



ALAN WILSON
ATTORNEY GENERAL

April 2, 2014

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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APR -2 2014

S.C. Supreme Court

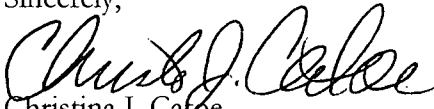
RE: Nicholas Parker v. State of South Carolina
Appellate Case No. 2013-001154

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the State's **Return to Petition for Writ of Certiorari**, along with **Proof of Service**, in the above-referenced case, which I am serving upon opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,


Christina J. Catoe
Assistant Attorney General

CJC/

Enclosures

cc: David Alexander, Esquire
Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Appeal from Georgetown County
The Honorable George C. James, Jr., Circuit Court Judge

APR - 2 2014

Appellate Case No. 2013-001154

S.C. Supreme Court

NICHOLAS PARKER,

PETITIONER,

v.

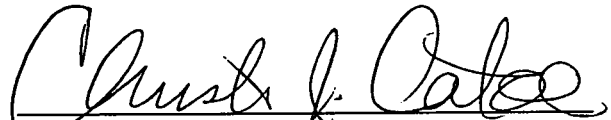
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Return to Petition for Writ of Certiorari** in the above-referenced case has been served upon the person(s) listed below, by U.S. mail, this 2nd day of April, 2014:

**David Alexander, Esquire
South Carolina Commission on Indigent Defense
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CHRISTINA J. CATOE

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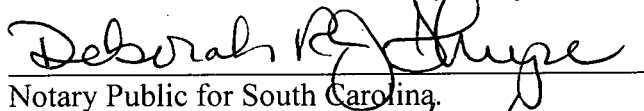
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SWORN to before me this 2nd day of April, 2014.


Notary Public for South Carolina.

My Commission Expires: 1/29/2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County
The Honorable George C. James, Jr., Circuit Court Judge

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NICHOLAS PARKER,

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STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

The post-conviction relief judge properly denied relief where Petitioner failed to credibly prove that he would have accepted the State's plea offer for a thirteen-to-sixteen-year sentence had counsel more thoroughly explained the mental state required for the offense of kidnapping; furthermore, Petitioner's request for reinstatement of the previous plea offer, made for the first time on appeal, is not preserved since Petitioner sought only a new trial below.

STATEMENT OF THE CASE

Petitioner was indicted in Georgetown County in March 2006 for first degree burglary and kidnapping. (App. p. 1164-68). On January 29 through February 2, 2007, Petitioner proceeded to trial before the Honorable John C. Hayes, III, and a jury. (App. p. 1-747). The jury acquitted Petitioner of first-degree burglary but found Petitioner guilty of kidnapping. (App. p. 741). Judge Hayes sentenced Petitioner to twenty-five years. (App. p. 747). Petitioner timely appealed, but the appeal was dismissed on October 8, 2009, pursuant to Anders v. California, 386 U.S. 73 (1963). (App. p. 1133-34).

Petitioner filed an application for post-conviction relief on February 1, 2010. (App. p. 749-55). The State made a Return on March 1, 2010. (App. p. 756-58). Two amendments to the PCR application were subsequently submitted. (App. p. 759-61). An evidentiary hearing was first scheduled before the Honorable Steven H. John on August 24, 2011. (App. p. 762-873). However, the hearing was continued at Petitioner's request after the judge learned that Petitioner's post-conviction relief counsel had not had an opportunity to review trial counsel's file in the matter because an office worker in trial counsel's office had mistakenly informed post-conviction relief counsel that the file had burned in the September 2008 fire in trial counsel's former office. (App. p. 863-72; p. 1073-75).

Petitioner's evidentiary hearing was rescheduled and commenced anew before the Honorable George C. James, Jr., on January 23, 2012. (App. p. 874-1116). After taking the matter under advisement, Judge James issued an order denying post-conviction relief on March 20, 2013. (App. p. 1133-59). This order was filed on March 25, 2013. (App. p. 1133). Petitioner's counsel timely filed a motion for rehearing and/or motion to alter or amend, but the motion was denied on April 30, 2013. (App. p. 1160-63). A timely appeal was filed, and a Petition for Writ of Certiorari followed on December 16, 2013. This Return follows.

