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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable George M. McFaddin, Circuit Court Judge

RONALD MICHAUX, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000960

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding trial counsel provided effective representation where counsel failed to fully advise Petitioner regarding the plea offers and the possibility of success at trial?

STATEMENT OF THE CASE

On March 20, 2014, Trooper Michael D. Harrison with the South Carolina Highway Patrol was stationed on Interstate 20 around mile marker 42 conducting traffic enforcement. App. 112, l. 6-App. 113, l. 11. Harrison was positioned on the right shoulder of the eastbound lane and was observing oncoming traffic through his sideview mirrors when he noted a white Volkswagen Passat slow down abruptly as it approached his position. A tractor trailer traveling behind the Passat "had to swerve into the passing lane to avoid striking the rear of the Volkswagen." App. 112, l. 13-App. 114, l. 2. Harrison entered traffic to follow the Volkswagen, saw the vehicle was "weaving" within its lane and decided to initiate a traffic stop. App. 114, l. 24-App. 116, l. 19.

Upon approaching the Volkswagen, Harrison noticed barcode stickers on the rear window and a license plate out of New York. Based on those observations he believed that the car was a rental vehicle. Inside the car Harrison saw two cans of air freshener and tobacco shavings that appeared to be from a cigar. Harrison smelled an "overwhelming" odor of marijuana coming from the car as he began to speak with Petitioner who was the driver and sole occupant of the vehicle. He noted Petitioner appeared nervous and his hand was trembling. When he requested Petitioner's driver's license he was provided with a North Carolina identification card for Ronald Michaux, Jr. App. 116, l. 22-App. 119, l. 11.

During the stop Harrison learned that Petitioner's driver's license was revoked out of North Carolina. Harrison issued a warning for the traffic violations and informed Petitioner that he would be searching the car based on the smell of marijuana. During the search Harrison located a black plastic bag knotted closed in the back seat passenger floorboard. Inside the bag

he located a white powdery substance that field tested positive for cocaine. The roadside weight was approximately five ounces[1] of powdery substance. App. 127, l. 6-App. 130, l. 22.

Petitioner was arrested and charged with trafficking. Petitioner was indicted during the July 2015 term of the Lexington County grand jury for one count of trafficking cocaine, 100 grams but less than 200 grams. App. 274-275. On May 17-19, 2016, the State called the case to trial before the Honorable R. Knox McMahon and a jury. The State was represented by Lester McGill Bell, Jr., and Bradley Pogue. Petitioner was represented by David Mauldin. App. 1. Petitioner was found guilty as indicted. App. 258, ll. 16-20.

Petitioner did not appear for the last day of trial. Judge McMahon sealed Petitioner's sentence and issued a bench warrant for his arrest. App. 228, l. 16-App. 229, l. 24. On August 25, 2016, Petitioner was brought before the Honorable William P. Keesley to have his sentence unsealed. Petitioner was sentenced to twenty-five years of incarceration. App. 270, ll. 12-18; App. 276. Petitioner timely appealed his conviction and sentence. The Court of Appeals affirmed his conviction in an unpublished opinion. State v. Michaux, Op. No. 2018-UP-440 (S.C. Ct. App. filed December 5, 2018).

On June 4, 2019, Petitioner filed a *pro se* application for post-conviction relief.[2] App. 277-289. An amended PCR application was filed by PCR Counsel J. Falkner Wilkes on November 14, 2019. App. 290-297. The State filed a return and motion for a more definite statement dated January 7, 2020. App. 298-314. An evidentiary hearing was convened on April 12, 2022, before the Honorable George M. McFaddin. The State was represented by Taylor

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1 Subsequent forensic testing confirmed the powder was cocaine weighing approximately 137.43 grams. App. 188, ll. 21-25.

2 Petitioner's *pro se* application included copies of the indictment, warrant, and trial transcript as exhibits. These exhibits were not included in the Appendix as they were duplicative of documents already in the Appendix or not relevant to the issue raised.

Smith. Petitioner was represented by Counsel Wilkes. App. 315. Petitioner proceeded forward on eight claims of ineffective assistance of counsel, including that trial counsel was ineffective for giving poor advice regarding plea negotiations and for giving poor advice about the chance of success at trial. App. 319, l. 14-3App. 20, l. 9.

Petitioner testified that after speaking with Counsel Maudlin about his case he was under the impression that trial was the best course of action. He believed, based on conversations with counsel, that he had a strong Fourth Amendment violation argument. He recalled being offered a plea at trial that he rejected because he thought he would be found not guilty. Petitioner did not recall being offered a plea for zero to fifteen years. He testified that if Counsel Maudlin had explained his chance to win at trial was "slim to none" he would have accepted a plea offer. App. 323, l. 20-App. 326, l. 7. Petitioner further testified that Counsel Maudlin had not explained to him what an Alford[3] plea was and that if he had, Petitioner would have considered entering a plea instead of going to trial and getting a twenty-five-year sentence. App. 326, l. 12-App. 327, l. 2.

Counsel Maudlin testified that he "never tell[s] people that they've got a winner or a solid loser [at trial] because it goes either way, but I mean, he's the only person in the car. I've told him that you're the only one in the car. The drugs are in the car, it's leaning toward you." App. 341, ll. 21-23. He stated Petitioner's position was that the search of the car was illegal, and that the drugs should be suppressed. App. 341, ll. 3-6. Counsel Mauldin testified he explained that while there was an issue to argue for suppression, he could not say whether it was a winning or losing argument. He told Petitioner the drugs might not be suppressed. App. 342, ll. 14-24.

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3 North Carolina v. Alford, 400 U.S. 25 (1970)

Counsel Maudlin stated that "if the drugs weren't suppressed, its not a terribly great case for him." App. 341, ll. 9-10.

