

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

LINWOOD CARSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000512

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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S.C. Supreme Court

INDEX

INDEX 1

ARGUMENT IN REPLY 2

CONCLUSION 4

ARGUMENT IN REPLY

In his Petition for Writ of Certiorari, Petitioner Linwood Carson has argued that his plea counsel provided ineffective assistance of counsel where Petitioner would have accepted the State's plea offer of fifteen (15) years had he not been misadvised by plea counsel that he would have had to serve at least 85% of that plea offer before he could be eligible for an early release program.

In response, the State argues that Petitioner's allegation for relief is a nullity because Petitioner would not have been eligible for parole due to his prior convictions. Petitioner's argument, however, is not about parole, but rather when Petitioner would be eligible for early release, discharge, or community supervision as provided in S.C. CODE ANN. § 24-21-560.

In rejecting the State's fifteen (15) year plea offer, Petitioner relied upon his plea counsel's erroneous advice that he would have to serve at least 85% of the actual term of imprisonment before Petitioner would be eligible for any early release program. See S.C. CODE ANN. § 24-13-150 (“[A]n inmate convicted of a “no parole offense” as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.”).

The 85% rule only applies to “no parole offenses” which are punishable by a maximum term of imprisonment of twenty years or more. S.C. CODE ANN. § 24-13-100. The State agrees that because burglary second degree does not carry a twenty (20) sentence, it is not a no parole offense. See S.C. CODE ANN. § 16-11-312(C)(2). Therefore, there is no dispute in this case that the 85% rule would not have applied to the State's fifteen (15) year plea offer and that Petitioner's plea

counsel was deficient in giving such advice. Petitioner would not have had to serve at least 85% of a fifteen (15) year sentence before being eligible for an early release program. Again, the issue is not of parole eligibility, but of eligibility for release under other programs. Therefore, whether Petitioner was eligible for parole or not would not necessarily affect his ability to be eligible for early release under other programs.

Petitioner has proven that he was prejudiced by his plea counsel's deficient performance where there was an eight year difference in the sentence Petitioner received and the fifteen (15) year plea offer and both Petitioner and plea counsel testified at the evidentiary hearing that Petitioner would have accepted the State's fifteen (15) year plea offer had plea counsel advised Petitioner correctly. App. 65-67; 76-77. Petitioner is therefore entitled to relief for his plea counsel's deficient performance.

CONCLUSION

For the reasons set forth herein and in the Petition for Writ of Certiorari, Petitioner respectfully requests that this Court grant his Petition for Writ of Certiorari and allow for full briefing on the issue.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of February, 2014.

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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Reply to Return to the Petition for Writ of Certiorari in the above referenced case has been served upon John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of February, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of February, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.