

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Feb 01 2023

S.C. SUPREME COURT

Certiorari to Cherokee County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CECIL BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001052

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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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to object to petitioner’s drug sentence, or in the alternate to move for the withdrawal of his guilty pleas, because the fifteen-year agreed upon drug sentence was not honored in the case, and because the plea judge erred in considering an improper factor that led to the issuance of a greater sentence overall for petitioner 3

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ISSUE PRESENTED

Trial counsel erred in failing to object to petitioner's drug sentence, or in the alternate to move for the withdrawal of his guilty pleas, because the fifteen-year agreed upon drug sentence was not honored in the case, and because the plea judge erred in considering an improper factor that led to the issuance of a greater sentence overall for petitioner.

STATEMENT

Petitioner Cecil E. Blackwell pled guilty to trafficking in methamphetamine and failure to stop for a blue light on October 10, 2018, at the Cherokee County General Sessions Court before Judge R. Keith Kelly.¹ Petitioner's plea resolution included a recommended fifteen-year sentence on a lesser drug charge (trafficking in ten to twenty-eight grams, 2nd offense) and a recommended sentence of five years concurrent on the failure to stop for a blue light charge (also 2nd offense) App. 36-45.

Petitioner's sentencing was deferred for seven days until October 17, 2018, but petitioner failed to appear for sentencing as scheduled. In January, 2019, petitioner was apprehended by law enforcement and a sentencing hearing was convened on February 4, 2019, before Judge Kelly at the Cherokee County Courthouse. Petitioner was sentenced to an aggregate twenty-year prison term. App. 47-53. Petitioner was represented by John Rekenbeil at the guilty plea proceeding and sentencing hearing held in the case, and Assistant Solicitor Kimberly L. Leskanic appeared on behalf of the state during both proceedings. Petitioner did not appeal his convictions or sentences.

On January 10, 2020, petitioner filed a PCR application with the Cherokee County Office of the Clerk of Court. App. 55-61. The respondent filed a return on June 17, 2020. App. 79-89. Amended PCR Applications were filed on June 5, 2020, and August 28, 2020. App. 62-78; App 91-108. A PCR hearing was convened on April 18, 2022, at the Spartanburg County Courthouse before Judge G.D. Morgan. App.116-164. Petitioner was present at the PCR hearing and represented by Attorney Rodney Richey, and Assistant Attorney General Chelsey Marto appeared at the hearing on behalf of the state.

¹ Prior to the guilty plea, a pre-trial hearing was held on petitioner's chain of custody complaint as a precursor to the question of whether a suppression of the drug evidence was a meritorious matter in the case. App. 1-16.

On July 14, 2022, Judge Morgan issued an Order of Dismissal denying petitioner's PCR allegations of ineffective assistance of trial counsel in the case. App. 165-175. Petitioner appealed Judge Morgan's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to petitioner's drug sentence, or in the alternate to move for the withdrawal of his guilty pleas, because the fifteen-year agreed upon drug sentence was not honored in the case, and because the plea judge erred in considering an improper factor that led to the issuance of a greater sentence overall for petitioner.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On July 11, 2017, Officers Ronnie Painter, Brandon Dorsett, Justin Wings, and Millie Agrawal encountered petitioner during a routine patrol in Cherokee County and recognized him from a prior incident. As petitioner rode away on his motorcycle, he ran through a red light and the police officers activated the patrol car blue lights. As the officers followed petitioner, they observed petitioner reach at his waistband, pull out a wallet pouch and throw it under a white van parked in the area. The police recovered the pouch and found methamphetamine inside. Ultimately, petitioner was arrested in connection with the drugs. App. 41, 19 – p. 42, l. 13.

At the plea proceeding, a sentencing hearing was scheduled for a subsequent date (seven days later), but petitioner missed the sentencing hearing date by a little over three months. At the sentencing hearing, the sentencing judge made the following comments regarding the original missed sentencing date:

The Court: No sir, I am not allowing you to withdraw the plea. There is no reason to allow you to withdraw the plea, but you were given a seven-day period, which is most unusual. I did that as a courtesy to your lawyer and you didn't come back. If there had been some issues, you could have come back in that seven-day period. App. 53, lines 5-10.

During the PCR hearing held in the case, petitioner testified that he believed he received a twenty-year drug sentence instead of the fifteen-year agreed upon drug sentence because he did not appear at his first scheduled sentencing hearing set for a week after his guilty plea proceeding. App. 132, lines 8-16; App. 137, lines 7-10. Instead, the sentencing hearing occurred approximately three and a half months after the scheduled date

Trial counsel testified at the PCR hearing and explained that petitioner received a sentence greater than the fifteen-year drug sentence agreed upon because he in effect absconded and did not return for his scheduled hearing that was set to occur a week after the plea proceeding. App. 150, l. 16 – p. 151, l. 7.