ARGUMENT

The post-conviction relief judge properly denied relief where Petitioner failed to credibly prove that he would have accepted the State's plea offer for a thirteen-to-sixteen-year sentence had counsel more thoroughly explained the mental state required for the offense of kidnapping; furthermore, Petitioner's request for reinstatement of the previous plea offer, made for the first time on appeal, is not preserved since Petitioner sought only a new trial below.

Factual Background

Petitioner and the victim dated for approximately fifteen months and lived together in several different locations, including Petitioner's grandparents' house in Summerville, South Carolina. (App. p. 68-73). During this time, Petitioner was controlling and violent with the victim. (App. p. 74, line 23 – p. 75, line 1; p. 137-38). Shortly before the incident in question, the victim decided to break up with Petitioner due to the difficulties in the relationship. (App. p. 74-75). Petitioner's grandmother helped the victim carry out her plan to leave on January 17, 2006. (App. p. 74, lines 7-18). After the victim left, she lived with her mother in Georgetown; however, she and her two children had plans to move into a trailer her mother owned. (App. p. 77). The victim had some telephone contact with Petitioner after she left, either using her friends' cell phones or her mother's home phone. (App. p. 78-79). One of the things she and Petitioner discussed was that the victim needed to retrieve her belongings from Petitioner's grandmother's house, where they had last lived together. (App. p. 79-80). Eventually they made arrangements for the victim to pick up her belongings on January 31, a Tuesday. (App. p. 80).

On the evening of Saturday, January 28, the victim was at a friend's house hanging out and drinking a few beers. (App. p. 81). Her good friend Casey was serving as a babysitter that night. (App. p. 81). During the time the victim was at her friend's

house, Petitioner repeatedly called for her on her friend Kevin's cell phone; however, the victim did not speak with Petitioner. (App. p. 82-83). The victim left her friend's house shortly after midnight and went to the trailer she was preparing to move into. (App. p. 82). Petitioner did not have keys to the trailer. (App. p. 84). The victim decided to sleep on the couch because the bedroom was not yet move-in ready. (App. p. 84). Around 5:00 or 5:30 am, her friend Kevin came over to complain that Petitioner was continuing to call for her on his cell phone. (App. p. 84-85). The victim responded by calling Petitioner and telling him to stop calling her friends; that it was over; and that she did not want to talk to him anymore.¹ (App. p. 85). After that, Kevin left and the victim went back to sleep. (App. p. 85).

Around 7:30 am, the victim awoke to find Petitioner taping her arms together with duct tape. (App. p. 86). She noticed that her ankles were also taped up, and, before she could get out a complete sentence, Petitioner placed another piece of tape over her mouth. (App. p. 86). The victim was able to rip the tape off her mouth and she started screaming and yelling for Petitioner to leave her alone. (App. p. 86-87). She told Petitioner she was supposed to pick her kids up at 8:30 am, but he responded that he "didn't give a fuck." (App. p. 88). Petitioner then picked her up, hoisted her over his shoulder, and carried her out. (App. p. 87). Petitioner dropped her on the porch because she was struggling so much to get away. (App. p. 87). However, Petitioner picked her back up, carried her out to the truck where his grandmother was waiting, and placed her in the back seat. (App. p. 88). Petitioner then went back inside and got a comforter for the victim. (App. p. 88).

¹ Telephone records from Petitioner's grandmother's house were entered into evidence to corroborate the victim's testimony regarding the phone calls. (App. p. 66, lines 4-12; p. 134-36). At trial Petitioner admitted that he called for the victim numerous times during the evening before the incident into the early morning hours of the day the incident occurred, and admitted that within one two-hour time period, he called for the victim approximately eight times. (App. p. 382-86).

Petitioner's grandmother drove off, but kept asking Petitioner why he was doing this and telling him that he was going to get them sent to jail. (App. p. 93). Petitioner did not answer but told his grandmother to just keep driving. (App. p. 94). The victim continued to scream as she lay in the back seat of the truck, and Petitioner repeatedly told her to be quiet. (App. p. 95). At one point, the grandmother threatened to turn off and take Petitioner to a nearby police station, but Petitioner yanked the steering wheel and told her she had better keep going straight. (App. p. 97).

