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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Debra R. McCaslin, Circuit Court Judge

CHARLES ADAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000559

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did trial counsel's failure to properly advise Petitioner on whether to accept a fifteen year plea offer on the day of his arraignment violate Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where Petitioner would have accepted the offer if counsel had correctly advised him of the strength of the state's evidence against him, and where Petitioner was unquestionably prejudiced because he was sentenced to twenty-five years after he pled guilty pursuant to a much less favorable offer once his trial had commenced?

STATEMENT OF THE CASE

A string of burglaries occurred in the Grande Dunes subdivision in Myrtle Beach during the summer of 2018. Petitioner became a suspect after his girlfriend's car was spotted in the neighborhood during the early morning hours when some of the burglaries occurred. Petitioner's girlfriend and her mother identified Petitioner on surveillance footage obtained from some of the burglarized homes. App. 86, ll. 10-19. Additionally, on August 1, 2018, a Cadillac was stolen from one of the houses in the neighborhood. Officers spotted the Cadillac in the area and, knowing it was stolen, attempted to stop the vehicle. A chase ensued and ended when the Cadillac crashed. The driver of the Cadillac fled onto a golf course and was not apprehended that morning. However, a shirt and a hat later found to have Petitioner's DNA on them were found about fifteen feet from the Cadillac. App. 42, l. 17 – 44, l. 6. Petitioner was ultimately charged with twenty-eight separate offenses stemming from these crimes. The prosecution chose to try Petitioner for the offenses that occurred on August 1, 2018. App. 42, ll. 17-19.

A Horry County grand jury indicted Petitioner on December 13, 2018 for three counts of first degree burglary, grand larceny, breaking and entering a motor vehicle, and failure to stop for a blue light. App. 189-198. His case was called to trial on April 19, 2021 before the Honorable Steven H. John, and a jury. App. 1. On the morning of the second day of trial, Petitioner pled guilty as indicted. App. 36, l. 13 – 41, l. 6. He was sentenced to twenty-five years for each count of first degree burglary, ten years for grand larceny, five years for breaking and entering a motor vehicle, and three years for failure to stop for a blue light. All sentences were ordered to be served concurrently. App. 54, l. 11 – 55, l. 7. Petitioner's remaining twenty-three charges were dismissed pursuant to a plea agreement. App. 45, ll. 9-11.

On August 9, 2021, Petitioner filed an application for post-conviction relief (PCR) raising the claim argued in this petition. App. 57-63. The state filed a return to this application on October 18, 2021. App. 64-73. With the assistance of counsel, Petitioner filed an amended application on November 28, 2022, again raising the claim argued in this petition. App. 74-75. An evidentiary hearing was convened on January 3, 2023 before the Honorable Debra R. McCaslin. App. 76. Assistant Attorney General Chelsey Marto represented the state. James Falk represented Petitioner. App. 76.

Petitioner testified at the evidentiary hearing that during his arraignment in April 2020, the assistant solicitor offered to allow him to plead guilty to a single count of burglary in exchange for a sentence recommendation of fifteen years imprisonment. App. 83, ll. 4-23. Petitioner had to accept the offer that day and plead guilty or the offer would be withdrawn. Petitioner spoke with trial counsel who advised him that he (Petitioner) was "going to have to eat the grand larceny charge (related to the theft of the Cadillac) because . . . there is basically no getting out of that" due to the DNA evidence on the hat and shirt found near the Cadillac. App. 88, l. 10 – 90, l. 21. However, counsel told Petitioner there was less evidence against him to support the burglary charge. According to Petitioner, counsel told him that Petitioner's statement to law enforcement implicated Petitioner in the grand larceny, but not in any burglary. Petitioner explained that counsel had not reviewed his statement "enough" to know it "actually did implicate [Petitioner] for a burglary." App. 91, l. 8 – 92, l. 11. Because of counsel's advice concerning the strength of the state's evidence against him, Petitioner rejected the state's favorable plea offer. App. 96, ll. 2-18.

Once Petitioner later learned his statement did incriminate him for burglary, Petitioner decided to plead guilty, but the fifteen year offer had been withdrawn. He then accepted the

state's offer to plead guilty as indicted in exchange for a sentence recommendation of twenty-five years imprisonment. App. 109, l. 7 – 110, l. 7.

