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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

IKEEF BRAILSFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDANT,

APPELLATE CASE NO. 2014-000286

PRO-SE PETITION FOR WRIT OF CERTIORARI

IKEEF BRAILSFORD
Petitioner

Livesay-B Correctional Institution
PO Box 580
Una, SC 29378

INDEX

Index..... p. 1

Issue..... p. 2

Statement..... p. 3

Argument..... pp. 4-7

Conclusion..... p. 8

Supplementary Appendix..... pp. 9 - Supp. App. 3

ISSUE PRESENTED

Was counsel ineffective for failing to challenge whether petitioner was correctly charged as third offense verses a second offense

STATEMENT

On March 1, 2011, petitioner appeared before the Honorable W. Jeffrey Young in Sumter County and pled guilty to distribution of cocaine base, manufacturing of cocaine base, and two more counts of distribution of cocaine base. Respective sentences of fifteen (15) years, suspended upon service of twelve (12) years, ten (10) years, ten (10) years, and ten (10) years were imposed. Charles D. Barr, Esquire, was plea counsel. Bronwyn McKnew, Esquire, was the assistant solicitor. (App. p. 1 – p. 41).

Petitioner filed an application for post-conviction relief on January 26, 2012. (App. p. 42 – p. 48). An amended application dated June 25, 2012, was also filed. (App. p. 49 – p. 51). Respondent filed a return dated June 15, 2012. (App. p. 52 – p. 57). An evidentiary hearing was held on December 20, 2013, before the Honorable R. Ferrell Cothran. Petitioner was present and was represented by Tommy Thomas, Esquire. Respondent was represented by Daniel Gourley, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 58 – p. 120). On January 14, 2014, Judge Cothran issued an order denying and dismissing the application for post-conviction relief. (App. p. 127 – p. 135).

This petition follows.

ARGUMENT

Was counsel ineffective for failing to challenge whether petitioner was correctly charged as third offense versus a second offense?

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S. Ct. 2052 (1984); Stalk v. State, 383 S.C. 559, 681 S.E. 2d 592 (2009). With respect to a guilty plea the second prong above looks at whether defense counsel's deficient performance affected the outcome of the plea process. Stalk v. State, supra. This means that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985). This usually involves counsel's giving of correct sentencing advice or legal advice about the charges against his client. Hinson v. State, 297 S.C. 456, 377 S.E. 2d 338 (1989); Ray v. State, 303 S.C. 374, 401 S.E. 2d 151 (1991); Pelzer v. State, 381 S.C. 217, 672 S.E. 2d 790 (Ct. App. 2009); Morris v. State, 371 S.C. 278, 639 S.E. 2d 53 (2006).

In this case, the petitioner questioned during his guilty plea as to what offense he was pleading guilty to. (App. p.5, lines 10-20). The assistant solicitor took it upon herself to enhance the current offense to be treated as a third offense upon the fact that the petitioner's prior criminal history report showed the petitioner to have convictions during one prior adjudication of two drug offenses with different incident dates. (App. p.5, line 21-p.7, line 4). She acknowledged the disposal of the prior drug convictions as part of a plea bargain but stated it did not matter to her. (App. p.7, lines 2-4;15). Defense counsel

stated during the guilty plea hearing and also during the PCR hearing that he didn't feel it made a difference whether the petitioner was charged as a second time offender or a third time offender. (App. p.6, lines 10-13; p.113, lines 22-25). Defense counsel also stated he didn't remember ever discussing with the petitioner about the difference between a second and third offense until it was brought up on the record before the trial judge. (App. p.111, line 19-p.112, line 9).

