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Oct 17 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable William H. Seals, Circuit Court Judge

Opinion No. 2024-UP-321

DENNIS CUMBEE, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000966

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Dennis Cumbee, respectfully requests that this Court grant rehearing. On October 2, 2024, this Court affirmed as modified the order of the PCR court denying relief. Dennis Cumbee Jr. v. State, No. 2024-UP-321 (S.C. Ct. App. Oct. 2, 2024). As to the first issue, this Court found that, "Plea counsel was deficient in misinforming Petitioner that he would be eligible for early release." This Court then, however, found that the plea court "correctly advised Cumbee he would have to serve the entirety of his thirty-five year sentence." This Court additionally found that Petitioner failed to demonstrate that but for counsel's erroneous advice, he would have proceeded to trial.

First, while this Court correctly found deficient performance, counsel respectfully submits that this Court misapprehended the erroneous advice provided by two different lawyers as advice about parole eligibility or eligibility for early release. The erroneous advice was **not** about parole eligibility or eligibility for early release. Instead, both lawyers misadvised Petitioner about the sentence he would serve, a direct consequence of the plea. Second, counsel respectfully submits that this Court overlooked the fact that the plea court did not specifically advise Petitioner that he would have to serve "the entirety" of his thirty-five year sentence. The plea court did not mention day-for-day or "the entirety" of the thirty-five year sentence. The information conveyed by the plea judge could not have cured the erroneous advice about sentencing provided by two lawyers. Third, counsel respectfully submits that this Court overlooked Petitioner's undisputed testimony that he would not have pled guilty but for the erroneous sentencing advice from two different lawyers.

As to issue two, this Court correctly found that plea counsel was deficient in failing to move to withdraw the guilty plea. This Court wrote, "We hold the PCR court erred in finding counsel was not deficient in failing to move to withdraw the plea. Plea counsel testified he did not understand at the time that the plea court's colloquy contradicted his understanding of Cumbee's eligibility for early release, and that misunderstanding was the reason that he did not attempt to withdraw the plea." While counsel for Petitioner agrees with the finding of deficient performance, counsel respectfully submits that this Court misapprehended the nature of plea counsel's misunderstanding. The misunderstanding was **not** about eligibility for early release. Instead, the misunderstanding was about the sentence itself, a direct consequence of the plea. While not conceding the argument above that the colloquy could not have cured the error, if the plea judge's colloquy was sufficient to convey to Petitioner that he would be required to serve the entirety of his sentence, then plea counsel should have recognized that he had provided

inaccurate advice and immediately moved to withdraw the plea. This Court correctly found deficient performance.

This Court, however, found that Petitioner failed to establish prejudice writing, "However, we conclude there was probative evidence to support the PCR court's finding that Cumbee failed to establish he was prejudiced by counsel's deficiency: there was evidence in the record indicating Cumbee's misunderstanding of the collateral consequences of his sentence were unrelated to his decision to plead, that he agreed with the State's facts, and that he never intended to proceed to trial." Again, the misunderstanding was not about collateral consequences of sentencing. The misunderstanding was about the sentence itself.

As discussed above, in finding Petitioner failed to show prejudice, counsel respectfully submits that this Court overlooked Petitioner's undisputed testimony that he would not have pled guilty but for the erroneous sentencing advice from two different lawyers. If the lawyer had realized his mistake about sentencing during the guilty plea and he correctly advised Petitioner, Petitioner would not have proceeded with the guilty plea.

Counsel respectfully submits that in citing language from Lee v. United States, 582 U.S. 357 (2017), for the proposition that Petitioner failed to show prejudice in both issues, this Court overlooked the clear language from Lee, 582 U.S. at 358:

> The Government makes two errors in urging the adoption of a *per se* rule that a defendant with no viable defense cannot show prejudice from the denial of his right to trial. First, it forgets that categorical rules are ill suited to an inquiry that demands a "case-by-case examination" of the "totality of the evidence." Williams v. Taylor, 529 U.S. 362, 391, 120 S.Ct. 1495, 146 L.Ed.2d 389 (internal quotation marks omitted); Strickland, 466 U.S., at 695, 104 S.Ct. 2052. More fundamentally, it overlooks that the Hill v. Lockhart inquiry focuses on a defendant's decisionmaking, which may not turn solely on the likelihood of conviction after trial.

