

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY

In the Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

APPELLATE CASE NO. 2013-000215

Jeffery Eugene Jeter,

Petitioner,

v.

State of South Carolina,

Respondent.

PRO SE AMENDED RESPONSE

Jeffery Eugene Jeter
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386 Redemption Way
McCormick, SC 29899
PETITIONER

Ms. Suzanne White

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COUNSEL FOR RESPONDENT

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S.C. SUPREME COURT

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APPENDIX

[Please note Petitioner has no new documents to submit & is relying on those already in the record.]

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STATEMENT OF ISSUES ON CERTIORARI

I. DID THE STATE VIOLATE DUE PROCESS AFTER HAVING PETITIONER SIGNED THE PLEA CONTRACT, ENTER THE PLEA PER THE RECOMMENDATION, & THEN NOT ENFORCING THE PLEA CONTRACT.

II. IS THE PCR COURT'S FINDINGS SUPPORTED BY EVIDENCE THAT A PLEA CONTRACT WAS NOT SIGNED, & STIPULATED TO THE COURT, DETERMINING WHETHER THE STATE FAIL TO ENFORCE THE PLEA CONTRACT.

STATEMENT OF THE CASE

Petitioner hereby repeats the allegations contained in the section label as "Statement" in "Johnson Petition For Writ of Certiorari" & the section label as "Statement of Facts" in the "Petitioner's PRO SE Response to Johnson Petition For Writ of Certiorari," as if repeated herein verbatim.

STATEMENT OF FACTS

At PCR Petitioner allege that

e. Applicant signed a legally binding contract with the solicitor's office regarding a plea offer, which was not enforced.

PCR Counsel was grossly ineffective for failing to obtain the signed plea contract in order to present a complete & undisputable defense, taking a full & fair bite of the apple, satisfying Petitioner's burden of proof per Rule 71.1 (e), SCRCP.

THIS IS THE REASON OF THIS PRO SE AMENDED RESPONSE

ARGUMENT I

PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED WHERE PETITIONER SIGNED THE PLEA CONTRACT, ENTERED THE PLEA PER THE RECOMMENDATION, & THE STATE FAILED TO ENFORCE THE PLEA CONTRACT.

FACTS

Prior to court, Counsel James Cheek had Petitioner to sign a plea Contract, drawn up by the solicitor, for a ~~10~~⁵ year cap on all charges.

SOLICITOR KENDELL: Your honor... it is a really three part recommendation, Your honor.

GP/Tr. p. 17, L. 2 & 3, see also L. 17 & 18.

MS. WHITE: ... there was a signed plea offer

PCR/Tr. p. 5, L. 2

MR. CHEEK: ... he's already signed...

GP/Tr. p. 17, L. 24 & 25

Petitioner watched in open court Judge Couch write down the three part plea contract, previously signed by petitioner, as solicitor Kendall stipulated to the court off of the plea contract.

THE COURT: Say that recommendation one more time.

GP/Tr. p. 17, L. 15

SOLICITOR KENDELL: It would be up, be up to ten years, your Honor.

THE COURT: up to ten years.

SOLICITOR KENDELL: & that it would be running concurrent ... I will dismiss the remaining three charges as well.

GP/Tr. p. 18, L. 7-11, 20 & 21

Petitioner placed particular emphasis not only that the sentence would be up to ten years, & not over, but he also placed particular emphasis on paying the restitution

SOLICITOR KENDELL: ... victims ... seek restitution in the amounts

provided.

GP/Tr. P. 16, L. 25, P. 17, L. 1

THE DEFENDANT: I had two jobs at ... A landscaping job & a janitorial job I had just started on ... so I can try to pay some of this restitution back.

LAW

In State v. Thift, 490 S.E.2d 341 (S.C. 1994), the United States Supreme Court in Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), held that where a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled. In United States v. Ringling, 988 F.2d 504 (4th Cir. 1993), the court held that a plea bargain rests on contractual principles, & that each party should receive the benefit of the bargain. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental & constitutionally based. The court also noted that the government had to be held to a higher degree of responsibility than the defendant for imprecisions & ambiguities. see Mabry v. Johnson, 467 U.S. 504, 104 S.Ct. 2543 (U.S. 1984) (where the prosecution breaches its promise with respect to an ~~executed~~ executed plea agreement, the defendant pleads guilty on a false premise, & **HENCE HIS CONVICTION CANNOT STAND.**)

ARGUMENT

As already established above in the section label 'Facts' solicitor Kendall stipulated to the court off of the plea contract signed by petitioner setting forth the terms of the plea contract that it would only be up to ten years. **THE COURT WAS WRITING DOWN THE TERMS OF THE PLEA CONTRACT.** Petitioner sitting in court observing the between the court & the solicitor. Any reasonable man in petitioner's position would have any reason to believe the court would depart from the plea contract that the court just wrote down. As such, the petitioner detrimentally relied on the conduct of the parties before him & the signed plea contract, that it would be enforced.

