

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**May 03 2023**

S.C. SUPREME COURT

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Certiorari to Sumter County

Honorable Clifton Newman, Circuit Court Judge  
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TRAVIS J. MCFADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001190  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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### **ISSUE PRESENTED**

Petitioner's guilty pleas were not given voluntarily because trial counsel erred in not stating publicly on the record at the plea proceeding that the state agreed to a recommended twenty-year sentence to ensure that the plea judge, who sentenced petitioner to prison for forty-five years, was aware of the recommendation; and also counsel erred in advising petitioner that the plea judge would sentence him according to the state's sentence recommendation.

## STATEMENT OF THE CASE

Petitioner Travis J. McFadden pled guilty to voluntary manslaughter, robbery, and criminal conspiracy during the November 2013 term of the Sumter County General Sessions Court before Judge W. Jeffery Young, who sentenced him to imprisonment for an aggregate forty-five-year term. App. 1-27. A sentencing reconsideration hearing was held on December 16, 2016 before Judge Young, who denied the motion by Order dated February 8, 2017. App. 29-39. Assistant Public Defender Sharon B. Clark and Assistant Solicitor Eddie Donald represented petitioner and the state, respectively, at the plea proceeding.

Petitioner appealed his convictions and sentences and was represented on appeal by Appellate Defender Robert M. Pachak. App. 43-78. Petitioner's case was affirmed on appeal by the South Carolina Court of Appeals. See State v. McFadden, Unpublished Opinion No. 2020-UP-192 (filed June 24, 2020). App. 79-80

On June 1, 2021, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 81-87. The respondent filed a Return dated August 6, 2021, requesting that an evidentiary hearing be held in response to petitioner's PCR action. App. 88-96.

A PCR hearing was held on June 28, 2022, at the Sumter County Courthouse before Judge Clifton Newman App. 98-154. On August 1, 2022, Judge Newman issued an Order of Dismissal therein denying petitioner's PCR allegations of ineffective assistance of counsel raised in the case. App. 156-175.

Petitioner appealed. This petition follows.

## ARGUMENT

Petitioner's guilty pleas were not given voluntarily because trial counsel erred in not stating publicly on the record at the plea proceeding that the state agreed to a recommended twenty-year sentence to ensure that the plea judge, who sentenced petitioner to prison for forty-five years, was aware of the recommendation; and also counsel erred in advising petitioner that the plea judge would sentence him according to the state's sentence recommendation.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. The solicitor alleged that petitioner and six other co-defendants robbed a convenience store located in Sumter, South Carolina, on December 26, 2011, which resulted in the death of one man and the paralysis of another man. App. 8, l. 4 - p. 10, l. 9.

During the PCR hearing held in the case, petitioner testified that trial counsel told him that "the solicitor was offering twenty years", so he accepted this and pled guilty as charged. Petitioner testified further that counsel did not explain what a sentence recommendation meant with respect to his case. Moreover, petitioner stated that he believed that the recommendation was the equivalent of a deal, and that he was supposed to have received an automatic twenty-year sentence. Petitioner admitted that he did not know that the judge could "overthrow," i.e., not follow the sentence recommendation. Petitioner added that he would have opted for a jury trial had he known that the plea judge was not obligated to follow the sentence recommendation, particularly where he ultimately received a forty-five-year sentence, which was more than twice the length of the recommended sentence. App. 112, l.13 - p. 115, l.11; App. 119, lines 9 - 14; App. 121, l.23 - p. 123, 10.

Trial counsel testified at the PCR hearing and stated that she discussed the "plea recommendation" of twenty years with petitioner, and that she informed him of the expectation

that the plea judge would follow the sentence recommendation as judges usually did so in criminal cases. App. 126, 1.15 - p. 127, 1.25.

In the instant case, petitioner had no clear understanding of the difference between a negotiated plea bargained sentence and a sentence recommendation. Petitioner believed that a twenty-year sentence recommendation was automatic, and that the judge would not “overthrow” the recommended sentence authorized by the state because counsel advised that the plea judge would follow the sentence recommendation. It was not made plain to petitioner that a plea judge had the option of accepting or rejecting a sentence recommendation. Counsel’s failure to explain the definition of a sentence recommendation to petitioner constituted deficient legal representation in violation of the Sixth Amendment (see Hill v. Lockhart, 472 U.S. 52 (1985)), such that but for this error, a reasonable probability exists that petitioner would not have pled guilty in the case. A guilty plea is only voluntarily and knowingly entered into if the defendant has full understanding of the consequences of his pleas. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007), and Pittman v. State, 337 S.C. 597, 524 S.E.2d 623(1999), citing to Boykin v. Alabama, 395 U.S. 238 (2000). Undoubtedly, petitioner’s pleas were not given voluntarily in the case because he was unaware of definition of a sentence recommendation and how it applied to his case.

In addition, counsel erred in failing to state publicly on the record at the plea proceeding that the state’s sentence recommendation was twenty years in order to apprise the plea judge of the same. Counsel’s omission regarding this matter constituted ineffective assistance of trial counsel in violation of the Sixth Amendment as well. The guilty plea record is completely devoid of any reference whatsoever by either the solicitor or trial counsel to the plea judge about the existence of the twenty-year sentence recommendation in the case. It was entirely possible that

the plea judge knew not of the twenty-year sentence recommendation as the colloquy at the plea proceeding was devoid of any mention by the plea judge to petitioner that he was not bound to accept any sentence recommendation, which would have been consistent with the rule of law announced in State v. Riddle, 278 S.C.148, 292 S.E.2d 795 (198).

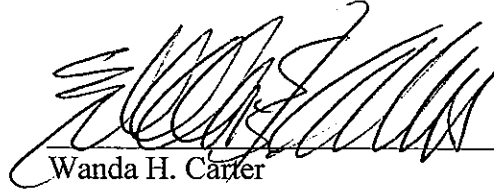
Counsel's failure to disclose the sentence recommendation to the plea judge at the plea proceeding, which would have triggered the plea judge to inform petitioner that following the recommendation was optional, would further support petitioner's position that he was unaware of the sentencing consequences in his case and that his pleas were not voluntarily entered as a result. Again, but for counsel's errors as outlined above, a reasonable likelihood exists that petitioner would have opted for a jury trial and that the outcome of his case might have been different. Finally, note that the absence of notice and disclosure of the sentence recommendation at the plea proceeding was deemed a meritorious error on direct appeal by the Court of Appeals and appellate briefing on the issue was ordered.<sup>1</sup> The appellate court was precluded from ruling on the same as counsel did not preserve the issue for appellate review. Therefore, but for counsel's failure to raise this issue at the plea proceeding and object to the sentence received in comparison to the sentence recommendation, the error would have been properly preserved for appellate review and possibly reversed on appeal.

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<sup>1</sup> The South Carolina Court of Appeals issued an Order dated July 19, 2018, ordering appellate counsel to brief the meritorious issue of "whether a guilty plea can still be voluntary if the state does not disclose a sentencing recommendation to the plea court." App. 55.

**CONCLUSION**

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

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of May, 2023.