When they arrived at the grandmother's property in Summerville, Petitioner carried the victim up to a little apartment in a separate building from the main house. (App. p. 98). He took her to the bedroom and "terrorized" her for a couple of hours, alternating between accusing her of "screwing around" and telling her he loved her. (App. p. 98-99). He also pulled the victim's pants down and "jammed" his finger into her vagina to check to see if she had been "messing with" anyone else. (App. p. 99). At one point he also slapped her across the face. (App. p. 100). Several times Petitioner told the victim that it was going to be "me and him or nothing" and that it would take "jail or death" to keep them apart. (App. p. 102). Meanwhile, the victim begged to be taken back home so she could get her children; Petitioner responded that he did not care about her children because they did not like him anyway. (App. p. 100). However, he did remove the duct tape from the victim while they were in the apartment. (App. p. 103-104). Petitioner's grandmother came to the apartment at one point and told Petitioner that the victim's mother had been calling, but Petitioner never let the victim speak to her mother. (App. p. 101). The grandmother also told Petitioner that if he touched or beat on

the victim he would “go to jail that day.” (App. p. 101). Petitioner told his grandmother to leave and said they were just talking. (App. p. 101).

The grandmother returned later and said that Petitioner’s grandfather was ready for them to leave since it was about to rain; at that point Petitioner allowed the victim to pack up her things. (App. p. 102). Petitioner and his grandmother, along with the victim, loaded the victim’s belongings into the truck and left. (App. p. 104-105). This time the victim was allowed to sit in the front seat, between Petitioner and his grandmother, who was driving. (App. p. 105). They stopped for gas and also stopped at Arby’s drive-thru, where Petitioner bought the victim a meal. (App. p. 106-107). Subsequently, Petitioner offered the victim some money, but the victim told Petitioner she did not need it. (App. p. 107-108). Finally, the victim was taken back to her trailer in Georgetown. (App. p. 108). However, she found the doors locked and, after they unloaded her belongings, the victim called her mother to come and open them. (App. p. 108-10). Before Petitioner and his grandmother left, Petitioner hugged the victim and told her he loved her and would talk to her soon. (App. p. 111). The victim felt compelled to respond that she loved him too “so he wouldn’t flip.” (App. p. 111, lines 11-16). When the victim’s mother arrived a bit later, the victim showed her the injuries and duct tape marks, and her mother “went crazy.” (App. p. 112). The victim and her mother decided to contact police the following day, after the victim calmed down. (App. p. 114-15).

The next day, an investigator met with the victim and observed remnants of duct tape on the victim and took photographs of the victim’s injuries, which were consistent with the victim’s version of events. (App. p. 115-15; p. 219-20). This investigator also went to the victim’s trailer where the incident began and collected a roll of duct tape, a

strip of duct tape, and other items of evidence substantiating the victim's version of events. (App. p. 222-23). The investigator also went to Summerville and obtained consent from Petitioner's grandparents to search the truck and the apartment house involved in the incident. (App. p. 36-41). Officers located silver duct tape and reddish hair strands consistent with the victim's hair. (App. p. 41-43). SLED analyzed the duct tape and concluded that the pieces of duct tape found in the victim's trailer and in the Summerville apartment house were consistent with the roll of duct tape found in the victim's trailer. (App. p. 263-78). Additionally, a piece of duct tape found in the truck was a "fracture match" to the roll of duct tape such that there was "no doubt" the piece of tape originated from the roll. (App. p. 278-81). Also, the victim's DNA was found on a piece of duct tape from the coffee table in the victim's trailer. (App. p. 295-97).

