The Supreme Court of South Carolina

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March 30, 2023

Mr. Alonzo C. Jeter, III, 282902
Manning Correctional Institution
502 Beckham Drive
Columbia, SC 29203

Re: Alonzo C. Jeter, III v. State of South Carolina
Appellate Case No. 2017-001777

Dear Mr. Jeter:

This Court is in receipt of your reply to return to rehearing received March 30, 2023. Because your rehearing was filed at the South Carolina Court of Appeals, we are forwarding your reply to that Court.

Very truly yours,

Brenda F. Shealy

CHIEF DEPUTY CLERK

cc: Megan Harrigan Jameson, Esquire
The Honorable Jenny A. Kitchings

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MAR 30 2023
S.C. SUPREME COURT

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MAR 30 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Court of Common Pleas
The Honorable Robin B. Stilwell, Circuit Court Judge

APPELLATE CASE NO. 2017-001777

Alonzo C. Peter, III, PETITIONER,

v

State of South Carolina RESPONDENT.

REPLY TO RETURN TO PETITION FOR REHEARING

On February 15, 2023, this Court filed an unpublished opinion affirming the post-conviction relief court's finding that Counsel was not ineffective for failing to provide adequate advice regarding the sale of a controlled substance within one-half mile of a playground.

Petitioner filed a petition for rehearing on February 27, 2023, and the Court directed Respondent to file a return to the petition within ten days on March 1, 2023. Respondent filed its Return by email and Petitioner received a copy of the Respondents' Return on March 16, 2023 via Manning Correctional Institution's Legal Mail System.[1]

[1] Albeit Respondent's Return is dated March 10, 2023, the envelope contains a postmarked date of March 13, 2023. Green v Green, 320 SC 347, 465 SE2d 130 (1995).

Petitioner proffers the following in Reply to the Respondent's Return:

1 In Respondent's assertion enumerated as 1 whereby Respondent attempts to persuade this Court that rehearing should be denied Respondent states that, "Petitioner claims [that] church property is not private property".

However, this is not the case as Petitioner claims the opposite. Rather Petitioner claims that churches and the property which belongs to the church **is** private property." As such a basketball goal that is clearly on church property is not a "public playground".

Secondly, the Respondent focuses on the existence or non-existence of prejudice. However, this is simply a red herring. Respondent has asked that this Court, in the interest of public interest, clarify that (1) A basketball goal doesn't satisfy alone as a playground, and (2) even if this Court would determine that a playground can be considered a single, simple basketball goal - such basketball goal being property of a church and residing on church property does not allow such basketball goal to be a "public" playground.

Should this Court not address this important public interest matter, there is certainly a chance that others will be erroneously convicted of such crime in error due to the precedent nature of State v Wakefield, 323 SC 189, 473 SE2d 831 (1996), and the courts neglect to specify for clarity in Cutner v State, 354 SC 151, 580 SE2d 120 (2003). Stare decisis should not prevent this Court from correcting this at this practical moment. See McLeod v Stevens, 396 SC 647, 723 SE2d 198 (2012)

("there should be no blind adherence to a precedent which, if it is wrong, should be corrected at the first practical moment.")

Should this Court look for prejudice it should look to (1) the fact that Plea Counsel failed to acknowledge that churches are not encompassed under S.C. Code Ann. § 44-53-445, failed to investigate or knew anything about the church and did not in fact drive to the church in question, and (2) proceeded to plea bargain and thus did not have proper and sufficient mitigating and balancing facts and knowledge of the facts and law in regards of the charges to be considered as strategy.

The Petition should be granted on this basis.

2. In Respondent's assertion enumerated as 2, Respondent attempts to persuade this Court that the Court's failure to clarify in its order that the terms "public" and "knowing" were not included in the indictment does not matter. These terms are indeed elements which would have been proven by the State at trial. While it is true the indictment is merely a notice document, this does not mean that all elements must not be contained within the indictment. This is in fact the only way that an indictment provides a defendant proper and sufficient notice. Also, it must be noted that as the indictment was drafted and presented to Petitioner – had the indictment been presented to the grand jury for a true bill it would have been true billed because the grand jury would not have been informed of the "public" and "knowing" elements.

If this Court and/or the Respondent would argue that Petitioner is wrong to the extent that the grand jury would have and must have been advised and informed of the "public" and "knowing" elements - then this Court and/or the Respondent must also agree that the Petitioner did not receive proper and sufficient knowledge through the indictment as was facially presented.