Counsel respectfully seeks rehearing, a grant of relief, and a remand for a trial.

I. **The PCR court erred in denying relief, where deficient performance was found following a plea where Petitioner was misadvised about the percentage of time he would have to serve for a murder charge, where testimony from Petitioner and his two attorneys confirmed that a written letter sent by plea counsel to Petitioner advised him that he would only have to serve eighty-five percent of his sentence and established it was the opinion of all involved that Petitioner would not have to serve his sentence day-for-day, and where Petitioner proved prejudice by testifying that he relied on the advice and would have acted differently but for the erroneous information provided by his attorneys.**

Petitioner pled guilty to murder for a negotiated thirty-five year sentence. Petitioner had no prior criminal record. (App. p. 16, lines 20-23). Prior to the guilty plea Petitioner was incorrectly advised, verbally and via written correspondence, by both of his lawyers, that he would only have to serve eighty-five percent of his sentence. (App. p. 62 lines 8 – 15). See S.C. Code Ann. § 16-3-20.

A. Deficient Performance Found by the PCR Court

The PCR court correctly found deficient performance. Petitioner was given incorrect sentencing advice by both of his lawyers. Cezar McKnight was Petitioner's first attorney. McKnight was retained by Petitioner's parents. (App. p. 41 lines 22 – p. 42 lines 1-10). Counsel McKnight received a written plea offer from the State that was entered as Applicant's exhibit #1 at the PCR hearing. (App. p. 43, lines 17-18; p. 91). Approximately two months after receiving the offer, Counsel McKnight wrote Petitioner a letter in reference to the plea offer by the State. (App. 91 – 92. The letter contained the following admittedly incorrect information about Petitioner's sentence:

> Enclosed within, please find a copy of the offer made by the Solicitor's Office in your case. They are offering you a Guilty Plea to the charge of murder, and they are offering you a sentence of 35 years. Murder is a most serious offense and it is a violent offense for the purposes of sentencing. **This means that you have to do a mandatory 85% of the sentence**, and that if you are convicted of 2 most serious offenses like murder during your life, you could face life in prison without probation or parole.

App. 92 (emphasis added). When asked on cross-examination if his in-person advice mirrored the information contained in the letter, Counsel McKnight testified, " . . . I'm almost certain that I probably told him it was 85 percent that he'd have to do." (App. p. 46, lines 10-11). Counsel McKnight testified that he did not recall advising Petitioner that he would serve anything other than eighty-five percent, and he admitted that was error on his part. (App. p. 46, lines 14-20).

Shortly after Counsel McKnight sent the letter about the plea offer, he was relieved and attorney John Hilliard assumed the representation. (App. p. 45 lines 10-14). Counsel Hilliard gave Petitioner the same incorrect sentencing advice as given by Counsel McKnight. Hilliard testified:

> I believed, and I told [Petitioner], that it was an 85 percent no parole offense. Experience had told me that there are no parole offenses, and this is a no parole offense. And I believed at the time that no parole offenses require the service of 85 percent. I believed that to be true at the time.

(App. p. 52 lines. 2 – 7). Hilliard admitted his mistake and testified, "You know, no parole is no parole, I get that part, but I believed at the time, and I was mistaken, but I believed at the time that 85 percent and day for day meant the same thing and they don't." (App. p. 55, lines 3-6).

Petitioner testified at the PCR hearing and recalled receiving the letter from Counsel McKnight containing the incorrect information. (App. p. 61 lines 5 – 12). Petitioner believed, both as a result of receiving the letter and based on an in-person conversation with Counsel McKnight, that he would only be required to serve eighty-five percent of his sentence, or approximately twenty-nine years and seven months. (App. p. 62 lines 1 – 15).

Petitioner confirmed that Counsel Hilliard's advice matched what he had been told by Counsel McKnight, as previously testified to by both attorneys. (App. p. 64 lines 1 – 25). Petitioner had a detailed recollection of the conversations he had with Counsel Hilliard, including a memory of counsel using his calculator to determine eighty-five percent of thirty-five

years, or 29.75 years. (App. p. 65 lines 1 – 16). The PCR judge correctly found deficient performance.

