

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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Certiorari to York County

Honorable R. Scott Sprouse, Circuit Court Judge
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JASON R. FRANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001592
—————

BRIEF OF PETITIONER
—————

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ISSUE PRESENTED

Whether the post-conviction relief court erred finding petitioner's allegation, that his Sixth Amendment right to advice of counsel was violated during plea negotiations, was "outside the scope" of post-conviction relief where the solicitor offered and later rescinded plea deal to petitioner before counsel was appointed and before petitioner had seen any discovery in his case?

STATEMENT

On October 14, 2010, a York County grand jury indicted petitioner for attempted murder. App. 668-69. On December 13, 2010, petitioner's case was called to trial before the Honorable John C. Hayes and a jury. App. 1. B.J. Barrowclough and Erik Delaney represented petitioner. E.B. Springs, assistant solicitor, represented the state. App. 1. The jury found petitioner guilty of attempted murder and Judge Hayes sentenced petitioner to life without the possibility of parole (LWOP). App. 439, ll. 23-25; 451, ll. 1-3.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 453-58. On April 12, 2022, an evidentiary hearing was held before the Honorable R. Scott Sprouse. App. 466-654. Nathan Sheldon represented petitioner, and Michael Neubauer represented the state. App. 466.

On October 4, 2022, Judge Sprouse signed an order denying PCR. App. 660-67. The PCR court found "while the procedure followed by the solicitor handling the case [was] concerning," petitioner's allegation that his right to counsel was violated during plea negotiations, was "outside the scope" of PCR. App. 666. The court found petitioner's allegation that defense counsel was ineffective for failure to request the trial court charge the jury with "the law of accident" was "purely speculative" where there was no proposed charge or any way to determine if the court would have accepted the proposed charge. The court also noted "the jury was given a charge on criminal intent" and "[w]hile the word 'accident' [was] not specifically used . . . the charge fit" the defense's theory of the case. App. 666.

The petition for a writ of certiorari and appendix were filed on July 14, 2023. The return was filed October 27, 2023. On September 22, 2025, this Court granted certiorari. This brief of petitioner follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a post-conviction relief court’s findings of fact and will uphold them if there is evidence in the record to support them. *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the post-conviction relief court. *Id.*

ARGUMENT

The PCR court erred finding petitioner's allegation, that his Sixth Amendment right to advice of counsel was violated during plea negotiations, was "outside the scope" of PCR where the solicitor offered and later rescinded plea deal to petitioner before he was appointed counsel and before petitioner had seen any discovery in his case.

Relevant trial facts

At trial the state alleged that petitioner intentionally drove a car into complainant, Edward Mullins, who was driving a moped. The central issue at trial was whether the incident was accidental or intentional.

Prior to sentencing the trial court stated, "this case has . . . a unique wrinkle that I think needs to be put on the record." App. 444, ll. 20-24. The court asked the solicitor about the plea offer extended to petitioner. App. 445, ll. 1-3. The solicitor, E.B. Springs, answered as follows:

[Petitioner] was originally charged – this happened on June the 7th, a few days after the new attempted murder law was enacted and assault and battery with intent to kill was repealed, disappeared. The officer that made this case charged him with assault and battery with intent to kill on the 7th, and there is no such crime on June the 7th.

. . . I looked at the case. I saw difficulties with the case. [Edward Mullins] has a horrible record, as the court has learned. I met with [petitioner]. He was in jail. His probation officer locked him up. He was pro-se. I met with him. We had a pleasant conversation. I said "first of all, do you want a lawyer?" He said "no. No, I'll handle this." **I said given the facts here, I will let you plead to leaving the scene of an accident with bodily injury, which carries a year, and reckless driving for one year active sentence.**" And he was extremely happy with that. [Petitioner] **said "I want that. . . . I'll do that."** I said "do you want a lawyer? You can have the same things and do the same thing. I can get you a public defender." He said "no, I'll handle it myself."

