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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to Marion County
Honorable H. Steven DeBerry IV, Plea Judge
Honorable Benjamin Alexander Hyman, Post-Conviction Relief Judge

Appellate Case No. 2026–000238

Christopher E. Bennett, #392357,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF THE ISSUES ON PETITION FOR CERTIORARI

The Petitioner's trial counsel was ineffective in his failure to thoroughly and properly explain to the Petitioner the specific waivers or consequences of the refusal of a first plea offer made by prosecution; said failure of trial counsel caused the Appellant irreparable harm.

COUNTERSTATEMENT OF ISSUES ON PETITION FOR CERTIORARI

Whether the post-conviction relief court correctly determined that Petitioner failed to meet his burden of establishing that Plea Counsel was constitutionally ineffective regarding the communication and explanation of the initial plea offer, the consequences of rejecting it, and the collateral consequences of the plea, where the record supports the post-conviction relief court's findings that Plea Counsel conveyed the initial plea offer, explained it in the context of the discovery, and did not misadvise Petitioner concerning the collateral consequences.

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections (SCDC). During its August 2022 term, the Marion County Grand Jury indicted Petitioner for two counts of Criminal Sexual Conduct with a Minor Second Degree (2022-GS-33-00380; -00520). Petitioner was represented by Jeffrey T. Lucas, II, Esquire (Plea Counsel). Twelfth Circuit Assistant Solicitor David A. Richardson, Jr. (A.S. Richardson) prosecuted the case.

On August 7, 2023, Petitioner appeared before the Honorable Michael G. Nettles and rejected a plea offer of fifteen (15) years imprisonment on Criminal Sexual Conduct (CSC) with a Minor Third Degree that would have involved the sex offender registry and GPS monitoring upon release.

On October 27, 2023, Petitioner appeared before the Honorable H. Steven DeBerry, IV, to plead pursuant to Alford[1]. In exchange for his plea, one of the charges (2022-GS-33-00520) was dismissed. Judge DeBerry sentenced Petitioner to twenty (20) years imprisonment for the remaining charge (2022-GS-33-00380) with credit for time served. Additionally, Petitioner was ordered to be placed on the sex offender registry and to be electronically monitored upon release. Petitioner did not appeal his sentence or conviction.

On March 11, 2024, Petitioner filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on February 5, 2025, at the Florence County Courthouse before the Honorable B. Alexander Hyman. Petitioner was present at the hearing and represented by Charles T. Brooks, III, Esquire. Assistant Attorney General Kylee Kanealey of the South Carolina Attorney General's Office represented the State. (App'x pp. 69–115). On January

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[2] North Carolina v. Alford, 400 U.S. 25 (1970).

21, 2026, Judge Hyman denied Petitioner's post-conviction relief application with prejudice. (App'x pp. 116–35).

On January 30, 2026, Petitioner filed a timely notice of appeal. On May 27, 2026, Petitioner filed his Petition for Writ of Certiorari and Appendix.

This Return to Petition for Writ of Certiorari follows.

STATEMENT OF FACTS

The facts giving rise to Petitioner's conviction were articulated by the State at Petitioner's guilty plea hearing as follows:

> This occurred between June and July of 2021 in Marion County at [redacted]. The defendant, who was approximately 51 years of age, was involved in a relationship with the mother of the child in this case. That's how he had access to the child. The child at the time was 11 years of age.
>
> And during this time, he had engaged in sexual intercourse with the child that resulted in pregnancy. The report was made to law enforcement, and DNA samples were obtained. The child was born actually of the victim.
>
> The DNA results are as follows: it's approximately a 180 billion times more likely that Christopher Bennett is the true biological father than if a random man is the father. So the DNA affirmed what the minor child stated happened.

(App'x p. 59).

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is any probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Appellate courts give great deference to a PCR court's credibility findings because appellate courts lack the opportunity to directly observe the witnesses. Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

<u>ARGUMENT</u>

The post-conviction relief court correctly determined that Petitioner failed to meet his burden of establishing that Plea Counsel was constitutionally ineffective regarding the communication and explanation of the initial plea offer, the consequences of rejecting it, and the collateral consequences of the plea, where the record supports the post-conviction relief court's findings that Plea Counsel conveyed the initial plea offer, explained it in the context of the discovery, and did not misadvise Petitioner concerning the collateral consequences.