B. Deficient Performance Found by this Court

This Court wrote, "We hold there was probative evidence in the record to support the PCR court's finding that plea counsel was not ineffective in misadvising Cumbee regarding his sentence. Plea counsel was deficient in misinforming Petitioner that he would be eligible for early release." While this Court correctly found deficient performance, neither counsel misinformed Petitioner that he would be eligible for parole or early release. In the letter to Petitioner, McKnight did not mention parole or early release. (App. p. 92). Hilliard testified that he advised Petitioner that murder was a no parole offense. (App. p. 52, lines 2-7). Both lawyers, however, misadvised Petitioner about the sentence he would actually serve, eighty-five percent of the thirty-five year sentence, a direct consequence of the plea. Petitioner showed deficient performance, not in misinforming Petitioner that he would be eligible for early release, but in misinforming Petitioner about the actual sentence he would serve.

C. Prejudice – PCR Court

In the order of dismissal the PCR judge wrote:

> The Court finds Applicant has failed to meet his burden of showing that but for Counsels' advice he would not have pled guilty but would have proceeded to trial. First, the plea court's statements that Applicant was not eligible for parole and would have to serve the entire thirty-five year sentence could scarcely be clearer." Applicant expressed no confusion during the plea proceeding, and communicated no concerns on the record to the plea court. The pleas court's colloquy cured any misapprehension, and Applicant knew that he was going to serve the entirety of the negotiated thirty-five year sentence, and he proceeded with pleading guilty anyway.

(App. p. 124). The PCR judge erred. The plea court's colloquy did not cure the misinformation about sentencing and Petitioner's undisputed testimony established prejudice.

1. Plea court's colloquy did not cure the misinformation about senfencing

During the guilty plea the judge asked, "Do you also understand that this crime carries a mandatory minimum sentence, which means the absolute minimum sentence that must be imposed is 30 years in prison. Do you understand that?" (App. p. 7, lines 14-17). The judge later asked, "You understand that for this crime you would not be eligible for parole. So if I impose the 35- year sentence you're going to have to serve the 35-year sentence. Do you understand that?" (App. p. 8, lines 12-15).

The plea court did not cure the error in counsels advice about the actual sentence Petitioner would serve. In Robinson v. State, 422 S.C. 78, 88, 810 S.E.2d 32, 38 (2018), the South Carolina Supreme Court wrote:

> For a plea hearing to cure deficient advice, the plea hearing must unambiguously address and resolve the incorrect advice—namely, that the Constitution forbade the State from proceeding to trial under the amended sentencing scheme. See United States v. Akinsade, 686 F.3d 248, 255 (4th Cir. 2012) (recognizing, "in order for a district court's admonishment to be curative, it should address the particular issue underlying the affirmative misadvice"). That did not occur here.

The colloquy at the plea hearing that discussed no parole and the thirty-five year sentence did not unambiguously address the advice Petitioner and his family received from two different lawyers that he would only have to serve eighty-five percent of his thirty-five year sentence for murder. The order of dismissal stating that there was no confusion during the plea ignores Petitioner's testimony at the PCR hearing that he looked to his lawyer during the plea because he was confused by the statements made by the judge about sentencing. When asked at the PCR hearing about the judge's comment during the plea, "You understand that for this crime you would not be eligible for parole. So if I impose the 35- year sentence you're going to have to serve the 35-year sentence" Petitioner testified, "After – during the time after he said it, I stopped and looked at Hilliard and he shaked his head yes. When we got – after the plea deal, I

asked Mr. Hilliard in the back if – what did he mean by that? And Mr. Hilliard told me that he had to say that in case the laws change." (App. p. 67, lines 10-20).