Counsel Maudlin testified he received a plea offer to a reduced offense that carried zero to fifteen years which he conveyed to Petitioner on August 12, 2014. The State was not willing to negotiate a term of years and intended to ask the judge for some prison time. According to Counsel Mauldin, Petitioner wanted a trial "because the solicitor was going to ask for time." App. 338, l. 8-App 340, l. 3. Counsel Mauldin stated he encouraged Petitioner to accept the original plea offer as even fifteen years non-violent was better than the mandatory minimum twenty-five years violent Petitioner would receive after trial. App. 342, ll. 2-13. Counsel Maudlin admitted that he did not explain a plea pursuant to Alford, *supra*, to Petitioner. He stated that Petitioner's reason for rejecting the plea offers was that he was not satisfied with the amount of time he was looking at and not because he was asserting his innocence. Had Petitioner asserted his innocence, Counsel Mauldin testified he "might have gone into it." App. 354, l. 19-App. 355, l. 11.

An order of dismissal was filed on May 28, 2024, finding Petitioner had not met his burden of proof. App. 396-421. The PCR court found credible Counsel Maudlin's testimony that he conveyed the plea offers to Petitioner and that his advice regarding accepting a plea offer versus going to trial was reasonable. The PCR court found Petitioner's testimony not credible and found that Petitioner could not show prejudice. App. 407-413.

ARGUMENT

The PCR court erred in finding trial counsel provided effective representation where counsel failed to fully advise Petitioner regarding the plea offers and the possibility of success at trial.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel extends to the plea-bargaining process, even if the plea offer is ultimately rejected. Lafler v. Cooper, 566 U.S. 156 (2012); Missouri v. Frye, 566 U.S. 134 (2012); Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); 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).

In Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009), this Court adopted the rule that "counsel's failure to convey a plea offer constitutes deficient performance." To determine prejudice, this Court announced a case-by-case approach assessing "whether but for counsel's deficient performance a defendant would have accepted the state's proposed plea bargain and that he would have benefited from the offer." Id. at 613, 675 S.E.2d at 422. Regarding communicating information to a client, the South Carolina Rules of Professional Conduct state that a lawyer is required to "promptly inform the client of any decision or circumstance with respect to which the client's informed consent...is required by these Rules," as well as "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.4, RPC, Rule 407, SCACR (emphasis added).

In 2010, the United States Supreme Court 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." Padilla v. Kentucky, 599 U.S. 356, 373 (2010). Two years later, the Supreme Court decided two companion cases concerning a defendant's right to effective assistance of counsel during the plea-bargaining process. In Frye and Lafler, *supra*, the Supreme Court held that failure of counsel to communicate a plea offer and properly advise a defendant as to the acceptance or rejection of that plea offer constituted deficient performance under the standards set forth in Strickland and Hill, *supra*.

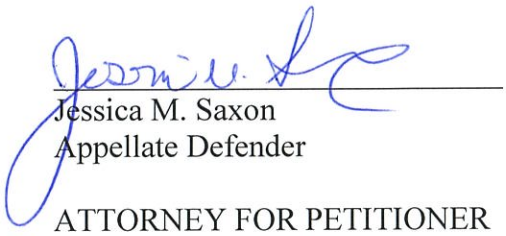
In Lafler, 566 U.S. at 163. (2012), the sole issue before the Supreme Court was how to apply Strickland's prejudice test where ineffective assistance of counsel resulted in the rejection of a plea offer and the defendant was convicted after the resultant trial. The Supreme Court held that when having to stand trial due to the deficient performance of counsel is the prejudice alleged, a defendant must show that there is a reasonable probability (1) that the defendant would have accepted the plea offer, (2) that the prosecution would not have withdrawn the plea offer in light of intervening circumstances, (3) that the court would have accepted the terms of the plea offer, and (4) that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence were imposed. Id. at 164. Importantly, the Supreme Court stated that subsequently receiving a fair trial did not necessarily cure the errors of counsel that occurred during the pretrial stages. Id. at 166. This is because the question was "not the fairness or reliability of the trial, but the fairness and regularity of the process that preceded [the trial], which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance." Id. at 169.

Counsel Maudlin failed to explain, in certain terms, that Petitioner's risk of conviction at trial was extremely high and that the only way to limit his exposure was to plead guilty. Counsel Maudlin also failed to adequately explain that the search of the car was reasonable under the circumstances and that he could only challenge the basis of the stop, which was not a strong argument for suppression of the drugs. Had Counsel Mauldin properly explained the State's evidence, the elements of the offense, the weakness of the suppression motion, and the fact that Petitioner had almost no chance to prevail at trial, then Petitioner would have entered a guilty plea. The failure of Counsel Mauldin to properly and clearly advise Petitioner of his chances at trial compared to the benefit of a plea deal was deficient performance.

Petitioner went to trial on the advice of counsel and was sentence to twenty-five years of incarceration on a violent offense. He will have to serve 21.25 years of his sentence. Had Petitioner pled guilty to the first offer he would have received at most fifteen years non-violent for which he would have to serve 9.75 years. Further, the original offer was for a range of time which started at zero years. Theoretically, Petitioner could have been sentence to probation had he been properly advised on the benefits of the plea deal compared to the low chance of success on the suppression motion and at trial. Petitioner's actual penalty was considerably more severe than it would have been had he been properly advised to enter a guilty plea, thus Petitioner has shown the necessary prejudice.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of this issue.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of November, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronald Douglas Michaux, Jr. states:

1. She is 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 before Judge George M. McFaddin, which was held on April 12, 2022, 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 Ronald Douglas Michaux, Jr.

Respectfully Submitted,

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of November, 2024.

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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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