THEREFORE, by the solicitor not enforcing the plea contract, is a breach of the plea contract, such must be viewed as Petitioner plead guilty on a false ~~pretext~~ premise, in violation of petitioner's due process rights. See S.C. Const. Art. I, §3 (Due Process) & U.S. Const. 14th Amendment (Due Process).

ARGUMENT II
THE PCR COURT'S FINDINGS ARE NOT SUPPORTED BY EVIDENCE WHERE THE PLEA CONTRACT WAS SIGNED, & STIPULATED, THUS THE STATE BREACHED THE PLEA CONTRACT.

FACTS

As undisputed in above Argument I, there was a plea contract. The Court held on page 7 of 13 of its' order that:

The Applicant offered no evidence that supported his assertion & in fact, the record itself directly refuted claims of a plea agreement with the state. The state MERELY offered a recommendation for sentencing to the court...

LAW

The post-conviction relief court will normally consider the guilty plea transcript as well as the evidence presented at the post-conviction relief hearing in looking at guilty plea issues. Harris v. Leake, 282 S.C. 131, 318 S.E.2d 350 (1984).

ARGUMENT

Petitioner repeats the allegation under the section label 'Facts' of Argument I, as if repeated herein verbatim. Contrary to what the Court held its' order the Guilty plea transcript is littered with evidence that there was a plea agreement &/or plea contract with the state. THEREFORE, the PCR court's findings are not supported by evidence.

MOTION FOR ORAL ARGUMENTS

Petitioner Moves the Court for oral arguments &/or to be given a hearing, in the interest of justice & fundamental fairness, to question GP/Counsel & the solicitor about the whereabouts of the signed plea contract.

In order to present ~~a complete~~ a complete & undisputable defense, taking a full & fair bite of the apple, Petitioner would need to present to this court a copy of the signed plea contract which PCR Counsel was ineffective for failing to obtain, prejudicing Petitioner's PCR's defense. Such is cause & prejudice to allow Petitioner to fully develop the record before this court.

WHEREFORE, Petitioner prays that this court grant Petitioner oral arguments, to be given a hearing &/or REMAND this case to the lower court for a hearing consistent with Arguments I & II.

MOTION FOR LEAVE TO AMEND

Courts hold pro se pleadings, pleadings in which the plaintiff acts as his own attorney, to less stringent standards than formal pleading drafted by an attorney, & liberally construe such pleadings. Jones v. Bock, 549 U.S. 199 (2007), & usually allow prisoners to correct deficiencies.

Under Rule providing that leave to Amend pleadings shall be freely given when justice so requires & does not prejudice any other party, prejudice in question is lack of notice that new issue is going to be tried, & lack of opportunity to refute it. Staubes v. City of Folly Beach, 529 S.E.2d 543 (S.C. 2000).

PCR Counsel was grossly ineffective for failing to obtain the signed plea contract in order to present a complete & undisputable defense, taking a full & fair bite at the apple, satisfying Petitioner's burden of proof per Rule 71.1(e), SCRCP. Petitioner moves to amend to correct such drastic deficiencies.

WHEREFORE, pursuant to Rule 15, SCRCP, Petitioner hereby prays leave of Court to Amend is freely granted.

CONCLUSION

I. The court grant certiorari & allow Petitioner to Fully brief the case &/or to be given a hearing &/or REMAND this case to the lower court for a hearing consistent with Arguments I & II

II Leave granted to Amend.

PETITIONER PRAYS CERTIORARI IS GRANTED.

PROOF OF SERVICES

I hereby certify that I served a copy of this, by U.S. Mail, postage affix, on: Ms. Suzanne White; S.C. Attorney General's Office; P.O. Box 11549; Columbia, SC 29211-1549.

11/23/14, SC
dated

Respectfully,
X. ~~Jeffery Eugene Jeter~~
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Date 1/23/14

Mr. Johnson,

Top of the morning to you, Hope that your
holiday was great. I am back again with one more
Amended to my pro-se Brief, And Also sent out in to
you about a week ago, And I was hoping that you could
send me copies back, BECAUSE Right now the whole case
is on hold down And I was unable to get them copied.
Thank you for your time in this matter And you have a
blessed Day.

Angela Jata

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