The plea court's colloquy did not speak specifically to the day-for-day requirement and therefore did not cure counsel's deficient performance. "[E]ven where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range." Bennett v. State, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006). In Bennett, this Court reversed the PCR court's grant of relief based upon a finding that "[b]oth the plea transcript and [Bennett's] testimony at the PCR hearing clearly indicate that counsel did consult with respondent and advised him that he should enter a guilty plea." Id. at 204-05, 638 S.E.2d 673, 676. This Court held that counsel's advice regarding sentencing was "not technically incorrect." Id. Because there was "no probative evidence in the record that counsel deficiently advised respondent to plead guilty," this Court reversed the grant of a new trial. Id. at 206, 638 S.E.2d at 677. Petitioner's case contained evidence from four witnesses in addition to written correspondence which was enough for the PCR court to find deficient performance. Notably, the letter from Counsel McKnight does not clarify the avenue by which Petitioner would be released after the service of eighty-five percent of his sentence. (App. p. 92). The letter does not reference parole, education/work credits, or any other early release mechanism. Hilliard testified that he advised Petitioner that murder was a no parole offense. (App. p. 52, lines 2-7). Therefore, the plea judge's remarks regarding murder being a no-parole offense did not cause any concern for Petitioner.

The plea judge's colloquy did not directly reference serving the *entire* sentence or contain a clear statement that Petitioner would be required to serve one hundred percent of the sentence, day for day. As a result, there was no clear understanding provided to Petitioner which would have overcome the deeply-rooted understanding planted by both of the attorneys who were hired

to represent him. As will be discussed in issue two below, if this Court concludes that the plea judge's colloquy was sufficient to convey to Petitioner, a layman, that he would be required to serve the entirety of his sentence, plea counsel should have recognized that he had provided inaccurate advice and immediately moved to withdraw the plea.

2. Petitioner's undisputed testimony is sufficient to show prejudice

In the order of dismissal the PCR judge provided a second reason for refusing to find prejudice writing:

> Second, the Court does not find Applicant's self-serving testimony, his attorney's advice regarding parole eligibility was what induced him to plead guilty, sufficient to establish that he relied on the misinformation in pleading guilty. See Frasier v. State, 351 S.C. 285, 389, 570 S.E.2d 172, 174 (2002) (internal citations omitted). Applicant rightly notes in his memorandum of law that, *depending on the facts of the case*, an applicant's self-serving statements *may* be sufficient to establish prejudice under Hill. Davie v. State, 381 S.C. 601, 613, 675 S.E.2nd 416, 422-23 (2009). The present matter, however, is not an appropriate circumstance to rely upon such a statement. Applicant has now made many alternative and conflicting assertions. Taking them all into consideration, the Court does not find them sufficient to establish that the Applicant, relying on the misinformation by his attorney and wholly disregarding the corrective plea colloquy, would have not pled guilty, but for counsel's misadvice.

(App. p. 125) (n. 3 omitted).

The PCR judge's reliance on Frasier is misplaced as the erroneous advice from counsel was not about parole eligibility but the sentence itself. The South Carolina Supreme Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

During the PCR hearing Petitioner testified that the advice he received from his lawyers that he would only have to serve eighty-five percent of his sentence was a factor in his decision to plead guilty. Petitioner testified, "It was the fact that, you know, I didn't have to do the

whole 35 years. And the fact that it was 85 percent, I was really asking for something under that. It was, you know, it was less than 35 years of less than 30 years and I already had some time in." (App. p. 65, lines 11-16). Petitioner testified that both of his lawyers advised him that eighty-five percent of a thirty-five-year sentence would be twenty-nine years and 7 months. (App. p. 62, lines 8-15; p. 65, lines 1-10). When asked, ". . . [I]s your reasoning because but for your attorney's advice that it was 85 percent you wouldn't have entered the guilty plea." (App. p. 70, lines 4-6). Petitioner answered, "That's correct." (App. p. 70, line 7). Petitioner's undisputed testimony that he would not have pled guilty but for trial counsel's advice that he would only have to serve eighty- five percent of his thirty-five year sentence is sufficient.

Additionally, Petitioner's mother, Denise Giles, testified at the PCR hearing that she understood that as a result of the guilty plea Petitioner would be required to serve eighty-five percent of his thirty-five-year sentence. (App. p. 79, lines 9-16). She testified that although Petitioner wanted a trial, she advised him to accept the plea offer as he would only have to serve eighty-five percent. (App. p. 80, lines 9-18). She was not told at any point that Petitioner would be required to serve the entirety of his sentence, day for day. (App. p. 80, line 19 – p. 81, lines 1-21).