The petitioner contends the PCR judge erred in denying relief where the trial judge did not have authority to sentence him for a third drug offense where his prior plea bargain held that he was to be treated as a second-time offender upon his next conviction. The sworn affidavit served to the petitioner upon his arrest stated records check revealed the defendant to have one prior drug conviction for purpose of recidivist sentencing, with law enforcement attesting to the same. (Supp. App. p.1). The petitioner testified to at his PCR hearing that his understanding at his 2006 plea adjudication was that his two drug offenses were to be consolidated into one and constitute one drug offense for purpose of recidivist sentencing. (App. p.87, line 22- p.89, line 7). Required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charge, the consequences of the plea, the constitutional rights he is waiving, and that the record reflect a factual basis for the plea. Anderson v. State, 342 S.C. 54, 535 S.E. 2d 649 (2000); Rollison v. State, 346 S.C. 506, 552 S.E. 2d 290 (2001). When determining issues relating to guilty pleas, the court can consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E. 2d 360 (1984). Transcripts from the 2006 guilty plea hearing are not available. (Supp. App. pp. 2-3). But the sentencing sheets from the 2006 guilty plea

hearing, signed by both counsels, the petitioner, and the sentencing judge, indicate a plea agreement being made, with the box for negotiated sentence marked on both sentencing sheets, and both drug offenses being pled to as a first offense. (App. pp. 121 & 124).

The State Supreme Court ruled that plea bargains are governed by contract principles. State v. Thrift, 312 S.C. 282, 440 S.E. 2d 341 (1994). In that ruling, the court took its position based off "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. The Fourth Circuit recently addressed the same issue in United States v. Ringling, 988 F.2d 504 (4th Cir. 1993). In Ringling, the court held that a plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain. Id. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based. Id. The court also noted that the government had to be held to a higher degree of responsibility than the defendant for imprecisions or ambiguities. Id. Furthermore the opinion in State v. Thrift, Supra. held effective its filing; all plea agreements must be on the record reciting the scope, offenses, and individuals involved in the agreement, that the information must be disclosed to the trial judge, and that the court will limit its review of a plea agreement only to the terms which are fully set forth in the record.

The petitioner testified to at his PCR hearing that the trial judge at his 2006 plea hearing told him on the record that his next drug conviction after that date was to be a second offense. (App. p.68, lines 1-16). The entire record is not available to analyze,

being the 2006 plea transcript has been destroyed, but the sentencing sheets from that plea hearing are available and they support the petitioner's undisputed claim. (App. pp. 121 & 124; Supp. App. pp. 2-3). Justice Pleicones stated in the concurring separate opinion of the case law authority the PCR judge used to dismiss the allegation that the petitioner was denied effective assistance of counsel that an individual can bargain for multiple convictions to constitute one drug offense. State v. Robinson, 387 S.C. 568, 693 S.E. 2d 402 (2010). The petitioner should have been sentenced as a second-time offender.

The second prong used in evaluating allegations of ineffective assistance of counsel is whether the defendant was prejudiced by counsel's ineffective performance. (citing Strickland). The State Supreme Court ruled in Robinson v. State, 380 S.C. 201, 669 S.E. 2d 588 (2008), that the petitioner was prejudiced even though he was sentenced within the range of available sentences for a first offense, being he was sentenced to second offense. The trial judge at the petitioner's guilty plea hearing also stated it made a big difference to be sentenced as a third-time offender compared to a second-time offender. (App. p.6, lines 7-20). The petitioner was prejudiced by being sentenced as a third-time offender compared to being sentenced as a second-time offender.

The petitioner was denied effective assistance of counsel by counsel failing to adequately investigate and prepare a defense for trial. Had defense counsel adequately investigate the petitioner's plea agreement of the 2006 plea hearing in preparing a defense for the instant conviction, he would had been able to secure the transcript of the 2006 guilty plea and better defend the petitioner. (Supp. App. pp. 2-3). Defense counsel's performance fell below professional norms and greatly injured the petitioner.

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be vacated.