It came time for [petitioner] to take that deal and he came into my office pro-se with his girlfriend and his mother and he said "I'm not

going to. I want a trial." And I said "do you understand that I had explained to you when I first met with you that this would be charged as attempted murder. That's what the correct charge would have been. With your prior record, you would be tried for life without parole. And if you lose, you are going to get life without parole." He said "I understand that. I want a trial."

I brought him into the courtroom. We had a visiting judge next door. I don't remember the judge and gave the quick summary of where we were. I said "he needs a public defender," and [petitioner] indicated "yeah, I want a public defender because I want a trial." He got a public defender. He was charged with attempted murder and Mr. Delaney got this case. . . . Mr. Delaney came to see me and basically asked for some kind of an offer. I said "okay. I would allow him to plead to the new statutory assault and battery of a high and aggravated nature for twelve no-parole years. . . . [Petitioner] wanted nothing whatsoever to do with that. He wanted a trial and that's what we gave him, a trial.

App. 445, l. 6-447, l. 9.

Defense counsel added that petitioner had been willing to plead guilty and that he met with Mr. Springs and the elected solicitor, Kevin Brackett, and they were unable to come to an agreement. App. 447, ll. 16-23. Counsel told the trial court he thought the situation regarding early plea negotiations was "highly unusual," and that is why he escalated the conversation beyond Mr. Springs to Solicitor Brackett. App. 449, ll. 1-6. Defense counsel also informed the trial court that petitioner had cooperated with the prosecution of a murder case in another county and that he had been instrumental in that case. He said the solicitor in that county called this county "seeking some consideration" for petitioner. App. 449, ll. 7-20.

Petitioner told the trial court he believed that Mr. Springs was going to protect him from the consequences of his testimony in the murder prosecution and the reason he wanted the first guilty plea offer Springs extended was so that he could get married. Petitioner stressed that he would have taken any plea available to him, but Mr. Springs refused to work with him. App. 450, ll. 10-25.

Relevant evidentiary hearing facts

Petitioner testified at his evidentiary hearing that he was arrested on June 7, 2010, and charged with attempted murder. App. 473, ll. 10-25. Regarding the accident, petitioner testified Mr. Mullins was in front of him in a moped and refused to let him pass. App. 475, l. 23-476, l. 6. In an attempt to pass Mullins, petitioner “clipped [the] tail end” of Mullins’ moped. App. 476, ll. 6-11. Petitioner admitted he was driving without a license and that he left the scene of the accident. App. 476, ll. 1-3.

Petitioner turned himself in, gave a statement to law enforcement, and was released from custody. He was arrested soon after for violating his probation from an unrelated charge. App. 474, ll. 22-25; 476, ll. 21-23. Petitioner testified that not long after his arrest for violating probation, before he got bond, the solicitor, Mr. Springs, visited him in jail. App. 477, l. 22-748, l. 15. He contended Mr. Springs offered him a one-year sentence and told him he did not need a lawyer. App. 478, l. 24-479, l. 11. Petitioner believed this was a good offer; he accepted and believed the deal was done. App. 479, ll. 13-19.

Very shortly after petitioner was released on bond his son passed away. App. 479, ll. 24-25. Petitioner said he was “mentally distraught” and sought medical treatment at the hospital because he was suffering “outrages,” “severe insomnia,” “depress[ion],” and was “contemplat[ing] suicide.” App. 480, ll. 7-16. He still believed he did not need an attorney, and that Mr. Springs would notify him regarding when to come to court and plead guilty per their agreement. App. 481, ll. 4-10. In August he met again with Mr. Springs and at that time petitioner asked to have counsel to “be present and help [him] get through [the process].” App. 485, ll. 3-25. Petitioner contended Mr. Springs withdrew the first offer and offered twelve years. App. 486, l. 1-4. Petitioner asserted that during early plea negotiations with Mr. Springs he did not

have the opportunity to consult with counsel and had not yet seen his discovery. App. 488-89. Petitioner testified that the original plea offer was not revived once he was appointed counsel, which made him feel like he was being punished for requesting counsel because the deal disappeared. App. 496.

