

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Dorchester County

S.C. Supreme Court

Edgar W. Dickson, Circuit Court Judge

CONRAD LITTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001740

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
Appellate Defender

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

ATTORNEY FOR PETITIONER

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QUESTIONS PRESENTED

Did the record support the PCR court's finding that counsel was not ineffective in the plea bargaining process where Petitioner could not accept the prosecution's plea offer of five years because he could not immediately go to prison and where rather than making any counteroffer to delay service of a sentence, counsel had Petitioner wait to go before a plea judge who ultimately sentenced him to twelve years?

STATEMENT OF THE CASE

On July 30, 2009, the Dorchester County Grand Jury indicted Petitioner Conrad Little for distribution of cocaine. App. 114-115. On June 15, 2010, Petitioner appeared at a plea hearing before The Honorable Diane S. Goodstein. Steve Davis represented Petitioner and Mandy Kimmons represented the State. App. 1. After a routine plea colloquy and the State's explanation of its allegations, the plea judge found that a substantial factual basis supported the plea, and Petitioner had pled knowingly and voluntarily. App. 4, ln. 10—App. 37, ln. 10. The judge sentenced Petitioner to twelve years imprisonment. App. 42, ll. 2-6.

On August 15, 2011, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 45-50. On or around November 8, 2011, the State filed a return and partial motion to dismiss. App. 51-56. On May 22, 2013, Petitioner appeared at a hearing before The Honorable Edgar W. Dickson. Natalie Powers represented Petitioner and Daniel Gourley represented the State. App. 57.

At the hearing, plea counsel testified that he was appointed to represent Petitioner in early October of 2009. He soon obtained and relayed to Petitioner a plea offer for five years imprisonment. He testified that Petitioner rejected the offer because he was not ready begin serving a sentence; he preferred to wait until the end of the year when the holidays had passed. App. 96, ll. 11-18. A letter from the prosecution containing this offer and dated November 5, 2009 was entered into evidence. The letter required a response before November 19, 2009, stating, "or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the cases(s) will be placed on the trial calendar for disposition without further negotiation." App. 106.

On July 12, 2013, the PCR court issued an order of dismissal. The order stated Petitioner's allegation of ineffective assistance of counsel "in the plea bargaining process" was without merit because plea counsel relayed all plea offers to Petitioner. App. 111.

ARGUMENT

Counsel was ineffective in the plea bargaining process because he made no attempts to negotiate for a reasonable sentence acceptable to Petitioner, and Petitioner ultimately received a sentence up to seven years longer than he should have.

The record plainly shows plea counsel's ineffectiveness by failing to seek from the prosecution a reasonable and favorable plea offer and the prejudice that resulted in his receipt of a twelve year sentence. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687.


The right to effective assistance of counsel extends to plea negotiations. *See Missouri v. Frye*, 132 S. Ct. 1399, 1408 ("This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused."). Counsel's performance can be deficient based on incorrect advice to a defendant deciding whether to accept a plea offer. *See Lafler v. Cooper*, 132 S. Ct. 1376, 1391 (2012) ("As to prejudice, respondent has shown that but for counsel's deficient performance there is a reasonable probability he and the trial court would have accepted the guilty plea. In addition, as a result of not accepting the plea and being convicted at trial, respondent received a minimum sentence [three] & half times greater than he would have received under the plea. The standard for ineffective assistance under *Strickland* has thus been satisfied." (citations omitted)).

In this case, the record plainly shows plea counsel's ineffectiveness by utterly failing to seek from the prosecution a reasonable and favorable plea offer. The prosecution offered a five-year plea deal on November 5, 2009. Petitioner informed counsel that he was not ready begin serving a sentence; he needed to wait until the end of the year when the holidays had passed. Counsel never contacted the prosecution and even attempted to bargain for a slightly longer sentence in exchange for extending the offer acceptance date until after the holidays. Thus, even though the prosecution's offer letter required a response before November 19, 2009, assuming Petitioner wanted to spend the holidays with his family before leaving for a multi-year prison term, a slightly longer sentence was a reasonable concession in bargaining with the prosecution. Nevertheless, counsel's failure to make any attempt whatsoever at such a bargain resulted in an oppressively and unreasonably longer sentence of twelve years.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

CONRAD LITTLE,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001740

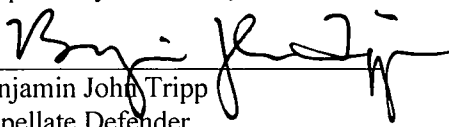
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Conrad Little states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 22, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Conrad Little.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 4th day of April, 2014

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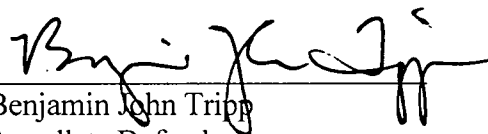
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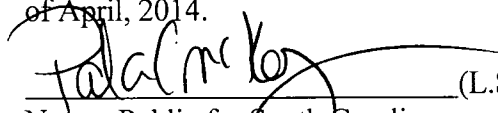
CERTIFICATE OF SERVICE

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 Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Conrad Little, 736 McDuffie Street Cayce, SC 29033, this 4th day of April, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of April, 2014.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.