After turning himself in to police, Petitioner provided a statement to police which was largely consistent with his subsequent trial testimony. (App. p. 1057-59; p. 1081, lines 13-20). Petitioner basically agreed with the victim's general timeline of events, but asserted that he spoke with the victim on the phone that morning and she asked him to come and pick her up so that she could go retrieve her belongings from Petitioner's grandmother's house in Summerville. (See App. p. 383-732). Petitioner explained that he did not break into the victim's house since he had her permission to come pick her up. (App. p. 399-402). Petitioner also explained that, while he did briefly put duct tape on the victim, he did so in a fit of rage before he even realized what he had done. (App. p. 402-408; p. 425, lines 19-23; p. 451, lines 8-10; p. 468, lines 20-22). Petitioner stated that he removed the duct tape soon thereafter and that the victim went with him to

Summerville and voluntarily remained with him until that afternoon when his grandmother returned her to her trailer with her belongings. (App. p. 409-32).

Applicable Law/Standard of Review

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). In order to prove entitlement to post-conviction relief, an applicant bears the burden to prove both deficient performance and prejudice. See, e.g., Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Proof of one without the other is insufficient to warrant relief. See id; Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 n6 (2001) (noting that even if a defendant proves that he was not fully advised of the consequences of a plea, he must also prove that he was in fact prejudiced thereby). “If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” Strickland v. Washington, 466 U.S. 668, 697 (1984). Critically, the findings of the PCR judge must be upheld if there is “any evidence” to support those findings. Robinson v. State, 387 S.C. 568, 574, 693 S.E.2d 402, 405 (2010).

Discussion

Petitioner contends that trial counsel was ineffective for failing to explain that the required mental state for kidnapping was “knowledge” rather than “intent,” and, on appeal, asserts he was prejudiced because “he **would** have accepted a plea offer and **would not** have taken the case to trial had he understood this difference.” (Petition for Writ of Certiorari, p. 9) (emphasis added). And, interestingly, although in his PCR

application and at the PCR hearing Petitioner repeatedly insisted he was seeking a “new trial” (App. p. 753; p. 893, lines 10-11 & lines 15-22; p. 1017, lines 19-24), Petitioner now seeks the remedy of a remand “with instructions to reinstate the plea offer of guilty for kidnapping with a negotiated sentence of thirteen to sixteen years.” (Petition for Writ of Certiorari, p. 10). Despite Petitioner’s assertions, the PCR judge did not err in denying relief because, although the PCR judge concluded that trial counsel was deficient for failing to more specifically advise Petitioner regarding the mental state for kidnapping, Petitioner failed to meet his burden to show the requisite prejudice. (See App. p. 1142-43). Moreover, Petitioner’s request for reinstatement of a previous plea offer - made for the first time on appeal - is not preserved since Petitioner requested only a new trial below.

In Judge v. State, the South Carolina Supreme Court held that “the Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process, even if the plea offered is ultimately rejected.” 321 S.C. 554, 560, 471 S.E.2d 146, 149 (1996), *overruled in part on other grounds* by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). The United States Supreme Court in Lafler v. Cooper recently agreed with this view and held that defendants have a Sixth Amendment right to counsel which extends to the plea-bargaining process. 132 S.Ct. 1376, 1384 (2012). However, Judge and Lafler made it clear that a PCR applicant, even if he proves deficient performance by counsel, must still prove he suffered prejudice resulting from counsel’s deficient performance. Judge at 560, 471 S.E.2d at 149; Lafler at 1391; *see also* Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991); Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000); Roscoe v. State, 345 S.C. 16, 20,

546 S.E.2d 417, 419 n6 (2001); Smith v. State, 369 S.C. 135, 138-39, 631 S.E.2d 260, 261-62 (2006); Leon v. State, 379 S.C. 448, 451, 666 S.E.2d 260, 261-62 (Ct. App. 2008); Davie v. State, 381 S.C. 601, 611, 675 S.E.2d 416, 421 (2009); Rolen v. State, 384 S.C. 409, 413-14, 683 S.E.2d 471, 474 (2009). Significantly, last summer in Taylor v. State, our Supreme Court held that regardless of whether or not plea counsel's performance was deficient, the defendant was not entitled to relief because he failed to prove prejudice through "probative and credible evidence," which was "fatal to Petitioner's claim." Taylor v. State, 404 S.C. 350, 362-64, 745 S.E.2d 97, 103-104 (2013).