Clay Pinkerton, Petitioner's trial counsel, testified that he reviewed with Petitioner the state's evidence against him. According to Pinkerton, one of his investigators went to the detention center and showed Petitioner his recorded statement to law enforcement prior to Petitioner's arraignment. App. 130, l. 1 – 131, l. 6. Pinkerton believed Petitioner's statement "could have been used against him for the burglary charges." App. 137, ll. 5-12.

Petitioner was arraigned on April 20, 2020. App. 137, ll. 2-4. That day, the assistant solicitor offered to allow Petitioner to plead guilty to a single count of burglary in exchange for a sentence recommendation of fifteen years imprisonment. The state would have dismissed Petitioner's remaining charges pursuant to the offer. App. 131, ll. 7-12. Pinkerton told Petitioner this was "a good deal." He never advised Petitioner "to turn [the offer] down." It was "ultimately" Petitioner choice whether to accept or reject the offer. App. 132, ll. 3-8. App. 137, ll. 13-21. The offer was withdrawn prior to trial. App. 134, ll. 17-21.

After Petitioner's case was called to trial, the assistant solicitor gave Pinkerton a transcript of Petitioner's statement, which had been produced by the solicitor's office, so the parties could determine what needed to be redacted before the statement was published to the jury. Pinkerton gave Petitioner a copy of the transcript. According to Pinkerton, once Petitioner read the transcript of his statement, he decided he wanted to plead guilty. At that stage, the assistant solicitor offered to allow Petitioner to plead guilty to the charges for which he was being tried in exchange for a sentence recommendation of twenty-five years imprisonment. Petitioner accepted this offer and pled guilty. App. 132, l. 9 – 133, l. 7; App. 134, l. 17 – 135, l. 7.

By order filed April 10, 2023, the PCR judge denied Petitioner relief. App. 170-188. The judge found Petitioner failed to prove trial counsel was deficient for advising Petitioner to reject the state's offer to recommend a sentence of fifteen years if Petitioner pled guilty to one count of burglary. The PCR judge found credible trial counsel's testimony that he told Petitioner this was a "good offer" but Petitioner was "not entertaining plea offers" at the time and chose to reject the offer. App. 181. The judge further found credible counsel's testimony that Petitioner was unwilling to plead guilty until the morning of the second day of trial when Petitioner was given a copy of a transcript produced by the state of the statement he gave to police upon his arrest, which Petitioner "acknowledged was highly inculpatory." App. 181.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to advise Petitioner to accept a highly favorable plea offer extended on the day of his arraignment before it expired, and since Petitioner was prejudiced by counsel's deficient performance given that he received a much harsher sentence on more serious offenses after he rejected the offer, this petition for writ of certiorari follows.

ARGUMENT

Trial counsel's failure to properly advise Petitioner on whether to accept a fifteen year plea offer on the day of his arraignment violated Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel since Petitioner would have accepted the offer if counsel had correctly advised him of the strength of the state's evidence against him, and where Petitioner was unquestionably prejudiced because he was sentenced to twenty-five years after he pled guilty pursuant to a much less favorable offer once his trial had commenced.

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to correctly advise Petitioner on the strength of the state's evidence against him before Petitioner rejected a favorable plea offer from the state. Petitioner was prejudiced by counsel's deficient performance because if counsel had correctly informed Petitioner of the incriminating nature of his statement to law enforcement, Petitioner would have accepted the extremely favorable plea offer and been sentenced to only fifteen years imprisonment. Instead, Petitioner rejected the state's initial offer and ultimately pled guilty pursuant to a much less favorable offer and was sentenced to twenty-five years.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). Our Supreme Court "has held that a defendant has the right to effective assistance of counsel during the plea bargaining process." Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000)). The United States Supreme Court has also "made clear that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment

right to effective assistance of counsel." Missouri v. Frye, 566 U.S. 133, 141 (2012) (quoting Padilla v. Kentucky, 559 U.S. 356, 373 (2010)) (internal quotations admitted).

"The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." Id. at 143. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions favorable to the accused." Id. 145.

To prevail on his claim of ineffective assistance of counsel, Petitioner is required to prove that (1) trial counsel's failure to communicate the state's plea offer constituted deficient performance, and (2) he was prejudiced by this deficient performance, *i.e.*, there is a reasonable probability that but for counsel's deficient performance, he would have accepted the original plea offer. Davie, 381 S.C. at 608, 675 S.E.2d at 420. Additionally, Petitioner must show actual prejudice. "However, it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice." Id. at 613, 675 S.E.2d at 422 (citing Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000)).

