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JAN 09 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

certiorari to Newberry County  
Honorable R. Kirk Griffin, Circuit Court Judge

Bennie D. Mitchell

Petitioner

vs

The State of South Carolina

Respondent

#2022-000258

PETITIONER'S PRO-SE BRIEF

Bennie Mitchell  
#278318-MacD C.I.  
B2-D2A 1516 Old Gilliard Rd.  
Ridgeville, SC 29472

Appellate Defender  
Joanna K. Delany

## ARGUMENT

the PCR court erred in finding counsel provided effective representation where Petitioner rejected a favorable plea offer based on counsel's erroneous advise that counsel had valid SOUND defenses/strategies for a trial

First, I argue that the PCR court erred in citing Missouri v Frye 132 S Ct 1399 when I argued, that counsel pressured me, causing me to reject, ERROR P.C.R. Tr. App p 696 L 25 about calling me I, Sol. McDaniel's plea offer to 15 years. Where my argument was on point with Latter v Cooper 132 S Ct 1376 - NOT that counsel did not relay - conveying a 15 year plea offer to me as the court ruled SEE: App p 752 - p 754 App p 696 L 21 - p 709 - L 7; App p 735 - p 738 - L 13

I also proved PREJUDICE by arguing and showing how counsel caused me to reject the Sol. plea offer. By counsel stating, that he had a Sup. court case "Herring case" that says the police can't

even give an opinion on who they think who's in the image. Counsel also stated, that he was going to raise mistaken identity, third party guilt. And, that he was going to get experts to do an overlay with the image and my booking photo. And since the image was so blurry, once the experts can't say who's in the image, nor will the jury.

But, during trial counsel did not do an overlay. He just put a pigs head over this image

SEE: [ERROR P.C.R. Tr. App. p 707 L 25], SEE:

App p 200 L 14 - p 210 - L 25.

Moreover, counsel even AGREED SEE [ERROR PCR Tr. App p 702 L 23], as to how Lt. McClinton could say that the person in the image was me that he .....

Knew me from living in Newberry for over  
20 years SEE App p 19 - p 22 - L16; App 29 -  
p 44. When in fact counsel knew this  
wasn't true SEE App p 20 L13 - L15

And, this AGREEMENT by counsel KILLED  
my whole case SEE: App p 22 L7 - L17.  
Which counsel should have allowed  
me to take the Sol. plea offer right then,  
as I asked. Or took it to the Sol.

Unbeknownst to me at the time the Sol  
plea offer to 15 years was more favorable  
than counsel baseless and prejudicial  
defense(s)/strategy(ies) (which all  
were woefully misplaced SEE Neal v  
Bigger; Rule 403; 701; 704 and his  
Herring case App p 29 - p 46; Mistaken  
identity App p 72 L1 - L5; p 73 L17 - L22 and  
p 75 L17 - L18; Third party guilt App p 78 - p 82

which was clearly unsupported by any facts, rules or laws upon my behalf. Even, after the trial judge had cited two (2) Fed. cases for counsel guidance SEE: App p. 47 - p 48

Here, the sol. pointed this out in his closing remarks. that counsel failed to subject the state case to a meaningful adversarial testing SEE: App. p 215 - p 217 - L8 Also see DR Adley App. p. 172 - p 185 and Donald Kneece App. p 200 - p 210 testimonies.

Which the court of Appeals affirmed, that all counsel points/arguments was misplaced SEE: App p 296 - p 300 Also see the Sup. court ruling App p 355.

Although, trial counsel testified at the

PCR hearing that I wanted to go to trial to make the state prove their case. Here, counsel never testified what was his discussion with me, regarding the facts of the case and developing any valid sound trial defense(s) (strategies) Or my exposure/potential sentence I'll get if convicted at trial.

Where I creditably argued and proved PREJUDICE per the 6<sup>th</sup> and 14<sup>th</sup> Amend. of the U.S. and S.C. Const. that I had admitted from day one, that I was the person in the image. And that I was guilty and would have accepted the Sol. 15 year plea offer. But rejected said plea due to counsel big talk about factual

innocent (blurr image) the theering case  
mistaken identity, third party guilty and  
the experts doing an overlay...

And, I even tried to accept the 15 year  
plea offer, after counsel's pre-trial  
matters during my second trial....  
But, counsel said that it was too  
late. we're in the start of the second trial....  
Here counsel never testified as to why  
my plea rejections wasn't put on record (1)

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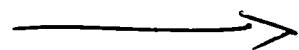
(1) Nor was there any testimony from Sol.  
McDaniel as to why my plea rejections  
wasn't placed on the record or even  
brought to him.

where counsel testified, that he has been practicing law for 20 years - knowing that a defendant could come back later upon a PCR claiming counsel caused him/her to reject a plea offer (2)

there, under the proper standard of review  
Even if this court deems that the PCR court used the correct case laws and review I still showed PREJUDICE and good creditably, that I would have accepted the Sol. 15 year plea offer. Which was more

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(2) Given my creditably and prejudicial arguments, this court should also consider trial counsel testimony as to how Lt. McClarkin felt about me SEE:  
App p 723 - p 724 Made me wonder for the first time at the PCR hearing. Did trial



favorable than rejecting this plea offer per  
counsel advice. And, going to trial  
facing a life sentence - receiving 20  
years - 5 years more than the plea offer.

Here, I argue, that it is a reasonable  
probability that but for my trial counsel  
unprofessional errors, I would have  
surely accepted the 15 years.

Thus, the result of my trial would have  
been different.

Where there is no reason (s) appears in the  
record, that would have caused the state

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Counsel adopt Lt. McClurkin's very same feelings  
to hoodwink me into rejecting the Sol. plea offer.  
to aid the state to obtain a conviction at a  
trial, knowing I had a DEFENSELESS case  
SEE: Court of Appeals ruling App 293 - p 303.

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to withdraw the plea offer or the court to  
refuse to accept it SEE: Latter 566 U.S.  
at 164.

Trial counsel further testified at the PCR  
hearing - what I [he] heard him [me] say  
is that had he [i] know that he [i]  
would've been found guilty he [i] would've  
taken the plea offer.  
And, he [counsel] had no objection to the  
State given me the 15 years at this time  
SEE: App 719

Although, my argument was that counsel  
caused me to reject the 15 year plea offer,  
upon his baseless, invalid, unsound trial  
defense(s) / strategy which PREJUDICED me,  
leading to a more severe sentence at trial

## CONCLUSION

Based on the foregoing arguments this court should deny Appellate Defender, Delany to be relieved as my counsel. And, ordered to fully brief all her and or my arguments in full. And or vacate the PCR court ruling and remand the matter for a re-sentencing hearing on the Sol. 15 year plea offer. And or grant me any further relief this court deems just and fair.

DATE: Jan 5, 23

Respectfully submitted  
Bernie Mitchell

CERTIFICATE OF SERVICE

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U.S. SUPREME COURT

I Bennie Mitchell do hereby declare under penalty of perjury that I have served my pro-se brief upon the below Hon. Sup. Ct. Clerk. By placing the above said into the Mac Dougall C.I. mail room on this 5<sup>th</sup> day of Jan 2023 to be placed in the U.S. mail w/ postage prepaid.

Bennie Mitchell