Petitioner has expressed in his pleadings and at the PCR hearing that the indictment looked right the way it was presented. Petitioner has also expressed in his pleadings the importance of the safeguards when an indictment does not include all elements of the crime. Petitioner has clearly explained in his pleadings that the safeguards were failed safeguards. Had those safeguards, being the Judge during allocution, the Solicitor understating the facts, and the Plea counsel when counseling - if either of these safeguards would have informed Petitioner of these elements this would have satisfied State v Gentry, 363 SC 93, 610 SE2d 494 (2005) as the Gentry court cited State v Wilkes, 353 SC 462, 465, 578 SE2d 717, 719 (2003). However, as the indictment nor the safeguards informed Petitioner of the "public" and "knowing" elements of the charge the indictment was in fact insufficient and Petitioner's waiver of presentment of the indictment was not valid.

The only other safeguard was the Petitioner himself as a person whom was untrained in law, experiencing a mental health breakdown and experiencing abuse and mistreatment while being held as a

pretrial detainee in Cherokee County's extremely overcrowded and unsafe Detention Center. However, as Petitioner expressed to the PCR Court, he had no access to any law books while in the Detention Center. There he had to trust that his lawyer knew the law. See Magee v Waters, 810 Fed 451, 452 (4th Cir. 1987) (The United States Constitution does not require every local jail to have a law library); Hause v Vaught, 993 Fed 1079, 1084 (4th Cir. 1993) (recognizing a pretrial detainee's right to access the court is satisfied if he has counsel.)

The Petition should be granted on this basis.

3. In Respondent's assertion enumerated as 3, it claims that this Court correctly recognized that Petitioner was facing a possible LWOP sentence.

SC Code Ann. §17-25-50, "Considering closely connected offenses as one offense", states:

> "In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute seperate and distinct offenses."

Petitioner emphasizes that he had one prior conviction on his record. This prior conviction was for possession of less than a gram of crack cocaine in 2004. Petitioner has submitted copies of his SLED Rap

Sheet, City and County background reports, and the record also includes Petitioner's records of his SCDC commitments (the PCR court had before it a copy of Petitioner's SCDC records as is customary). In addition and for indulgence, Petitioner points to Jeter v Tucker, Case No. 2:19-cv-1945-MGL-MGB (DSC 2020), 2020 WL [redacted] 1102231 (Specifically, take note of the court's ruling on Petitioner's motion to stay that was ruled on and addressed in the court's report and recommendation). Secondly, See Jeter v Cole et al, Case No. 7:23-cv-97-MGL-MGB (DSC) (Specifically, there is deposition of the staff of SCDC which testifies as to Petitioner's prior record and commitments; also a CD/DVD is included in the record, importantly).

As Petitioner had only one prior conviction on his record, and as this one prior conviction was over 10 years old prior to Petitioner's 2015 charges and plea — Petitioner would have [redacted] been charged with 1st offense convictions. See South Carolina's enhancement statute as it relates to controlled substances other than marijuana, §44-53-470:

"(A) An offense is considered a second or subsequent offense if: [only if]

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants,

stimulants, or hallucinogenic drugs."

As Petitioner's prior conviction was in 2004 and his current charges were in 2015, the charges could not be enhanced.

Secondly, Petitioner has explained that the drug sales were only two(2) rather than three(3) and were temporally connected and based off of one single agreement at genesis. Petitioner has submitted a Rule 60(b), SCRCP motion along with attachments which clearly reveal the single agreement and unambiguously supports Petitioner's claims in this regard. The PCR Court did in fact abuse his discretion in not granting ~~that~~ Petitioner allowance for discovery in this regard to include the audio and video of the controlled buys.

As such, had Petitioner been represented by competent counsel, and proceeded to trial on his charges - even if he were ultimately found guilty, an LWOP was not possible. Thus both the PCR Court and Plea Counsel, to include the Respondent erred in determining that Petitioner faced an LWOP sentence. Petitioner will also add that even if convicted and enhanced, only 2 strikes would have been possible, if the trial court failed to consider 17-25-50 and the temporal connection of the crimes.

The Petition should be granted on this basis.

4. Petitioner has clearly and sufficiently provided this Court with irrefutable proof of Petitioner's entitlement to relief under United States v Cronic, 466 US 648 (1984). As such there is no need to refute further Respondent's assertion enumerated as 4. The Petition should be granted under United States v Cronic.

5. Respondent in its assertion enumerated as 5, correctly determines that Petitioner asks that this Court treat his case as precedent and take the opportunity to clear up confusion as it relates to (1) LWOP possibility and 17-25-50; (2) Enhancement possibility as it relates to 17-25-50

6. In Respondent's assertion enumerated as 6, it makes a straw argument which results in a red herring. Respondent argues that "Petitioner is not entitled to a plea offer of his choice."