An expert in forensic psychiatry, Dr. Donna Maddox testified at petitioner's evidentiary hearing. App. 522-48. Dr. Maddox evaluated petitioner in preparation for PCR in 2018. App. 526, ll. 4-6. She diagnosed petitioner with borderline personality disorder, major depressive disorder, post-traumatic stress disorder, and two substance abuse disorders. App. 659. Dr. Maddox opined petitioner was mentally ill at the time of the incident and during the time before trial. She opined petitioner should have had psychiatric evaluation to determine competency particularly when the state's plea offer was rejected. App. 539, l. 23-540, l. 20. Dr. Maddox further opined someone with petitioner's mental difficulties should not have participated in serious legal proceedings without evaluation or aide of counsel. App. 542, ll. 6-24.

E.B. Springs, the prosecuting solicitor, testified at petitioner's evidentiary hearing. App. 550-605. Mr. Springs testimony at this hearing was similar to his statements to the trial court prior to petitioner's sentencing. Springs claimed that, even though he thought the facts of the wreck supported a charge of attempted murder, "he saw some wrinkles" and "serious problems" with the case. App. 551, ll. 16-18. Springs stated it was his understanding petitioner declined counsel and so after he evaluated the case, he went and made a very generous plea offer to petitioner in the detention center. App. 551, l. 19-552, l. 9.

Springs admitted this offer was made to petitioner when he did not have counsel¹ and

¹ Springs' testimony characterized the situation as petitioner representing himself *pro se* and declared it was petitioner's responsibility to request discovery. App. 551, ll. 20-24; 589, l. 10-590, l. 15.

without petitioner having seen any discovery in his case. App. 589. Petitioner accepted Springs offer to plead to the charge of leaving the scene with injury for one active year. App. 585, ll. 1-5. He denied ever telling petitioner he would not need an attorney. Instead, Springs insisted he offered multiple times to help petitioner get counsel appointed. App. 553, ll. 1-20; 557, ll. 2-25; 559, ll. 3-20. Springs maintained petitioner was adamant that he could handle his case without the advice of counsel. App. 553, ll. 1-20; 557, ll. 2-25; 559, ll. 3-20. He insisted petitioner never asked for advice of counsel prior to rejecting the offer. App. 565, ll. 1-4. Springs denied that he rescinded the initial offer because petitioner asked for an attorney. He claimed that he rescinded the offer because the offer had reached its deadline and petitioner declined to keep the deal. App. 565, ll. 3-7.

Springs testified the guilty plea was scheduled to go forward on August 12, 2010. However, right before the date he received a call from Randy Murdaugh, solicitor in another circuit, explaining petitioner had appeared as a prosecution witness in a murder trial that resulted in a not guilty verdict. Solicitor Murdaugh was concerned for petitioner's safety if he were to be incarcerated in general population after his guilty plea in this case. App. 560, ll. 7-24. Murdaugh wanted to arrange for petitioner to go into a protective unit and that would take some time. App. 561, ll. 1-9. Springs contacted petitioner and explained this to him and told him the guilty plea would be postponed until August 25, but that it would be the same deal and petitioner said he understood. App. 561, ll. 9-22.

Springs contended that on August 25, petitioner came in as planned but told him that he no longer wanted the deal and instead wanted to go to trial. App. 562, ll. 9-12. He said he was "flabbergasted" by petitioner's decision to reject the offer. App. 562, ll. 12-13. Springs declared that because of this change he believed it was best they go before a judge so that petitioner could

consider whether he wanted counsel for these serious charges. They went before Judge McIntosh and an attorney was appointed to petitioner's case.² App. 563, ll. 1-6; 564, ll. 18-24.

Springs testified he spoke with petitioner's appointed counsel who requested another offer and Springs offered twelve years if petitioner pled guilty to assault and battery of a high and aggravated nature. He said the earlier deal had expired and would never be revived. App. 565-66. He refused to revive the first offer because it would damage his "credibility," to not stick to the deadline. App. 567.

