

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

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OCT 23 2013

S.C. Supreme Court

CALDERONE BRACEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

2013-000264

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to explain fully sentencing consequences to petitioner because petitioner mistakenly believed that the required 85% service time on his voluntary manslaughter conviction would be deducted on the front end of his original sentence issued during the sentencing phase of his plea proceeding when such a calculation, or any calculation, could only occur only after he commenced serving his prison sentence.

STATEMENT

Petitioner Calderone Bracey pled guilty to voluntary manslaughter during the September 2011 term of the Sumter County General Sessions Court before Judge Howard P. King. Timothy Ward Murphy represented petitioner at the plea proceeding. Petitioner was sentenced to imprisonment for a period of thirty years. App.1-27. The remaining twenty-four charges¹ filed against him were nolle prossed. Petitioner did not enjoy the benefit of direct appeal of his conviction and sentence.

On April 9, 2012, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 29-47. The respondent filed a return dated June 25, 2012, requesting that a hearing be held in the case. App. 48-53.

A PCR hearing was convened on December 10, 2012, at the Sumter County Courthouse before Judge R. Ferrell Cothran. App. 54-89. Petitioner was present at the hearing and represented by Charles T. Brooks. On January 24, 2013, Judge Cothran issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel. App. 91-100.

Petitioner appealed Judge Cothran's Order of Dismissal. This petition follows.

¹ The indictment issued against petitioner charged him with murder, first degree burglary, eight counts of kidnapping, two counts of assault and battery with intent to kill, five counts of assault with intent to kill, two counts of armed robbery and six counts of attempted armed robbery. App. 101-106.

ARGUMENT

Trial counsel erred in failing to explain fully sentencing consequences to petitioner because petitioner mistakenly believed that the required 85% service time on his voluntary conviction would be deducted on the front end of the original sentence issued during the sentencing phase of his plea proceeding when such a calculation, or any calculation, could only occur after he commenced serving his prison sentence

At trial, the solicitor apprised the plea judge of the facts in the case. Apparently, on December 14, 2009, petitioner and his brother, Carlton Bracey, approached a home where more than ten people were present inside, and entered the house with the intent to commit robbery. The solicitor stated that petitioner and Bracey were armed and that gunshots were fired in the house in response to one occupant who fired gunshots. One male was killed and two other individuals were shot. Others in the house were not struck by gunfire. App. 14, l. 1-p. 16, 17.

During the PCR hearing, petitioner testified that counsel advised that he would be “doing twenty-four years instead of thirty years” in exchange for his guilty plea to manslaughter even though the negotiated sentencing agreement included a thirty-year sentence in exchange for the guilty plea. Petitioner stated that he relied on the twenty-four-year prison term as the incentive and reason for pleading guilty to voluntary manslaughter in the case. App. 61, l. 4-p. 63, l. 4; App. 7, l. 14-22; App. 67, l. 15-18; App. 69, l. 4-p. 71, l. 7; App. 7, l. 2-6.

Trial counsel testified that he advised petitioner that a sentence for voluntary manslaughter would require 85% service time, but since the sentence did not entail day for day service time and good credits were applicable to the sentence, then his prison time would end up being less than thirty years. Counsel admitted that this explanation of how SCDC’s calculations would end up

reducing the sentence/service time was probably what led petitioner to believe that his sentence would total twenty four years. App. 75, l. 1-p.77, l. 18.

Clearly, petitioner misunderstood counsel's advice regarding the negotiated sentence reached in the case, which totaled thirty years, and the actual service time served after his incarceration. In other words, although petitioner's actual service time could be reduced by many factors once incarcerated, these reductions would accrue after his service time progressed rather than being prematurely deducted against his original sentence.² Counsel did not explain clearly to the petitioner that the thirty-year sentence would be the initial sentence and that it would work its way downward with time shaved off the initial sentence over time after he began serving his sentence. Petitioner mistakenly believed that his start time would incorporate the downwardly diminished sentence calculated up front on his original sentence instead.

In order for a plea to be considered voluntary in nature per Boykin v. Alabama, 395 U.S. 238 (1969), a defendant must understand the nature and crucial elements of the charges, the consequences of the plea, the constitutional rights waived, and that a factual basis for the plea must exist. Anderson v. State, 342 S.C. 54, 535 S.E. 2d 649 (2000). Specifically, however, in order for a defendant to have his plea voluntarily given, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E. 2d 175 (1995); State v. Hazel 275 S.C. 392, 271 S.E. 2d 602 (1980); Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999).

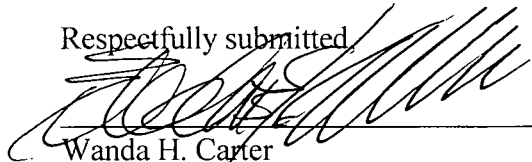
Here, petitioner was not fully advised of sentencing consequences by counsel because he mistakenly believed he would receive a twenty-four-year sentence in exchange for his voluntary manslaughter conviction when the negotiated sentence was for a thirty-year prison term. Counsel's failure to fully explain sentencing consequences in the case constituted deficient legal

representation at his plea proceeding in violation of petitioner's Sixth Amendment right to effective assistance of counsel in his case. See also Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner pled guilty in reliance on counsel's misadvice regarding sentencing expectations and was prejudiced as a result since the sentence he received in exchange for his plea was greater (by six years) than the sentence he thought he would receive, and because he would have requested a trial by jury if he had he been properly advised regarding sentencing consequences in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant this petition and allow full briefing on the issue raised.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of October, 2013.

² THE COURT: Gentlemen, the court has been advised that your lawyers and the State's attorneys have entered into negotiations, and this is what we would call a negotiated plea. That means that the sentence is a negotiated one between the State and your lawyers of 30 years in prison.

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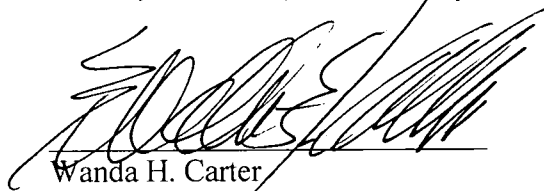
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

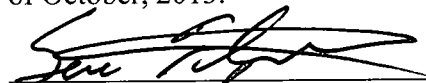
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Calderone Bracey #347965, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 23rd day of October, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of October, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.