On appeal, Petitioner asserts that the post-conviction relief court erred in not finding that Plea Counsel provided ineffective assistance of counsel. Specifically, Petitioner contends that Plea Counsel failed to thoroughly and properly explain the initial plea offer of fifteen years, the consequences of rejecting that offer, and the collateral consequences of the plea he ultimately entered. However, as the post-conviction relief court properly found: (1) Plea Counsel advised Petitioner of the initial plea offer, including its direct consequences and that he would have to serve sixty-five percent of that sentence, and did not misadvise Petitioner of the collateral consequences; (2) Petitioner chose to reject the initial plea offer based on his own displeasure with the terms of the offer and did not do so because of any alleged erroneous advice from Trial Counsel; and (3) Petitioner failed to establish that his plea was involuntarily or unintelligently made. After a full evidentiary hearing and credibility determinations, the post-conviction relief court correctly found Petitioner failed to meet his burden of establishing either deficiency or prejudice as required by <u>Strickland</u>. This Court should deny certiorari.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." <u>Strickland v. Washington</u>, 466 U.S. 668, 685 (1984). In post-conviction relief actions, the reviewing court applies the two–part test outlined in <u>Strickland</u> to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the Petitioner's conviction. Id. at 687. To obtain relief, a post-conviction relief Petitioner must prove (1) counsel's performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing Strickland, 466 U.S. at 104). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S.at 700.

Petitioner bears the heavy burden of establishing both prongs of the Strickland standard. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the Petitioner must establish that, in light of all the circumstances, the acts or omissions complained of "fell below an objective standard of reasonableness" as measured by "prevailing professional norms." Strickland, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry and apply "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689.

With respect to prejudice, the Petitioner must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. When evaluating this probability, the reviewing court "should consider the specific impact counsel's error had on the outcome of the trial" coupled with "the strength of the State's case in light of . . . . the [totality of the] evidence presented to the jury." Smalls, 422 S.C. at 188, 810 S.E.2d at 843. Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, 466 U.S. at 696.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by

Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that '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.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) '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.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler, 566 U.S. at 164). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

I. Plea Counsel conveyed the initial plea offer and explained it in the context of the discovery.

Petitioner contends that the post-conviction relief court erred in denying relief because Plea Counsel failed to explain the initial plea offer. (PWC p. 7). Petitioner notes that Plea Counsel was unclear whether he conveyed the initial plea offer to Petitioner and explained it to him in light of all the discovery. (PWC p. 6). The post-conviction relief court, however, found Petitioner not credible in his claim that he did not understand the sixty-five percent requirement or that inadequate advice induced him to reject the offer, and found Plea Counsel's testimony on the matter credible. (App'x p. 132); see Foye v. State, *supra*.

At the post-conviction relief evidentiary hearing, Plea Counsel testified that he possessed the discovery for a significant period while negotiating with the State and that he reviewed the discovery with Petitioner. (App'x pp. 86–87, 89–90). Plea Counsel further testified that he and Petitioner discussed the plea negotiations extensively over a period of months, including "how bad the case was and how much time was involved with it and how long it was going to impact him for years." (App'x p. 87). Petitioner himself acknowledged that Plea Counsel advised him of the fifteen-year offer and urged him to accept it. (App'x p. 133). The DNA results, showing it was approximately 180 billion times more likely that Petitioner was the biological father, were known to the defense before Petitioner rejected the offer on August 7, 2023.

The post-conviction relief court found that Petitioner rejected the initial offer because of the length of the sentence and his understanding of GPS monitoring, not because of any erroneous advice from Plea Counsel. (App'x pp. 132–34). The post-conviction relief court's credibility and factual findings are supported by probative evidence and are entitled to deference. Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40. Petitioner presented no evidence of what additional explanation Plea Counsel could have provided that would have caused him to accept the offer. Accordingly, Petitioner failed to prove deficient performance on this ground, and this Court should deny certiorari.

II. Plea Counsel had no duty to advise Petitioner of collateral consequences and did not misadvise him.

Petitioner contends that Plea Counsel failed to explain the consequences of the initial plea offer, including differences in parole eligibility. (PWC p. 7). Petitioner does not specifically state what consequences Plea Counsel failed to explain but does note that the initial plea offer would have left Petitioner eligible for parole after serving sixty-five percent of his sentence, whereas the plea offer he ultimately accepted leaves him eligible for parole after serving eighty-five percent of his sentence, which is a difference of eight years. (PWC p. 6).