The so called alternative and conflicting assertions do not negate the fact that Petitioner entered the guilty plea because he thought he would only have to serve eighty-five percent. Footnote three suggests that Petitioner offered three reasons for pleading guilty: 1) because he was guilty; 2) because he was told he would be eligible for early release after service of 85% of the sentence; and 3) because Hilliard did not have enough time to prepare the case for trial. (App. p. 125). All three reasons could be true at the same time. The law does not require that a criminal defendant plead guilty for only one reason, especially when multiple reasons are not mutually exclusive.

As to the first assertion listed in the footnote, Petitioner agreed that this was not a case where he would claim that he had an alibi or was not involved. (App. p. 77, lines 15-18). Instead, Petitioner testified that this was a case where a jury could have determined a lower level of culpability with possibly a lesser included offense of voluntary manslaughter or defenses of self-defense and stand your ground. (App. p. 77, lines 13-15). As to the second assertion, Petitioner pled guilty because he was erroneously advised that he would only have to serve eighty-five percent of the sentence. As to the third assertion, during cross-examination, Petitioner testified that he did not believe his attorney was prepared for trial. (App. p. 73 lines. 6 – 13). On redirect Petitioner testified that while he did not believe his attorney was prepared, he agreed to the terms of the plea deal under the mistaken belief that he would only be required to serve eighty-five percent of his sentence. (App. p. 77 line 22 – p. 78 lines 1-10). Petitioner's testimony was both understandable and logical; he was advised that serving eighty-five percent of a thirty-five year sentence was likely the most ideal outcome:

> After it was said that ... this is our - - this is [going to] be our best option and I was explained that, okay, it was 85 percent of 35 [years], that's when I accepted it.

(App. p. 78 lines 3 – 6). The fact that Petitioner additionally alleged that counsel was not prepared does not preclude a finding of prejudice from the erroneous sentencing advice. Petitioner demonstrated prejudice.

D. Prejudice – this Court

With regard to prejudice, this Court wrote, "However, the plea hearing transcript reflects the plea court correctly advised Cumbee he would have to serve the entirety of his thirty-five-year sentence." Counsel respectfully submits that this Court overlooked the fact that the plea court did not advise Petitioner he would have to serve day-for-day "the entirety" of his thirty-five year sentence. The plea court advised Petitioner about the thirty-five year sentence, advised that murder carried a mandatory minimum sentence of thirty years, and was a no parole offense.

(App. pp. 7-8). The information conveyed by the plea judge that discussed no parole and the thirty-five year sentence could not have cured counsel's erroneous advice that Petitioner would serve eighty-five percent of the thirty-five year sentence.

This Court additionally wrote, "Additionally, we find Cumbee failed to demonstrate that but for counsel's erroneous advice, he would have proceeded to trial: Cumbee acknowledged the veracity of the State's evidence during both his plea and PCR hearings, he testified inconsistently as to what motivated him to accept the State's plea offer, and plea counsel testified he was hired primarily in order to obtain a more favorable plea offer for Cumbee than his prior counsel." Counsel respectfully submits that this Court overlooked Petitioner's undisputed testimony that he would not have pled guilty but for the erroneous sentencing advice from two different lawyers. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484, (1991). Acknowledging the veracity of the State's case, inconsistent statements, and the reason for hiring a second attorney do not overcome Petitioner's undisputed testimony. Additionally, like the PCR court, this Court's reliance on Frasier is misplaced as the erroneous advice from counsel was not about parole eligibility, but the sentence itself.

"The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991)." Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). Petitioner testified that the advice he received regarding only being required to serve eighty-five percent of his sentence was a deciding factor in his decision to plead guilty. (App. p.65 lines 1 – 16; App. p. 70 lines 3 – 7). Additional conversations took place between Petitioner, his family, and Counsel Hilliard on the morning of the plea and the same erroneous advice was given. (App. p. 66 lines 8 – 21). Petitioner showed deficient performance.

II. The PCR court erred in denying relief, where the court reasoned that the plea judge's colloquy cured any misunderstanding as to Issue I, where plea counsel therefore should have realized he provided incorrect advice, and where counsel failed to act or move to withdraw Petitioner's guilty plea.

