

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

J. Derham Cole, Circuit Court Judge

RECEIVED

JAN 22 2014

S.C. Supreme Court

WILLIAM SHEROID CAMP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001661

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to obtain the expiration date of the state's plea offer because it was no longer available to petitioner when he pled guilty and ultimately received a sentence that was greater than what was offered previously.

STATEMENT

Petitioner William Sheroid Camp pled guilty to distribution of crack cocaine and distribution of crack cocaine within proximity of a school/park during the January 2011 term of the Cherokee County General Sessions Court before Judge Roger L. Couch. Petitioner was sentenced to imprisonment for a period of ten years on his conviction of distribution of crack cocaine within proximity of a school and twelve years on the distribution of crack cocaine conviction. App. p. 1-27. Ricky Harris represented petitioner at the plea proceeding, and Assistant Solicitor Kimberly L. Leskanic appeared on behalf of the state. Petitioner appealed, but his case was dismissed by the South Carolina Court of Appeals despite his explanation per Rule 203(d)(1)(B)(iv) SCACR.

Petitioner filed a PCR application and an Amended PCR application with the Cherokee County Office of the Clerk of Court on November 15, 2011, and May 9, 2012, respectively. App. p. 29-48. The respondent filed a return dated August 22, 2012, requesting that a hearing be held in response to petitioner's PCR action. App. p.49 – 53. A Second Amended PCR application was filed on November 6, 2012. App. 54-57.

PCR hearing was convened on January 26, 2011, at the Cherokee County Courthouse before Judge J. Derham Cole. App. 58 – 100. Petitioner was present at the hearing and represented by Thomas A. Killoren. Assistant Attorney General Suzanne H. White appeared on behalf of the state at the PCR hearing.

On July 10, 2013, Judge Cole signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 102-110.

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

ARGUMENT

Trial counsel erred in failing to obtain the expiration date of the state's plea offer because it was no longer available to petitioner when he pled guilty and ultimately received a sentence that was greater than what was offered previously.

During the plea proceeding, the solicitor apprised the trial judge of the facts in the case. Apparently, an undercover operative made a controlled buy of crack cocaine from petitioner on Carlyle Street in Cherokee County on January 22, 2009. App. 22, lines 12-22. Subsequently, petitioner was charged with distribution of crack cocaine and distribution of crack cocaine within proximity of a school/park.

During the PCR hearing, petitioner testified that there was a plea bargain in effect for receipt of a ten-year sentence for the distribution of crack cocaine charge in exchange for his plea to the same, but that when he questioned whether the correct C.D.R. code appeared on the sentencing sheet, the solicitor's ten-year plea bargain offer was rescinded. App. 73, l. 18 -p.74, l.2. App. 68, l. 7 - p.69, l.21. It was understood that petitioner would have received a ten-year sentence on the charge of distribution of crack cocaine within proximity of a school or park, but it was the distribution of crack cocaine charge that was the subject of the ten-year plea bargain that never came to fruition.

Ultimately, petitioner received a twelve-year sentence on the distribution of crack cocaine conviction. App. 71, lines 19-20. Trial counsel testified at the PCR hearing and explained that the solicitor breached her plea agreement when she revoked the ten-year offer for a distribution, second offense. Counsel explained that when the sentencing sheet CDR code was incorrect, a problem arose and as a result, the solicitor revoked the ten-year plea offer, and the sentence petitioner received on the distribution plea was twelve years imprisonment. Counsel added that the solicitor

commented that this was “a big mistake” and that she never meant to offer “a parole eligible plea.”

App. 90, 1.23 – p. 95, 1.2. Counsel stated that he tried to remedy the problem as follows:

Trial Counsel: After that Mr. Camp decided to plead guilty. We went back and tried to get the ten years again. Ms. Leskanic wouldn't give us the ten years, said that it had gone on too long and that we had stretched it out too much and she wanted 12 years....So we agreed to do 12 years on distribution third. It was a third offense. It was actually more than a third offense. A distribution third.

PCR Counsel: Do you think that Kim Leskanic's or the prosecutor's conduct was a punishment to Mr. Camp for giving forward with the trial? Did -- Kim Leskanic ever tell you that she was increasing the offer to 12 years to punish Mr. Camp for going forward with the trial?

Trial Counsel: She didn't say she was trying to punish Mr. Camp. She said that we had waited too long to accept the ten years.

PCR Counsel: And what did you interpret that to mean?

Trial Counsel: Same old heavy-handed prosecutorial tactic that I've dealt with for nearly 30 years. App. 95, ll. 16-20: App. 96, l. 17 – p. 98, l. 4.

Clearly, the solicitor's comment that [petitioner] waited too long to accept the ten-year [plea] bargain meant that counsel did not obtain the time limits in which to accept the plea offer. This failure to obtain the date on which this ten-year plea bargain expired prejudiced petitioner because he ended up with a greater sentence (twelve years instead of ten years) on his drug distribution conviction.

The Sixth Amendment right to effective assistance of counsel extends to cases involving plea offers, particularly where plea offers lapse and where prejudice is shown, i.e. that the defendant would have accepted the plea before the expiration date but for counsel's error in allowing the expiration date to pass before acceptance of the offer. In Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010), counsel erred in advising the defendant that the plea offer would have remained open until after the suppression hearing ended, but in reality, the offer expired at the close of the

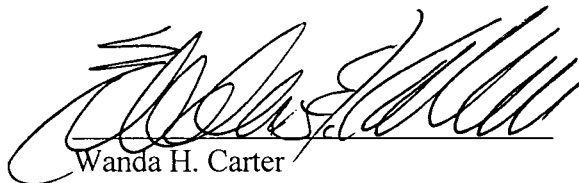
suppression hearing held in the case. Compare Missouri v. Frye, 132 S.Ct. 1399 (2012). In Missouri v. Frye, counsel did not convey the plea offer to the defendant and as a result, the plea offer expired. Compare also Davie v. State, 381 S.C. 601; 675 S.E. 2d 416 (2009), where the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (due to counsel's error) until after the plea offer had expired, and that he would have accepted that plea offer had it been communicated to him.

A defendant has a right to effective assistance of counsel during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. Additionally, a guilty plea must represent a voluntary and intelligent choice among the alternative causes of action open to the defendant. Hill v. Lockhart, 474 U.S. 52 (1985). Here, counsel's error in failing to obtain the deadline for petitioner to accept the ten-year plea offer violated petitioner's right to receive effective legal assistance in his case as guaranteed under the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, *supra*. Petitioner was prejudiced because he would have accepted the ten-year plea offer and avoided a greater sentence of twelve years but for counsel's error in failing to advise him of the end date on which the ten-year plea offer expired.

CONCLUSION

Based on the foregoing argument, petitioner requests that this court grant his petition and allow full briefing on the issue raised in the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHEROKEE COUNTY
J. DERHAM COLE, CIRCUIT COURT JUDGE

WILLIAM SHEROID CAMP,

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STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Sheroid Camp states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on January 9, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for William Sheroid Camp.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of January, 2014

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CERTIFICATE OF SERVICE


I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire and William Sheroid Camp, #240141, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 22nd day of January, 2014.



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.