Notably, Plea Counsel had no duty to inform Petitioner of any collateral consequences of the initial plea offer, including parole eligibility, classification, and the minimum amount of time to be served. "[N]ormally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea." Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004). Classification of a crime as "violent" or "non-violent" is also a collateral consequence of sentencing and a guilty plea is not rendered involuntary due to counsel's failure to inform defendant of consequences of a violent crime conviction. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). The "85% Rule," which requires a defendant to serve at least 85% of certain sentences prior to being eligible for release, is a collateral consequence of sentencing of which a defendant need not be informed. Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004). Nevertheless, defense counsel may be constitutionally ineffective if he misadvised the defendant on collateral consequences. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983) (If a defendant is actively misinformed about parole eligibility, he must prove he relied on this information in order to receive post-conviction relief.).

Plea Counsel cannot be deemed constitutionally ineffective for failing to inform Petitioner of such consequences where he was under no duty to do so. Petitioner did testify that Plea Counsel informed him, at least in general terms, of the sixty-five percent parole eligibility rule on the initial plea offer, but that Petitioner thought that sixty-five percent of fifteen years was thirteen or fourteen years. (App'x p. 110). Petitioner's misunderstanding of arithmetic does not transform competent advice into misadvice. The post-conviction relief court correctly found that Petitioner failed to show that Plea Counsel "actively and grossly misinformed him of the direct or collateral consequences of his plea," including the sixty-five percent rule. (App'x p. 132).

However, assuming *arguendo* Plea Counsel's representation was deficient, any alleged deficiency was further cured at the August 7, 2023, hearing, where the State and the revocation court informed Petitioner of the potential sentence and the collateral consequences of sex-offender registration and GPS monitoring. (App'x pp. 46–48). The post-conviction relief court properly noted that Petitioner never inquired about the sixty-five percent rule when he had the opportunity to do so. (App'x p. 132). Additionally, Petitioner's lack of a criminal history and knowledge of the criminal justice system does not create a duty that the law does not impose.

III. Plea Counsel was not ineffective for failing to explain the consequences of rejecting the initial plea offer.

Petitioner also contends that Plea Counsel failed to explain to Petitioner the specific waivers or consequences of the refusal of the initial plea offer. (PWC p. iii). At the evidentiary hearing, Petitioner testified that he understood the maximum sentence was twenty years and that Plea Counsel would attempt to negotiate a better deal. (App'x pp. 76–77). Plea Counsel confirmed that he discussed plea negotiations with Petitioner, which included that the offer ranged from fifteen to twenty years. (App'x p. 128). Petitioner was therefore aware that rejecting the fifteen-year offer could result in a less favorable resolution. The notion that rejecting a plea offer may lead to a worse deal is intuitive and was reinforced by Petitioner's understanding that the maximum exposure was twenty years, five years longer than the offer he rejected.

The post-conviction relief court properly observed that "it is axiomatic that where the State makes a favorable plea offer, and there is overwhelming evidence of guilt, rejection of that offer will not result in more favorable offers in the future." (App'x p. 133). Plea Counsel had no duty to advise Petitioner of the collateral consequences of the charges or potential future offers. The post-conviction relief court correctly found no deficient performance on this ground.

IV. Petitioner failed to prove prejudice.

Even assuming *arguendo* that Plea Counsel's performance was deficient, Petitioner failed to prove prejudice. To establish prejudice in the plea-offer context, Petitioner "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) '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.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler, 566 U.S. at 164).

Here, Petitioner cannot satisfy this standard. Petitioner rejected the initial plea offer on the record before Judge Nettles on August 7, 2023, after having had the benefit of counsel and knowledge of the overwhelming DNA evidence. The post-conviction relief court found that he rejected the offer because of the length of the sentence and GPS monitoring, not because of any deficient advice. (App'x pp. 132–34). What is more, Petitioner presented no non-speculative evidence that he would have accepted the offer but for any alleged deficiency. Petitioner has presented no credible, non-speculative evidence that he would have accepted that offer but for any alleged deficiency.

Moreover, by the time he entered his Alford plea on October 27, 2023, Petitioner affirmatively stated under oath that he was completely satisfied with Plea Counsel, had no complaints, and understood the rights he was waiving and the consequences of his plea. (App'x pp. 55–58). He ultimately received a negotiated resolution in which one of the two second-degree counts was dismissed. Given the overwhelming evidence, DNA establishing paternity at a statistical probability of approximately 180 billion to one, Petitioner has failed to undermine confidence in the outcome of the proceeding.

The post-conviction relief court properly found that Plea Counsel explained the initial plea offer to Petitioner and that Petitioner chose to reject the offer because of his displeasure with its terms, not because of any erroneous advice. (App'x p. 134). Those findings are supported by the record and entitled to deference. Petitioner failed to prove either deficient performance or prejudice.

Accordingly, this Court should deny certiorari.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's denial of relief. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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