

Jayne D. Gamble
Petitioner

v.

State of South Carolina
Respondent

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AUG 29 2025

S.C. SUPREME COURT

Written Memorandum
2025-000302

Petitioner first would like to point out that the lower courts did not rule on every issue presented sufficiently. Trial Courts held "The PCR Court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue" (Fishburne v. State 427 S.C. 505) At PCR plaintiff raised the following issues:

1. Trial counsel was ineffective for failing to get the 1st degree burglary charge dropped to a 2nd degree burglary
2. Trial Counsel failed to investigate
3. Trial Counsel was ineffective for failing to explain the elements of the charges contained in my indictment.
4. Ineffective for Conflict of Interest
5. Ineffective for failing to get the attempted Murder dropped
6. Trial Counsel ineffective for failing to explain the difference between negotiated and a open plea

In the Courts Dismissal in Allegation 1c it states: "Failure to move to dismiss the three counts of attempted murder and he should have been charged with ABWIK." (see attached)

Petitioner argues this was not a issue presented at PCR, the issue was that Counsel failed to get the attempted murder charge dropped after there was evidence that petitioner was not the shooter and co-defendant had admitted and pled guilty to the attempted Murder charge. (PCR TR. pg. 12+13) (see attached) At PCR trial Counsel admits there was video of the co-def being the shooter. (PCR TR. pg. 32-33) (see attached). Petitioner argues that the PCR counts did not sufficiently rule upon the issue presented at PCR. Petitioner has written PCR Counsel asking that he file a Rule 59(e) to have my issue properly ruled upon but PCR Counsel denied my request. I then wrote the Court of Appeals informing them but haven't heard anything.

Petitioner argues that trial Counsel's failure to investigate amounted to ineffective assistance of Counsel. At PCR petitioner argued that Plea Counsel didn't investigate the case to find out who was the shooter. When asked at PCR, Plea Counsel stated she didn't do any independent investigation outside of the discovery. (PCR Tr. pg. 32 2.14-16) And that she didn't know who the shooter was. (PCR Tr. pg. 32 2.14-21) Petitioner argues that in *And v. Cartoe* the Courts held "while the scope of a reasonable investigation depends upon a number of issues, at a minimum, Counsel has the duty to interview potential witnesses and to make "Independent" investigation of the facts and circumstances of the Case" (372 S.C. 331-332)

Had counsel did any Independent investigation she would of known that petitioner was not the shooter and the attempted Murder charges should have been dropped. And there's a reasonable probability that the outcome would have been different. Petitioner argues I would not had pled guilty if I had of known the attempted murder charges wasn't being dismissed.

Petitioner argues that PCR judge ruled on Allegation 16 which stated the issue was Failure to move to dismiss the armed robbery count. Petitioner argues that petitioner was never charged with Armed Robbery and this was not a issue that was presented at PCR. Again the PCR Court didn't rule on every issue presented at the hearing, petitioner was never charged with Armed Robbery. "The PCR court shall make specific findings of fact, and state expressly it's conclusions of, relating to each issue presented." (Fishburne supra)

Petitioner argues trial counsel was ineffective for not explaining the consequence between a negotiated plea and a open plea

Petitioner testified that Counsel failed to explain the difference between a negotiated plea and a open plea (PCR Tr. pg 10) Petitioner testified that Counsel told him he could of gotten 18 yrs on the open plea and caused plaintiff to turn down the negotiated Plea of 30 yrs and take the open plea and got 60 years. Petitioner argues I would not of turned down 30 years for 60 years. Trial Counsel at PCR testified she knew defendant was thinking he could get less in an open plea. (PCR Tr. pg 27 L. 9-12)

In "Hill" the Courts held "Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in Criminal cases" (Hill v. Lockhart 106 S. Ct 366) Petitioner argues Plea Counsel did not communicate the plea offer that the negotiated plea was the lesser Sentence but rather told petitioner the open plea was the lesser Sentence and plaintiff received significantly more than what the State offered. "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." (Missouri v. Frye 132 S. Ct 1399)

In Frye the courts held "To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time" (Missouri v. Frye 132 S. Ct 1399) Had trial Counsel not advise me to take the open plea and that I would receive 15 yrs plaintiff would have accepted the negotiated plea of 30 years instead of 50 years on the open plea. "Any amount of additional jail time has Sixth Amendment significance." (Flower v. U.S. 531 U.S. 198)

In Laffer, the court held that the Sixth Amendment right to counsel applies to the plea bargaining process and prejudice occurs when, absent deficient advice, the defendant would have accepted a plea that would have been accepted by the court, and that "the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed Laffer v. Cooper 132 S. Ct 1376

"The Courts held "The Sixth Amendment guarantees criminal defendants effective assistance of counsel. (Strickland v. Washington 466 U.S. 668" and the guarantee extends to the plea bargaining process. (Lafleur v. Cooper 566 U.S. 1361)

Petitioner argues that had counsel inform petitioner that petitioner could not get 15 years due to the nature of the charges on a open plea petitioner would have taken the lesser sentence. At PCR when asked about the Plea (PCR Tr. pg 26 L.16-25; pg 27 L.1-6) she admits she had me under the impression I could get 15 yrs if I took the open plea. Petitioner argues I would not had turned down a lesser sentence if it wasn't for the erroneous advice of Counsel. "To establish prejudice it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a lesser sentence" (Missouri v. Frye 566 U.S. 314)

This issue wasn't ruled upon by the PCR court but was presented at PCR. Petitioner argues that the Attempted Murder's charges were to be dismissed there was video evidence and Body Cam evidence of who the shooter was Counsel ineffectiveness of not presenting favorable evidence along with the fact that co-defendant had admitted to shooting and pled guilty to obtain a lesser sentence. Petitioner only pled guilty upon advice of Plea Counsel that petitioner would receive 15 yrs if petitioner took the open plea. This advice cause led to petitioner losing a lesser plea of a negotiated plea of 30 years to being sentenced to 50 yrs. Petitioner argues had Counsel not rendered this erroneous/ineffective advice petitioner would have taken the 30 yrs. There's a reasonable probability that the Outcome would have been different.

Aug. 20, 2025

~~James Gamble~~

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