In Petitioner's case, assuming the PCR judge properly concluded that trial counsel's performance was deficient, the denial of relief must still be upheld where the judge concluded that Petitioner failed to prove prejudice. Initially, the PCR judge's finding that Petitioner "failed to **credibly** convince" him that he would have made a different choice regarding the plea offer had he been more specifically advised regarding the mental state for kidnapping is entitled to significant deference.² (App. p. 1142-43)

² Petitioner's contention that the "only basis" for the PCR judge's prejudice finding was Petitioner's trial testimony that he refused to plead guilty because he wanted to "get the truth out" is incorrect. (See Petition for Writ of Certiorari, p. 9). What the PCR judge actually stated in his order is as follows:

This Court finds credible trial counsel's testimony regarding his advice to the Applicant. This Court finds that the Applicant was fully and properly advised regarding all relevant considerations pertaining to the State's plea offers, with the exception that counsel did not explain to the Applicant the distinction between knowledge and intent with respect to the kidnapping offense. However, the Applicant failed to **credibly** convince this Court that he would have considered the plea offers any differently had counsel more specifically educated him regarding "knowledge" versus "intent," **especially considering** the Applicant's trial testimony that the only reason he did not accept a plea was because he wanted a jury to be able to hear the truth about what happened. (Trial Transcript, p. 454, lines 12-17). Accordingly, this Court finds that, even if counsel was ineffective for failing to more specifically advise the Applicant regarding the mental state for kidnapping, he failed to prove he was in fact prejudiced with respect to accepting or rejecting the plea offers.

(emphasis added). See Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999), Solomon v. State, 313 S.C. 526, 529, 443 S.E.2d 540, 542 (1994), & Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Smith v. State, 375 S.C. 507, 520, 654 S.E.2d 523, 530 (2007) (all holding that great deference must be afforded the PCR court's findings and conclusions, especially where matters of credibility are involved, since the appellate court lacks the opportunity to directly observe the witnesses during their testimony). . . .

Furthermore, in order to be entitled to relief, Petitioner bore the burden to show that, **at the time the offer was made** - not in hindsight several years later - he would have accepted the plea if counsel had more thoroughly educated him regarding the mental state required for kidnapping. Keeping in mind that, at the PCR hearing, the remedy Petitioner was seeking was a **new trial** rather than reinstatement of any previous plea offer, Petitioner's testimony at best indicated that he was unsure whether or not he would have accepted the thirteen-to-sixteen-year plea offer at the time it was offered. For example, he testified that, had he been properly advised regarding the mental state for kidnapping, he "probably would have took the plea **or either** when I went on the stand I would have said things differently." (App. p. 989, lines 12-16) (emphasis added). Petitioner also stated that if his lawyer had prepared him "the right way," he "**might have** took the plea and we **might could have** argued more on a ten year plea than take it to trial." (App. p. 1014, lines 19-22) (emphasis added). Finally, in response to a question by his PCR attorney regarding whether or not he would have "considered th[e] plea differently" had he been properly advised regarding the mental state for kidnapping, Petitioner stated, "Yes, ma'am, I would have." (App. p. 988, line 24 – p. 989, line 3).

(App. p. 1142-43) (emphasis added). The fact that the PCR judge used the phrase "especially considering" indicates that there were in fact other considerations - one of which was obviously credibility - at play in his decision.

Critically, contrary to Petitioner's assertions on appeal, Petitioner never testified at the PCR hearing that he "would have" accepted the thirteen-to-sixteen-year plea offer. Cf. Davie v. State, 381 S.C. 601, 606, 675 S.E.2d 416, 418-19 (2009) (relief granted where the defendant "stated he **would have** accepted the fifteen-year deal had he been aware of it prior to the plea proceeding"); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991) (relief appropriate where the defendant testified that "had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he **would not have** pled guilty"); Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (relief warranted where the defendant testified he "**would not have** pled had he known the charge was a felony"); Missouri v. Frye, 132 S.Ct. 1399, 1405 (2012) (granting relief where defendant testified at his PCR hearing that he "**would have**" entered a guilty plea to a lesser charge had he been aware of the plea offer); see also Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (the evidence regarding prejudice was "uncontroverted" where the defendant testified he entered his plea in expectation of receiving a lesser period of parole eligibility **and** where this testimony was corroborated by an attorney for a codefendant). Thus, because Petitioner's testimony indicated only that he might have taken the plea or that he would have evaluated the plea using a different thought process, and Petitioner never unequivocally stated that he definitely would have accepted the plea, Petitioner failed to meet his burden to prove prejudice. In that vein, where Petitioner sought **only** a new trial below, the remedy of reinstatement of the thirteen-to-sixteen-year plea offer is wholly inappropriate. See e.g., State v. Cope, 405 S.C. 317, 338-39, 748 S.E.2d 194, 205 (2013) (it is "axiomatic" that an argument cannot be raised for the first time on appeal; this prohibition ensures that the

