court concluded that lack of an agreement with state would make the potential for testifying Co-defendants bias even more likely.

In the context of plea bargaining would appear to support defendant position (10) ten years extended during his trial or (13) thirteen years conviction of the same crimes as principal offender Antonias Williams during his plea hearing, any amount of additional jail time has Sixth Amendment significance. Supreme Court finding the failure to disclose this material evidence prejudiced defendant.

Brady v. Maryland, 373 U.S. (1963), a finding of materiality of evidence is required under Brady.

The suppression by the state of evidence favorable to an accused upon request where the evidence is material, of the good faith or bad faith of the prosecution.

In view of the remedy by the circumstances in this case provide the defendant with an opportunity to admit their crimes and receive more favorable terms at sentencing meaning that a plea agreement can benefit both parties. A decision rendered in a former appeal of this case is held to be binding in an earlier decision giving negative pregnant to the violation of due process of NEW SENTENCING HEARING.

Prosecutorial discretion to bargain a favorable plea and what sentence (straight-up with the mandatory minimum (10) ten years extended during defendant trial or (13) thirteen years conviction of the same crimes as principal offender Antonias Williams during his plea hearing.

Judicial discretion what is fair under the circumstances and guided by a concern not with the fairness of bargaining, but with the fairness of conviction and determination of law.

Conclusion

Supreme Court concluded the difference in the sentence Christopher E. Russell received and the plea offer extended prior to jury's verdict was truly lost in the process of trial.

NEW SENTENCING HEARING evidence of probative value in proceeding trial transcript & record February 13, 2013 and PCR hearing transcript & record April 19, 2017.

IT IS THEREFORE ORDER:

Christopher E. Russell sentence shall be vacated and Remanded conviction to General Session Court for NEW SENTENCING HEARING.

AND IT IS SO ORDER:

this 12th day of June 2017, Honorable Perry H Gravely presiding judge convey a favorable plea offer as if defendant had accepted the (straight-up with the mandatory minimum of (10) ten years extended during total or (13) thirteen years convicted of the same crimes as Co-defendant during his plea hearing.

It is for any reason this cannot be done by coroporation that Judicial and Administers informing the right principal in support of a legal jurisdiction.

Your help concerning this written petition of a criminal judgement consisting of the

NEW SENTENCING HEARING plea bargain. will
be very grateful. I would like to thank you
in advance for your time and patience.

~~Left~~ ~~at~~ ~~all~~ ~~in~~ ~~written~~
13/ ~~Assistant~~ ~~Prosecutor~~
Christopher E. Russell
defendant

This _____ day of December 2022

Enclosure
cc: filed

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SC SUPREME COURT

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2011-GS-23-01118;

01122-01124

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

CHRISTOPHER E. RUSSELL)

DEFENDANT)

ORIGINAL

TRANSCRIPT OF RECORD

February 13, 2013,
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, Judge; and a jury.

A P P E A R A N C E S:

MARK MOYER, ESQ.
Attorney for the State

SUSANNAH ROSS, ESQ.
Attorney for the Defendant

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SC SUPREME COURT

APRIL HERRON
Official Court Reporter

* MS. ROSS: Judge, I would just say that Mr. Russell, in light of the fact that you have no ability to change the sentence here, is looking at life without parole. Mr. Russell has been offered opportunities to plead to life without parole on the table a number of times. He has consistently maintained his innocence on this case.

* THE COURT: If I'm not mistaken that was an offer that was actually made today during this trial, or am I incorrect on that?

* MS. ROSS: That was true, that was an offer that was extended today during trial.

THE COURT: Mr. Moyer, as to the burglary, armed robbery and kidnapping, those are all LWOP. Would conspiracy be LWOP as well?

MR. MOYER: The conspiracy would not, it would be five years. If it please the Court, I have documentation I'd like to enter into the record regarding life without parole.

THE COURT: Absolutely, please.

MR. MOYER: I have the Notice of Intent to Seek Life Without Parole document that was served on the defendant and his attorney on December the 18th of 2011, based on his previous convictions. He has seven previous convictions for burglary, second degree. Which are all

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-000826
Lower Court No. 2016-CP-23-3282

Christopher Eric Russell, Respondent,

v.

State of South Carolina, Petitioner.

APPENDIX

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General
SC Bar No. 79054
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

WANDA H. CARTER
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201
(803) 734-1330

ATTORNEY FOR RESPONDENT

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1 Q. And -- okay. So you have nothing in your file. My
2 question is, I guess, was he adamant that he was, I mean,
3 what's his position in regards to pleaing on this case?

4 A. His position was always that he was innocent and he did
5 not want to plead guilty.

6 Q. Okay. Did he say -- did you have any discussions with
7 him, well, I'll plead guilty if I can get something less
8 than life without parole?

* 9 A. I don't recall that independently. It's quite possible
10 often that I'll hear probation or something like that, but
11 he was not accepting the twenty years or even a straight-up
*12 with the mandatory minimum of ten.

13 Q. Right. I mean, because at this point in time when all
14 this is going on from March 29th of 2011 to December 8th
15 life without parole is not on the table yet?

16 A. Uh-uh (negative). No.

17 Q. And y'all -- because he hadn't been served with it.

18 A. Right.

19 Q. It's a potential that's out there. Was he -- do you
20 remember advising him of that and say, hey, look, if you
21 don't ---

22 A. Yes.

23 Q. --- turn -- if you turn these down, you're going to get
24 served with life without parole?

25 A. Yes, I would have -- I was well aware of his record and

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THE SOUTH CAROLINA SUPREME COURT
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LEGAL MAIL

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