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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2021-CP-38-0677

Demossio Valentine #242226.....Petitioner,

v.

State of South Carolina.....Respondent,

RULE 203(d)(1)(B)(v) and RULE 243 (c)

WRITTEN EXPLANATION OF BASIS OF APPEAL

Petitioner appeals the Honorable Grace Gilchrist Knie’s Order of Dismissal dismissing petitioner’s application for post-conviction relief. On December 18th, 2023, the court signed an order dismissing Petitioner’s application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 28th, 2023. Petitioner filed the initial notice of appeal on January 03, 2024.

On September 15, 2014 Applicant pled guilty in the Pickens County Court of General Sessions to Distribution Crack 3rd, indictment number 11GS3902047. Applicant was represented by John DeJong. Judge Welmaker sentenced Applicant to 15 years and 9 months in prison. Applicant’s direct appeal was denied.

Applicant’s first post-conviction relief action, filed on February 2, 2015, was dismissed with prejudice by Judge Verdin on May 15, 2018. Mills Arial represented Applicant at this PCR. Applicant appealed his initial PCR dismissal, and an order denying his petition for cert was filed on November 1, 2019, and remittitur was issued on November 20, 2019.

On March 26, 2021, in response to repeated requests, Applicant received a complete copy of his file from Teal Johnson with the Pickens County Public Defender’s Office. Included with a

copy of his file was a plea offer issued by the Solicitor's office to plea counsel on August 06, 2012 for 10 years of active time which expired on August 27, 2012.

Applicant filed a second PCR action on June 17, 2021.

The state moved to dismiss the application as untimely, improperly successive and barred under *res judicata*. A motion hearing was held at the Greenville County Courthouse before Judge Knie, who granted the state's motion to dismiss, finding that 1) Applicant failed to file a timely petition, and 2) that the petition is improperly successive and barred under *res judicata* for the following reasons:

Specifically, the PCR court found that:

1. Applicant's discovery of the plea offer in March 2021 did not meet the standard for after discovered evidence, noting that Applicant's testimony at his original PCR hearing indicated he knew of the plea offer prior to his plea in 2012.
2. Applicant raised these issues in the first PCR hearing, held on October 25, 2017, including Applicant's testimony that he believed that plea counsel had not timely conveyed all plea offers to Applicant. Applicant also argued this issue on appeal.
3. Applicant presented this claim in his prior PCR action. This claim was litigated, ruled upon, and appealed. *Res-judicata* prohibits the re-litigation of this claim.


The explanation for the basis of this appeal is as follows:

1. Applicant is requesting that he be allowed a merit hearing in this case because Applicant has access to evidence that he did not have at the original PCR hearing or during his appeals, specifically proof that there was a plea offer for the State, which contradicts the testimony of plea counsel at the original PCR hearing.
2. Applicant testified at the original PCR that plea counsel first informed him on September 13, 2014 that there had been an expired plea offer made in 2012, and this plea offer had not been relayed prior to the offer expiring. Applicant further testified that "[he] was in the county in ... 2012 and 2013" and there was no reason why he would not have gotten any plea offer. (PCR Tr. 7:15-17). Applicant stated that plea counsel "informed me that I had an initial plea in 2012 that was for 10 years. . . he never informed me of that plea, until [September 13, 2014]. He said the plea came back from August 2012." (PCR Tr. 7:1-6). Applicant also testified at this hearing that "it was a plea bargain in there I had never even seen, never heard about or any of that. It was for a second offense which would have made my sentence – it would have made it 65 percent." (PCR Tr. 8-9:23-25, 1).
3. Plea counsel, John DeJong, testified at the original PCR hearing that he did not have any recollection of a plea offer in Applicant's case. (PCR Tr. 25:19-23). Plea counsel indicate he had reviewed his file, and found no plea offer. He also testified that he did not have

anything that shows he sent Applicant a plea offer, or anything that showed he had negotiated a plea offer with the state on Applicant's behalf. (PCR Tr. 26).

4. Judge Verdin, in her order of dismissal for the first PCR, specifically found that "counsel explained that there was nothing in his file that showed there was a 10-year plea offer in Applicant's case". (PCR Dismissal Order 7). The court then found that 1) plea counsel's testimony was credible, and 2) Applicant's testimony was not credible. (PCR Dismissal Order).
5. At the time of the original PCR hearing, the Applicant did not have a copy of the plea offer or a complete copy of his file, and was unable to submit this evidence to the PCR or appellate courts in support of his claim.
6. Had the original PCR court had this documentation at the original hearing it could not have made the same findings, and would have had to find Applicant's testimony credible on this issue.
7. Relief on the basis of after discovered evidence is appropriate where Applicant presents evidence showing that 1) the newly discovered evidence was discovered since the entry of the plea, 2) and in the exercise of reasonable diligence could not have been discovered prior to the entry of the plea, and 3) the newly discovered evidence is of such a weight and quality that the interests of justice require the plea to be vacated. *Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014).
8. In this case Applicant meets the above prongs with enough certainty to require a merit hearing on this issue. Specifically, Applicant has newly discovered physical proof that this plea offer was extended and not relayed to Applicant prior to the plea offer expiring, that Applicant had repeatedly requested a copy of his trial file and did not receive a copy that included this plea offer until March 2021, and that this proof would likely have changed the outcome of his original PCR hearing and his original guilty plea.
9. The second PCR was filed in June 2021, well within a year after Applicant discovered proof of the plea offer, and is thus timely.
10. Both the letter to Applicant from Teal Johnson, dated March 26, 2021, and the plea offer issued by the solicitor's office to John DeJong dated August 06, 2012, were made exhibits at the motion to dismiss hearing before Judge Knie and are attached to this explanation of the basis for this PCR appeal.

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