Petitioner was represented at trial by B.J. Barrowclough and Erik Delaney and they both testified at his evidentiary hearing. App. 605-45. Barrowclough said when he discovered what transpired before he was appointed, he "found the whole situation to be shocking." App. 606, ll. 12-16. In disbelief Barrowclough went to Springs' superior, Mr. Brackett, to discuss and bring his attention to the situation. App. 606, ll. 18-23. He said ultimately Brackett "decided not to involve himself with what Mr. Springs [had done]." App. 607, ll. 1-3.

Barrowclough testified petitioner wanted to accept Springs' original plea offer and he "desperately [tried] to get that deal back." App. 607, ll. 16-18. During plea negotiations with Springs, Barrowclough expressed to him "how unreasonable [he] thought [Springs] was by . . . offering one year and then pulling it back before any attorneys were involved in the case." App. 610, ll. 1-4. The only subsequent offer Springs extended was a twelve-year offer. They turned that offer down and went to trial. App. 610, ll. 16-20.

Barrowclough appeared dismayed at the entire situation and stated "to go from a year with no lawyer to life . . . with a lawyer, numerous [] people, lawyers and non-lawyers around here, have commented on that being so inappropriate. App. 629, ll. 20-25. Erik Delaney's

² Springs testified there was no transcript of this hearing; the transcript "was destroyed." App. 565, ll. 18-24.

testimony was substantially the same as his co-counsel Barrowclough's.

Discussion

The PCR court erred finding petitioner's allegation was "outside the scope of an application for PCR." Contrary to the findings of the PCR court, petitioner's claim that his conviction and sentence are in violation of the Constitution is within the scope of PCR. The Uniform PCR Act states: "[a]ny person who has been convicted of, or sentenced for, a crime and who claims [t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State" may institute PCR proceeding. *See* S.C. Code Ann. § 17-27-20.

Additionally, the PCR court made no findings regarding whether petitioner's right to counsel was violated when the solicitor offered and then rescinded a very beneficial deal before petitioner had obtained counsel or seen any discovery in his case. Instead, the PCR court found that petitioner's later appointed attorneys "made a diligent effort to obtain the previous plea offer," and that this "issue" was known to the trial court, who directed Mr. Springs to put the facts regarding plea negotiations on the record. App. 667.

The Sixth Amendment right to counsel protects the integrity of the adversarial system of criminal justice by ensuring that all persons accused of crimes have access to effective assistance of counsel for their defense. "The right is grounded in 'the presumed inability of a defendant to make informed choices about the preparation and conduct of his defense.'" *State v. Quattlebaum*, 338 S.C. 441, 446, 527 S.E.2d 105, 107 (2000) (internal citations omitted).

To establish a valid waiver of counsel, the accused must be advised of the right to counsel and adequately warned of the dangers of self-representation. *Faretta v. California*, 422 U.S. 806, 835 (1975). In the absence of a specific inquiry by the lower court addressing the

dangers and disadvantages of proceeding pro se, we look to the record to determine whether petitioner had sufficient background or was apprised of her rights by some other source. *Bridwell v. State*, 306 S.C. 518, 519, 413 S.E.2d 30, 31 (1992).

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, 687–88, (1984). The right to effective assistance of counsel extends to the plea-bargaining process. *Lafler v. Cooper*, 566 U.S. 156, 162 (2012); *Simuel v. State*, 432 S.C. 150, 154, 850 S.E.2d 642, 643–44 (Ct. App. 2020).

In *Lafler*, the defendant first expressed a willingness to accept a plea offer in court, but later rejected the offer based on the advice of counsel. 566 U.S. 161. Thereafter, the defendant was tried, found guilty, and sentenced to substantially more time than the plea offer would have provided. *Id.* On appeal to the United States Supreme Court, the parties agreed trial counsel’s advice with respect to the plea offer constituted deficient performance. *Id.* at 163. The issue before the Court was how to apply *Strickland*’s prejudice test where ineffective assistance resulted in rejection of a plea offer, and yet the defendant was convicted after a trial. *Id.* The Court held in these circumstances, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, 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 were in fact imposed. *Id.* at 164.