trial judge is able to properly rule after he has considered all relevant facts, law, and arguments); Campbell v. Robinson, 398 S.C. 12, 25, 726 S.E.2d 221, 228 n6 (Ct. App. 2012) (appellant's argument seeking a particular remedy on appeal was unpreserved because she requested a different remedy below).

In addition to the fact that Petitioner never unequivocally stated he would have accepted the prior plea offer, other evidence further supports the PCR judge's finding that Petitioner failed to credibly meet his burden to show prejudice. Significantly, in this case, trial counsel **did not** advise Petitioner to go to trial; instead he told Petitioner he would likely be convicted of kidnapping and get much more time. (App. p. 1032-33; p. 1035, lines 11-25; p. 1036, lines 1-10; see also p. 1050, lines 5-9). Cf. Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012) (relief warranted where defendant's attorney convinced him to reject a favorable plea offer by advising him that he would **prevail** at trial because the state would be unable to establish his intent to murder the victim). For that reason, trial counsel urged Petitioner to accept the plea offer. (App. p. 1036, lines 7-10; p. 1038, lines 3-10; see also p. 1050, lines 5-9). However, despite being informed that he was most probably going to be convicted and get a lengthy prison sentence, Petitioner refused to accept the offer at that time. (App. p. 1036, line 18). At the PCR hearing, Petitioner proffered no specific reasons to convince the PCR judge that his being informed that the mental state for kidnapping is "knowledge" rather than "intent" would have been so significant in his mind **at the time the offer was made** that it would have changed his mind about accepting the plea offer. (See App. p. 901-12; p. 957-60; p. 982-89; p. 1005-17). See Taylor v. State, 404 S.C. at 362-63, 745 S.E.2d at 103 (finding that the defendant failed to prove prejudice where neither he nor his witnesses at the PCR hearing

provided specific reasons why knowledge of the relevant law would have caused the defendant to change his mind about pleading guilty). In fact, at trial and at the PCR hearing, Petitioner denied having either intent **or** knowledge of what he was doing at the time he duct-taped the victim. (App. p. 407-408; p. 425, lines 19-23; p. 451, lines 8-10; p. 468, lines 20-22; p. 1009-10). Since Petitioner felt at that time he did not have **either** mental state, there is no reason to believe that more thorough advice on the subject of the mental state required for kidnapping would have caused him to accept the plea offer.

In sum, since the PCR judge's finding was based on Petitioner's credibility, it should be given significant deference. Furthermore, Petitioner failed to unequivocally testify that he would have accepted the plea offer, and there was no reason to believe that further information regarding the mental state for kidnapping would have changed Petitioner's mind about taking the plea offer where, rather than advising him to go to trial, counsel told Petitioner he would likely be convicted and urged him to accept the plea offer. Finally, Petitioner's request for reinstatement of the thirteen-to-sixteen-year plea offer is not appropriate or preserved where he requested only a new trial below. Therefore, the PCR judge did not err in denying relief.

CONCLUSION

For the reasons discussed above, Respondent submits that this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent asks permission under the rules to fully brief the issues discussed above.

Respectfully submitted,

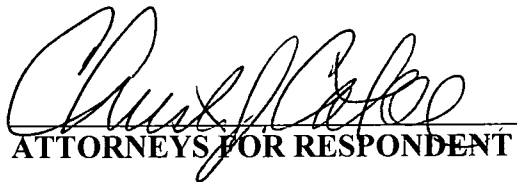
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ATTORNEYS FOR RESPONDENT

April 2, 2014