

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

HENRY PINCKNEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000396

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

STANDARD OF REVIEW 3

ARGUMENT

Plea counsel’s mistake in conveying an inaccurate plea offer
rendered petitioner’s guilty plea unknowing and involuntary 4

CONCLUSION 7

PETITION TO BE RELIEVED AS COUNSEL 8

ISSUE PRESENTED

Did plea counsel's mistake in conveying an inaccurate plea offer render petitioner's guilty plea unknowing and involuntary?

STATEMENT

On July 24, 2018, petitioner Henry Edward Pinckney pled guilty before the Honorable Perry M. Buckner to possession with intent to distribute marijuana (second offense), possession with intent to distribute cocaine base, and felony hit-and-run with death resulting. App. 1-3. Leigh Staggs represented the State and Jeffrey Stephens represented petitioner. App. 1. The plea was a negotiated fifteen-year sentence. App. 3, l. 1 – 19. Judge Buckner accepted the negotiated plea and sentenced petitioner to a total of fifteen years' imprisonment. App. 29, l. 12 – 30, l. 11. Petitioner did not appeal.

On January 28, 2019, petitioner filed a PCR application. App. 32. On November 3, 2021, the Honorable DeAndrea G. Benjamin held a hearing. App. 109. James K. Falk represented petitioner and Lauren Mims represented the State. App. 109. On February 23, 2023, Judge Benjamin denied petitioner's claims. App. 153. This petition follows.

STANDARD OF REVIEW

The appellate court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)).

ARGUMENT

Plea counsel's mistake in conveying an inaccurate plea offer rendered petitioner's guilty plea unknowing and involuntary.

Plea counsel did not dispute conveying what was ultimately an incorrect plea offer to petitioner. App. 130, l. 21 – 134, l. 22. He sent petitioner a letter dated June 6, 2018, telling him that the State extended an offer of a ten-year sentence. App. 45. App. 130, l. 21 – 134, l. 22. At the PCR hearing, plea counsel was confused about whether such an offer existed. App. 130, l. 21 – 134, l. 22. He did not know whether the ten-year offer conveyed to petitioner was his mistake or a miscommunication with the solicitor. App. 134, l. 4 – 22. Plea counsel stated, “I understand how Mr. Pinckney could have been confused about it.” App. 133, l. 18 – 20.

Petitioner testified at the PCR hearing that he received the letter about the ten-year offer and was “looking forward” to it. App. 116, l. 12 – 19. App. 126, l. 5 – 8. The first time petitioner learned that he did not have a viable ten-year offer was when he got to court and learned that the only offer at that time was for fifteen years. App. 117, l. 10 – 19. Petitioner refused to go along with the plea for fifteen years. App. 117, l. 10-19. Plea counsel testified, “I just recall that when we got to the first court date, the offer was different than what I believed it was, and we had to stand down.” App. 131, l. 15 – 18.

Petitioner ultimately pled guilty to a negotiated sentence of fifteen years. App. 18, l. 2 – 19, l. 5. App. 28, l. 3 – 9. The plea colloquy reveals there may have been a ten-year offer at some point. App. 25, l. 6 – 16. The victim's mother spoke at sentencing. App. 24, l. 1 – 25, l. 16. She said, “We had a plea bargain that was pled out that nobody told us about that we found out that we snitched, that we got away from, because we were not happy.” App. 25, l. 12 – 14. The victim's mother's statement at sentencing creates the possibility that a ten-year offer was

conveyed and accepted, but improperly withdrawn by the solicitor because of the family's opposition.

“Plea bargains rest on contractual principles, and each party should receive the benefit of its bargain.” United States v. Ringling, 988 F.2d 504, 506 (1993); see also State v. Thrift, 312 S.C. 282, 293, 440 S.E.2d 341, 347 (1994) (citing Ringling); State v. Gates, 299 S.C. 92, 382 S.E.2d 886 (1989) (specifically enforcing a plea agreement under contract law principles). “State prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty.” State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007) (citing Santobello v. New York, 404 U.S. 257 (1971)).

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under Strickland v. Washington, 466 U.S. 668 (1984). Petitioner's guilty plea was unknowing and involuntary because his attorney failed to secure the ten-year offer from the State and, when the offer changed, pressured his client into accepting the fifteen-year offer.

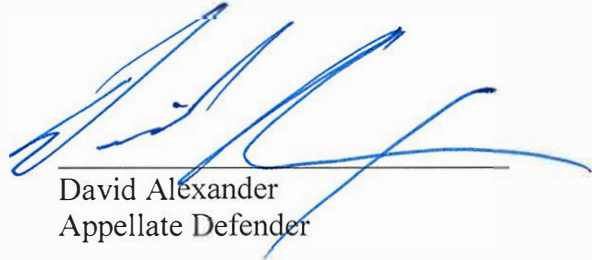
“The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). “Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). The Supreme Court has “never applied a distinction between direct and collateral consequences to define the scope of constitutionally ‘reasonable professional assistance’ required under Strickland.” Id. at 1481 (quoting Strickland, 466 U.S. at 689).

Plea counsel admitted that he did not know what caused the ten-year offer in his letter to become fifteen years at the first attempt to have petitioner plead guilty. Petitioner's refusal to plead when faced with fifteen years offer shows petitioner's true intentions. Furthermore, the victim in this case had a blood alcohol level of 0.3 and a video showed her "wandering across the street." App. 141, l. 6 – 142, l. 14. App. 21, l. 14 – 23. Two MAIT recreations of the accident were done and the first "said that the victim was at fault in the collision." App. 21, l. 6 – 9. Petitioner's blood alcohol level was only .01. App. 21, l. 6 – 9.

Petitioner had a defense and did not want to plead to a fifteen-year sentence. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 130 S.Ct. at 1485. Rejecting a fifteen-year offer—which petitioner actually did—was rational because of the problems with the State's case. Plea counsel performed deficiently in conveying information that ultimately turned out not to be the State's position, whether due to his mistake, a miscommunication, or withdrawal by the State in the face of the family's opposition. Petitioner has shown prejudice in that he pled to a higher sentence and that rejecting such a sentence would have been rational. This Court should reverse and remand the case to the circuit court.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions and sentences, and remand to the circuit court.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of September, 2023.

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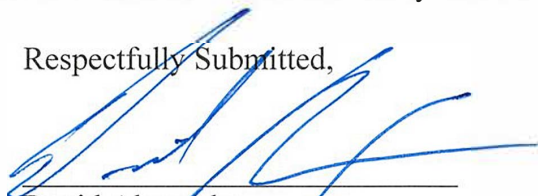
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Henry Pinckney states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge DeAndrea G. Benjamin, which was held on November 3, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Henry Pinckney.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of September, 2023.

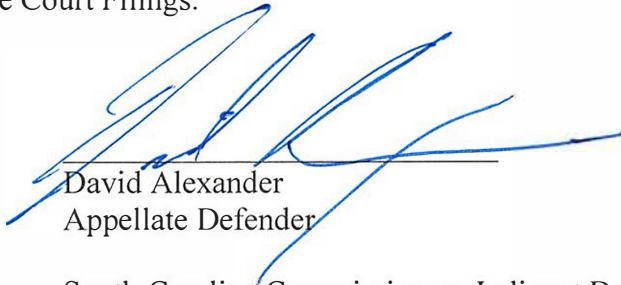
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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This 20th day of September, 2023.