

RECEIVED

Dec 14 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

JASON ALLEN LARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2021-000764

REPLY BRIEF OF PETITIONER

KATHRINE H. HUDGINS
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

TABLE OF AUTHORITIES

Cases

<u>Sanders v. State</u> , 412 S.C. 611, 773 S.E.2d 580 (2015).....	1
--	---

ARGUMENT IN REPLY

The PCR judge erred in refusing to find that the advice Petitioner received in agreeing to the waiver of the right to seek post-conviction relief, as required by the plea agreement, was constitutionally defective.

The waiver of the right to seek post-conviction relief was required as part of the plea agreement. In order to determine whether the advice Petitioner received in agreeing to that waiver, as part of the plea agreement, was constitutionally defective this Court must view the whole plea agreement and all of the advice given with regard to the plea agreement. See Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015) (“Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective.”). The advice Petitioner received in agreeing to the waiver as part of the plea agreement was constitutionally defective because plea counsel failed to advise Petitioner that he would not receive jail time credit for the trafficking charge and failed to explain that Petitioner was not entitled to a backdated sentence. Under the facts of this case this Court should find that both the waiver and the plea were rendered involuntary by counsel’s deficient performance.

Petitioner maintains that relief is warranted in the form of a new trial. The alternative request for a remand for further findings with regard to ineffective assistance of counsel is not a concession of any purported procedural bar. Instead, because the waiver was invalid and Petitioner was limited in his first PCR hearing by the waiver, Petitioner should have the opportunity to litigate additional allegations of ineffective assistance of counsel.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of December, 2023.