In Davie, this Court held defense counsel's failure to convey the state's initial plea offer of fifteen years imprisonment to the defendant constituted deficient performance when the defendant later pled guilty and was sentenced to an aggregate amount of twenty-seven years imprisonment. 381 S.C. at 610, 675 S.E.2d at 421. This Court further found the defendant was prejudiced by defense counsel's deficient performance noting "that the difference in the sentence [the defendant] received and the plea offer is proof of prejudice." Finally, the Court held that a new sentencing

hearing was the proper form of relief for the defendant. Id. at 614, 675 S.E.2d at 423. Because there was no evidence in the record that the defendant expressed a desire to proceed to trial rather than plead guilty, the Court held a remand for a new trial was not the proper remedy. Id. at 615, 675 S.E.2d at 423-424.

In Frye, which was decided after Davie, the United States Supreme Court found defense counsel ineffective when he failed to advise the defendant of a plea offer or allow him to consider the offer before it expired. Frye, 566 U.S. at 145. The Court held, "To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability that the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it." Id. at 147. The Court ultimately remanded the case noting that the Court of Appeals of Missouri failed to require Frye to show that the "plea offer, if accepted by Frye, would have been adhered to by the prosecution and accepted by the trial court." Id. at 150.

In Lafler v. Cooper, 566 U.S. 156, 161 (2012), the United States Supreme Court found defense counsel ineffective when the defendant rejected a favorable plea offer, despite admitting guilt and expressing a willingness to accept the offer, after defense counsel "convinced [the defendant] that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist," which was "an incorrect legal rule." In order to prove prejudice in these circumstances, the Court held "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution

would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." Id. at 164. The Court found the defendant in Lafler suffered prejudice because he had shown that but for counsel's deficient performance there was a reasonable probability he would have accepted the offer, the trial court would have accepted its terms, and as a result of not accepting the plea and being convicted at trial, the defendant received a minimum sentence three and a half times greater than he would have received under the plea. Id. at 174.

Furthermore, in Lafler, the Court rejected the Solicitor General's argument that "there can be no finding of Strickland prejudice arising from plea bargaining if the defendant is later convicted at a fair trial." The Court stated, "Even if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence." Id. at 166.

Additionally, in Kolle v. State, 386 S.C. 578, 591-592, 690 S.E.2d 73, 80 (2010), this Court found plea counsel was ineffective in advising Kolle that the state's initial plea offer was "not a good deal" and misinforming Kolle that the offer would remain open after a suppression hearing, when the offer did not remain open and was significantly less than the seven year sentence Kolle received. This Court stated, "Had Kolle known that the state would withdraw this offer after the suppression hearing, he may have decided to accept it and received a lower sentence." Id. This Court thus affirmed the PCR court's decision to grant Kolle relief. Id.

In this case, Petitioner's rights to the effective assistance of counsel were violated when trial counsel failed to correctly inform Petitioner of the strength of the state's evidence against

him before Petitioner rejected a highly favorable plea offer in which the state offered to allow Petitioner to plead guilty to one count of second degree burglary in exchange for a sentence recommendation of fifteen years plus the dismissal of Petitioner's remaining pending charges. Petitioner testified that he would have accepted this offer if he would have known his statement to law enforcement implicated him in a burglary as well as the grand larceny. According to Petitioner, counsel advised him that he would have to "eat the grand larceny charge" because of the significant evidence against him, but the evidence to support the burglary charge was not as strong.

Petitioner was prejudiced by counsel's deficient performance because instead of being convicted of a single count of second degree burglary and being sentenced to fifteen years, Petitioner was convicted of five offenses (three counts of first degree burglary, grand larceny, and failure to stop for a blue light) and sentenced to twenty-five years. The more severe sentence on more serious offenses alone is proof of prejudice.

Respectfully, this Court should reverse Petitioner's convictions and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of September, 2023.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Everett Adams states:

1. She is an 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, which was held on January 3, 2023 before the Honorable Debra R. McCaslin, 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 Charles Everett Adams.

Respectfully Submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of September, 2023.

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CERTIFICATE OF COUNSEL

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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Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
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This 25th day of September, 2023.