

STATE OF South Carolina

IN THE SUPREME COURT

Certiorari to Orangeburg County

De Andrea G. Benjamin, Circuit Court Judge

JOHN DRAYTON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000963

RE: Pro SE Response

Argument to Be Add to JOHNSON Petition
For WRIT OF CERTIORARI.

RECEIVED

FEB 18 2014

S.C. SUPREME COURT

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FEB 18 2014

S.C. SUPREME COURT

ISSUE PRESENTED

Did the Court enhance the sentence of negotiated 15 years non-violent, non-most serious without my knowledge. In the plea bargain there is no stipulation on record or on the sentencing order that says anything about a mandatory sentence. This was not brought to my attention until I got to the South Carolina Department of Correction. This was an hidden agenda that was not enclosed or brought to my attention during the plea offer. The sentence that I was advised to plead to don't line up with my max-out, parole eligibility or anything that a non-violent 15 year sentence is entitled or eligible for.

STATEMENT

ON November 10, 2009, term of the Orangeburg County Grand Jury, Petitioner JOHN B. DRAYTON was indicted for Entering a Bank Depository, or Building and Loan With Intent to Steal (2009-65-38-1555). ON February 4, 2010 I, Petitioner JOHN B. DRAYTON was advise by Counsel Douglas Mellard to take A Fifteen year sentence. APP. 5, LN 15. A Negotiated Sentence of Fifteen years NOT MOST SERIOUS or NON-VIOLENT APP 6, LN 22-25, APP 7, LN 1-2. The State has recommended a sentence of Fifteen years. App 8, 19-22, The Judge ask other than that, they was no other stipulation to enhance this recommendation. The Court accept the Plea of Fifteen years NON VIOLENT and NOT MOST SERIOUS with NO other stipulation that indicate other than that. App 13, 13-21, Credit for any time that I had serve.

ARGUMENT

Mr. Douglas MELLARD Failed to specify the bearing of the CDR Code or any hidden stipulation. As my attorney in representation there should have been no hidden agenda. All terms and agreements should have been specific so I would have known what I was facing. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel.

I, Petitioner JOHN B. DRAYTON was given an under-handed mandatory twelve (12) years, nine (9) months without knowledge of the intent. Classification record at the Dept of Correction indicates a stipulation from the Court of Orangeburg County that has enhanced a non-violent charge to violent by the changing of CDR code. Code # 0002. Armed Robbery as indicated in APP 54, 4-7 carries a mandatory minimum and 85 percent, APP 6, 20-25, APP 7, 1-2, clearly indicated that my negotiated sentence of Accessory before the fact of entering a bank with intent to steal was accepted by Honorable James C. Williams JR. It does not call for a mandatory sentence neither was this ever stipulated in the transcript or the sentencing sheet. Please enter as (Exhibits-A), the sentencing sheet that does not indicate any mandatory requirement. (Exhibits-B), a letter from Culler & Brown LLP, Attorney at Law in which he explains the sentencing

of Arm robbery versus a lesser Plead. Exhibit C is everything listed in statement with (APP) Page and Line. Under the Fifth Amendment say that no person will suffer double jeopardy, my sentencing is a clear repeat of my sentence from a prior charge APP, 12, 22-23 which I receive fifteen year, state-v- Truedal 296 SE 2d 528, 278, SC 368. The trial court improperly accepted defendant guilty pleas on continued assertion that the pleas was a product of deprivation of defendant constitutional right.

CONCLUSION

For the foregoing reasons, I, Petitioner JOHN B. DRAYTON requests that this Court grant my Petition for writ of Certiorari to allow Full briefing on the issue.

This 9th day of February, 2014

Respectfully Submitted,

John B. Drayton

JOHN B. DRAYTON

(Petitioner)

Send Back!

STATE OF SOUTH CAROLINA)
 COUNTY OF Orangeburg)
 STATE VS.)
 John B. Drayton)
 AKA:)
 Race: B Sex: M Age: 46)
 DOB: 01-20-1964 SS#: 248-19-9575)
 Address: 208 Ashley Ann Lane)
 Ladson, SC 29456)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS38-1555
 A/W#: M212150
 Date of Offense: 6/25/2009
 S.C. Code § 16-11-380
 CDR Code #: 0257

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was:

CONVICTED OF or PLEADS

TO: ACCESSORY BEFORE THE FACT OF ENTERING A BANK WITH INTENT TO STEAL

in violation of § 16-1-40 of the S.C. Code of Laws, bearing CDR Code # 0002

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC § 17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. JJD (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, 15 YEARS Recommendation by the State.

ATTEST:
Thomas B. Scott III 15931 John B. Drayton 13521
 Scott, III, Thomas B SC Bar# John B. Drayton Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: Hold in Orangeburg until Feb 12, 2010
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
 \$ _____ paid to Public Defender Fund

Recipient:	
*Fine:	\$
§ 14-1-305 (Assessments 107.5%)	\$
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 35-13 (Public Def/Prob)	\$500 \$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.11 TP (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Other: _____

 Appointed PD or appointed other counsel, § 35.13 TP requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]
 Judge Code: 0114
 Sentence Date: 2-4-10
 SCCA217 (06/2009)

Clerk of Court/ Deputy Clerk [Signature]
 Reporter: Harry Det Walker



CULLER & BROWN LLP
ATTORNEYS AT LAW

Friday, January 28, 2011

Dear Mr. Drayton,

I have been appointed to represent you on your post Conviction Relief (PCR) (I hired Jill Ullman to work in the Public Defender's office since I used to be the Chief PD.) I also worked with her and managed her work. I make you aware of this so you can decide if you want me to continue or whether you want a lawyer with no connection to the PD office or Miss Ullman.

I want to also tell you a few things about PCR-you cannot get a time cut-which I saw in your petition as a goal. The ONLY thing a Judge can grant you is a new trial. You were indicted, I see for armed robbery- if you got a new trial for that the Solicitor would be able to either try the case or plea you if you wanted to do that- armed robbery is listed as a "most serious" offense- this means-if convicted you would serve 85% of you time. It also carries up to 30 years- so 85% of 30 is 25.5 years. Worst case-the Solicitor goes to trial and you end up with the max and serve 25.5 years. What you pled to is NOT listed as a "most serious" offense- which means you will serve less than the 85% you would on armed robbery.

Last thing- the CDR code does not match- that could well be-but it is not enough in my opinion to get you a PCR. I am sending you a form to sign and return- if you want me to continue-waive any conflict that may exist. If you do not-sign that too. I hope this has been helpful

Sincerely,



Michael R. Culler, Jr.

MICHAEL R. CULLER, JR.
mc_cullerbrownlaw@yahoo.com

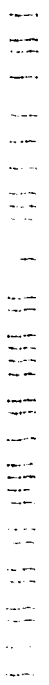
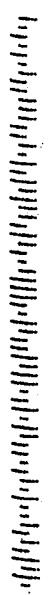
ANDREW J. BROWN
ab_cullerbrownlaw@yahoo.com

Mr. John B. Drayton - 137499
MacDougall Correctional Inst.
1516 Old Millard Road
Ridgeville, D.C. 29472
C-II-C-11-A

The Supreme Court of South Carolina
Daniel E. Shearman, Clerk of Court
Post Office Box 11330
Columbille, South Carolina 29211

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Institution.

Legal