A. Deficient Performance Found by this Court

This Court correctly found that plea counsel was ineffective in failing to move to withdraw the guilty plea. This Court wrote, "We hold the PCR court erred in finding counsel was not deficient in failing to move to withdraw the plea. Plea counsel testified he did not understand at the time that the plea court's colloquy contradicted his understanding of Cumbee's eligibility for early release, and that misunderstanding was the reason that he did not attempt to withdraw the plea." Counsel for Petitioner agrees with the finding of deficient performance. Counsel for Petitioner, however, respectfully submits that this Court misapprehended the nature of plea counsel's misunderstanding. The misunderstanding was **not** about **eligibility** for early release. Instead, the misunderstanding was about the sentence itself, a direct consequence of the plea. Plea counsel Hilliard correctly advised Petitioner that murder was a no parole offense. (App. p. 52, lines 2-7).

Hilliard testified:

> I believed, and I told [Petitioner], that it was an 85 percent no parole offense. Experience had told me that there are no parole offenses, and this is a no parole offense. And I believed at the time that no parole offenses require the service of 85 percent. I believed that to be true at the time.

(App. p. 52 lines. 2 – 7). Hilliard admitted his mistake and testified, "You know, no parole is no parole, I get that part, but I believed at the time, and I was mistaken, but I believed at the time that 85 percent and day for day meant the same thing and they don't." (App. p. 55, lines 3-6). Hilliard incorrectly advised Petitioner about the actual sentence he would serve, eighty-five percent rather than day-for-day, not the possibility of parole or early release. While not conceding the argument above that the colloquy could not have cured the error, if the plea

judge's colloquy was sufficient to convey to Petitioner, a layman, that he would be required to serve the entirety of his sentence, then plea counsel should have recognized that he had provided inaccurate advice and immediately moved to withdraw the plea. This Court correctly found deficient performance.

B. Prejudice – this Court

This Court found that Petitioner failed to establish prejudice writing, "However, we conclude there was probative evidence to support the PCR court's finding that Cumbee failed to establish he was prejudiced by counsel's deficiency: there was evidence in the record indicating Cumbee's misunderstanding of the collateral consequences of his sentence were unrelated to his decision to plead, that he agreed with the State's facts, and that he never intended to proceed to trial." Again, the misunderstanding was not about collateral consequences of sentencing. The misunderstanding was about the sentence itself, a direct consequence of the plea.

In finding that Petitioner failed to show prejudice counsel respectfully submits that this Court overlooked Petitioner's undisputed testimony. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484, (1991). Petitioner satisfied the prejudice prong by his uncontroverted testimony that he would have asked Counsel Hilliard to withdraw the plea had he known about the day-for-day requirement:

> Q: As the second allegation on your amendment, you have alleged that your attorney was ineffective when he didn't interject or move to withdraw your guilty plea after the Court addressed the service of your sentence. If Mr. Hilliard would have said after the Judge made his comments or you raised a concern, you know what I did misadvise you, it's day for day, would you have wanted him to move to withdraw your guilty plea at that point and not have to wait to go forward with this PCR?
>
> A: Yes ma'am. I would not have gone forward.

(App .p. 70 lines 14- 23) . "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful

had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991)." Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). The fact that Petitioner may have agreed with the State's facts at the guilty plea does not overcome Petitioner's statement that he would not have entered the plea if he had been advised he would have to serve the sentence day for day. He did not intend to proceed to trial because he was advised he would only have to serve eighty-five percent. Petitioner demonstrated prejudice. Counsel respectfully seeks rehearing, a grant of relief, and remand for trial.

Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER

This 17th day of October, 2024.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable William H. Seals, Circuit Court Judge

DENNIS CUMBEE, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000966

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Dennis Cumbee, #370848, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of October, 2024.

Kathrine H. Hudgins
Senior Appellate Defender

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ATTORNEY FOR PETITIONER

From: Stock, Chris
To: SC - MULLER AMBREE; Grace Sommer
Cc: Hudgins, Kathrine
Subject: 2020-000966 - Cumbee, D - Petition for Rehearing
Date: Thursday, October 17, 2024 2:16:00 PM
Attachments: 2020-000966 - Cumbee, D - Petition for Rehearing - AG Cover Letter.pdf
2020-000966 - Cumbee, D - Petition for Rehearing.pdf

Ms. Muller,

Please find attached for service the Petition for Rehearing for Dennis Cumbee, Jr.'s appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
Administrative Assistant
Commission on Indigent Defense
Appellate Division
(803) 734-1330