The PCR judge ruled that the fifteen-year drug sentence was a recommendation rather than a negotiated sentence reached through a plea bargain, and that as a result no ineffective assistance of trial counsel occurred in the case. App. 165-175.

In State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976), the Court held that a sentencing judge must not consider prejudicial and improper matters at sentencing. Also, a sentencing judge must not allow arbitrary, untenable, or unreasonable reasons to enter in during sentencing in a case. Here, it appeared as though the plea judge abused his discretion by in effect punishing petitioner with an extra five years added to the agreed upon drug sentence because his sentencing was delayed for a little over three months. The sentencing delay was an improper sentencing matter that should not have factored into the drug sentence issued to petitioner, which ultimately increased his prison time by five years beyond the drug sentencing agreement reached at the plea proceeding. Trial counsel erred in failing to object to petitioner's drug sentence because a little over three months sentencing delay did not justify an extra five years added to the drug sentence.

In addition, regardless of whether the classification of the fifteen-year agreed upon drug sentence was a recommendation or negotiated sentence, the drug sentencing matter was still an agreement, and the inducement and impetus behind petitioner's decision to plead guilty in the case. Therefore, counsel erred in not only failing to object to petitioner's greater twenty-year drug sentence as improper, a sentence that was not agreed upon, but also in not moving for the withdrawal of petitioner's guilty pleas at the sentencing hearing. Note that petitioner stated at the sentencing proceeding that he wanted to withdraw his pleas, and petitioner confirmed this via his testimony at the PCR hearing by reminding all that he requested leave to withdraw his guilty pleas at the sentencing hearing. App. 124, lines 7- p. 125, l. 24.

Petitioner relied on the agreed upon sentencing as inducement to plead guilty to the state's charges. Specific performance is the remedy used where one has been denied a constitutionally-guaranteed right. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), citing to Turner v. Tennessee 858 F.2d 1201 (6th Cir. 1988) and United States v. Morrison 449 U.S. 361 (1981). Compare Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003), the case was remanded for specific performance on the plea agreement where counsel was ineffective in failing to ensure that the state adhered to the original plea agreement in order to grant the defendant the benefit of the bargain. In Sprouse, supra, the plea agreement breach was the solicitor's classification of the defendant's second-degree burglary offense as violent because this deviated from the plea agreement. See also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the case was remanded for specific performance where counsel was held ineffective in failing to have a plea agreement enforced because the defendant relied to his detriment on the promised plea bargain. In Custodio, supra, there was a breach of a plea agreement that included a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was

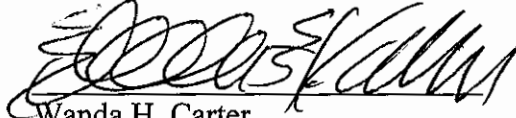
reliance on the plea bargain by the defendant when he pled guilty in the case. In Jordan v. State, 247 S.C. 52, 374 S.E.2d 683 (1988), the Court remanded the case for specific performance on the plea agreement where the solicitor did not fulfill his promise not to oppose probation at the plea proceeding according to the plea agreement. See reversals in Smith v. State, 407 S.E.2d 270, 754 S.E.2d 900 (2014); and upheld at 413 S.C. 194, 7754 S.E.2d 696 (2015), and Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000), where the Court remanded for specific performance in both cases on both of the plea agreements where the solicitors promised not to make sentencing recommendations on the defendants' voluntary manslaughter pleas, but breached the agreements and asked for maximum sentencing nonetheless in those cases.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. Thompson v. State, *supra*.

There was a breached drug sentencing agreement that existed in petitioner's case, and thus counsel erred in failing to move for the withdrawal of petitioner's guilty pleas, and in failing to object to the greater drug sentence issued as a punitive measure in the case. Counsel's errors violated petitioner's right to competent legal counsel in a criminal case as guaranteed under the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as the ineffective assistance led to a greater sentence, and but for the same petitioner would have opted for a jury trial.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of February, 2023.

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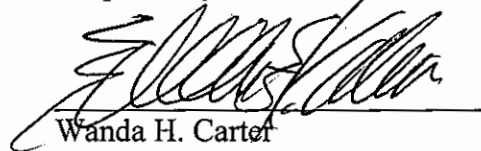
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cecil Eugene Blackwell states that:

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 G.D. Morgan, Jr., which was held on April 18, 2022, 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 Cecil Eugene Blackwell.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of February, 2023.

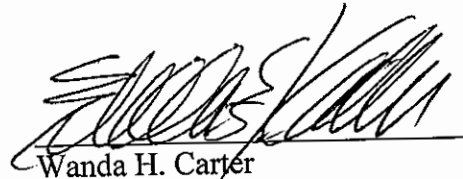
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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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