Simply put, Petitioner does not argue that he is entitled to a plea offer of his choice. Rather, Petitioner argues that (1) Plea Counsel cannot effectively negotiate a plea offer or bargain unless counsel is competent and has investigated the facts and law of the case and is competent of both, (2) Should the State make a plea offer or offer a plea bargain - Plea counsel must articulate to the defendant things such as all elements of the crimes, critical matters such as temporal connection with regard to 17-25-50, and must be competent in fact and law so as not to provide the defendant erroneous information as to these things, and (3) only when Plea Counsel has done all of the above, is when Petitioner will have knowingly, and intelligently, voluntarily enter into such agreement. Only then will Rollison v State, 346 SC 506, 552 SE2d 290 (2001) apply.

The Petition should be granted on this basis.

7. In Respondent's assertion enumerated as 7, Respondent contends

that Petitioner has not met his burden of proof that absent Counsel's erroneous advice, Petitioner would not have pled guilty to all charges. Respondent further contends that Petitioner has not presented any new information that should cause the Court to change their analysis on this issue.

Petitioner has provided sufficient argument in his pleadings which would mute this claim of the Respondents. Further, Petitioner would again point to his Rule 60(B)SCRCP, attachments which have been submitted to this Court. Also, and again, Petitioner will point to Jeter v Tucker, Case No. 2:19-cv-1945-MGL-MGB (DSC 2020), 2020 WL 1102231 (Specifically, take note of the court's ruling on Petitioner's Motion To Stay which was ruled on and addressed in the court's report and recommendation. Take note also that this case has been revealed in Westlaw and case law in general as being distinguished from the cases of Brown v State, 814 SE2d 146 (2018) and McElrath v State, 277 SE2d 890 (1981). Petitioner will also point to Jeter v Cole et al, Case No. 7:23-cv-97-MGL-MGB (DSC) (Specifically there is deposition of the staff of SCDC which testifies as to Petitioner's prior record and commitments; also a CD/DVD is included in the record, importantly.)

Petitioner clearly established and continues to establish clearly that he would not have pled guilty to the charges. Respondent's speculative argument is unsupported by any evidence. Petitioner has clearly shown that he was misled by incompetent lax counsel

and that counsel's cumulative errors worked to deprive Petitioner of the knowledge and intelligence needed in which to select whether or not to enter the plea of guilty to the crimes. The record contains several matter which demonstrate clearly that the outcome of Petitioner's case would have certainly been different had Petitioner been provided the constitutional benefit of competent counsel who would also use his competence to investigate, subject the prosecutor's case to meaningful adversarial testing, and would inform and arm Petitioner with the necessary and essential knowledge whereby and wherewith Petitioner would then be able to make an intelligent and thus voluntary decision as to how he would proceed in the case.

With regard to the proximity charges, the Petitioner had a constitutional right to be informed of each and every element with regard to charges either by a sufficient indictment or by meaningful safeguards. As the state was required to prove each and element ☆ there was no element which was deminimus and not worth mentioning. The remaining charges were simply as a result of entrapment, were (2) two buys and not (3) three, and were temporally connected, and did not pose a threat to Petitioner of a lifer sentence. The Petition should be granted on this basis.

Respectfully submitted,

Alonzo C. Jeter, III
PETITIONER/pro se
Manning Correctional Institution
502 Bechman Drive
Columbia, South Carolina 29203

This 20th day of March, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

APPELLATE Case No. 2017-001777

Alonzo C. Jeter, III, ---------- PETITIONER,

v

State of South Carolina, ---------- RESPONDENT.

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served the Reply To Return To Petition For Rehearing on Respondent by placing a copy of the same inside of a postage prepaid envelope and by placing said envelope in the hands of Manning Correctional Institution's mail room personnel on this 20th day of March, 2023, for mailing via the United States Mail, addressed as follows: Chelsey F. Marto, AAG, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211; The Honorable Patricia A. Howard, Clerk, South Carolina Supreme Court, Post Office Box 11330, Columbia, South Carolina 29211.

s/

Alonzo C. Jeter, III
Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203

March 20, 2022

Alonzo C. Jeter, III, #282902
Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203

The Honorable Patricia A. Howard
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Alonzo C. Jeter, III v State; App. Case No. 2017-001777

Dear Honorable Clerk:

Enclosed for filing, please find the Reply To Return To Petition For Rehearing, along with a Certificate of Service for the same.

Enclosed please also find an additional copy of these documents along with a self-addressed stamped envelope.

Please return to me, by way of the provided SASE, file-stamped copies of these documents.

Thank you for your assistance in this matter.

Sincerely,

Alonzo C. Jeter, III

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