The Court analyzed a similar issue in *Missouri v. Frye*, 566 U.S. 134, 147 (2012). The issue in that case was whether the constitutional right to effective assistance of counsel extended to negotiations and considerations of plea offers that lapse or are rejected. 566 U.S. at 138. The

Court held defense counsel has a duty to communicate formal offers from the prosecution that may be favorable to the accused. *Id.* at 145. The Court recognized that “the plea-bargaining process is often in flux, with no clear standards or timelines and with no judicial supervision of the discussions between prosecution and defense.” *Id.* at 143. Further, the Court recognized the prevalence of guilty pleas in the criminal justice system, noting that “[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas.” *Id.* According to the Court, “[t]he reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages.” *Id.* Based on this reality, the Court declared that “the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.” *Id.* at 144.

In *Simuel v. State*, this Court held that trial counsel’s advice with respect to a plea offer did not amount to ineffective assistance of counsel. 432 S.C. 150, 850 S.E.2d 642, (Ct. App. 2020). Simuel argued on appeal that counsel was ineffective for failing to advise him to accept the state’s offer or inform him that if he were convicted, he would face a mandatory sentence of LOWP. *Id.*

The cases above are distinct from this case in that they all allege a deficiency of trial counsel during plea negotiations. Importantly, the cases agree that the right to advice counsel is attached at the time of plea negotiations. Petitioner does not allege that either of his attorneys were deficient in their representation of him during plea negotiations. The allegation is simply petitioner was deprived of advice of competent counsel during plea negotiations with the state.

Here, petitioner was denied the right to advice of counsel during a critical time—plea negotiations—when the solicitor, Mr. Springs, approached him with a plea offer *before* petitioner was appointed counsel and before he had seen discovery in his case. There is conflicting testimony regarding whether petitioner was advised he should consult with an attorney. Mr. Springs insisted he told petitioner multiple times that he should have an attorney and that he assured petitioner the deal would remain with or without an attorney. Petitioner testified Springs did not think he needed an attorney and that once he asserted his right to have counsel, Springs rescinded the offer.

However, it is uncontested Springs approached petitioner very shortly after his arrest on unrelated charges and before he had seen any discovery with a plea offer. It is uncontested petitioner was not warned of the dangers of self-representation. It is also uncontested that when petitioner was appointed counsel the original deal was rescinded, the next offer was drastically different, and Springs was unwilling to revive his first offer. Springs testified August 12 was the deadline and after that deadline the deal was dead. App. 567, l. 19—568, l. 10. Springs contended the deadline expired and that was the reason he would not revive the initial plea offer. However, the record reflects circumstances outside of petitioner’s control delayed the August 12, guilty plea hearing until August 25, and by that time petitioner wanted an attorney to represent him going forward.

In *Frye*, the Court held, “defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel.” 566 U.S. 134, 147 (2012). To establish prejudice, it is necessary for a defendant 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 sentence of less prison time.” *Id.* A

defendant “must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law.” *Id.*

Undoubtedly, convictions for leaving the scene of an accident with bodily injury, and reckless driving with a one-year sentence are more favorable than a conviction of attempted murder with a sentence of LWOP. Springs acknowledged at the conclusion of petitioner’s trial and at petitioner’s evidentiary hearing that he made the one-year guilty plea offer and there would have been no reason the trial court could not have accepted the offer. Petitioner was prejudiced by the violation of his constitutional right to advice of counsel during plea negotiations where Mr. Springs refused to revive the original offer and petitioner went to trial and ultimately received a sentence of LWOP where he was previously offered a sentence of one year.

CONCLUSION

By reason of the foregoing argument, petitioner respectfully requests this Court reverse the lower court's denial of post-conviction relief and remand his case for a new trial.



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Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of October, 2025.