Respectfully submitted,



IKEEF BRAILSFORD, #264172

Petitioner

July 30, 2014

SUPPLEMENTARY APPENDIX

ARREST WARRANT

M-441820

STATE OF SOUTH CAROLINA
County/ Municipality of
Sumter

THE STATE
against
10065463

Ikeef Lionell Brailsford

Address: Cannery Rd
Dalzell, SC 29040-

Phone:
Sex: M Race: B Height: 6 Weight: 280
DL State: SC DL #: 007845109 SSN:
DOB: 10/18/1981 Agency ORI #: SC0430000
Prosecuting Agency: Sumter County Sheriff
Prosecuting Officer: D. Vickers - 0255
Offense: Drugs/ Manufacture, distribution, etc.
methamphetamine or cocaine base, 2nd offense
Offense Code: 3015
Code/Ordinance Sec: 44-53-0375 (B) (2)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Ikeef L Brailsford
on 5/28/2010

SA Cpl Jeffrey Richards
Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Sumter County General Sessions
141 N. Main St., Rm 308
Sumter, SC 29150

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter

Personally appeared before me the affiant D. Vickers

being duly sworn and says that defendant Ikeef Lionell Brailsford

did within this county and state on or about 05/28/2010

State of South Carolina (or ordinance of Sumter County/ Municipality of Sumter

in the following particulars: 5/28/2010

DESCRIPTION OF OFFENSE: Drugs/ Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense

CLERK OF COURT
SUMTER COUNTY, S.C.

I further state that there is probable cause to believe that the defendant
the crime set forth and that probable cause is based on the following facts:

That on May 28, 2010, at 50 Sheffield Ct, in the county of Sumter, the defendant did distribute to an undercover Officer working under
defendant did deliver suspect crack cocaine to a codefendant, Fred China III to distribute to an undercover Officer working under
the direction and control of the Sumter County Drug Unit who did purchase suspect crack cocaine appx. weight 2 grams, from the
codefendant using \$100 in documented drug unit funds. Records check revealed the defendant to have one prior drug conviction.
Law enforcement will attest to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Sumter

Affiant's Address 107 East Hampton Street

Sumter, SC 29150-

Affiant's Telephone (803)436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/28/2010 defendant Ikeef Lionell Brailsford

did violate the criminal laws of the State of South Carolina (or ordinance of

Sumter County/ Municipality of Sumter) as set forth below:

DESCRIPTION OF OFFENSE: Drugs/ Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 07/14/2010

Signature of Issuing Judge
Let Anna Tindal

Judge Code: 5769

Issuing Court: Magistrate

ORIGINAL

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ORIGINAL

Magistrate

Municipal

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ORIGINAL

AFFIDAVIT

who

violate the criminal laws of the

Sumter

CERTIFIED TRUE COPY

Sumter County

Sumter County

Supp. App. 1

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-8542

October 8, 2013

Margaret T. Sullivan
504 Henderson Street
Sumter, SC 29150

RE: State v. Ikeef Brailsford
Warrant No.: 2006-GS-43-00392; 2005-GS-43-00890

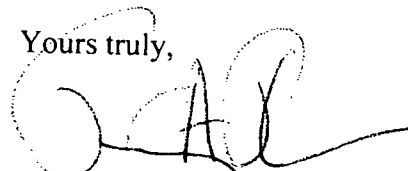
Dear Ms. Sullivan:

Mr. Brailsford was convicted of the above referenced charges on June 8, 2006 in Sumter County by The Honorable Steven H. John. The purpose of this letter is to determine if you still have the recording from this guilty plea. I have been retained to represent on Post Conviction Relief from other charges, but there is a question of what Judge John said to Mr. Brailsford during the 2006 plea.

Kindly contact my office as soon as possible to let me know if this case can be transcribed and if so what the anticipated cost for transcription would be. Mr. Brailsford's PCR hearing I believe is going to be set for the week of December 16, 2013.

Thank you and I look forward to hearing from you soon. If you would like to communicate by email, you can do so by emailing Jackie@paroleme.com

Yours truly,



Tommy A. Thomas
Attorney at Law

TAT/jem

Supp. App. 2

Mr. Tommy A. Thomas, P.C.
Attorney and Counselor at Law
Harrington Building
P.O. BOX 88
Irmo, S.C. 29063

Dear Mr. Thomas,

I received a transcript request on State vs. Ikeef Brailsford. I no longer have my notes from that 2006 case. We are only required to keep the last 5 years. So I would only have 2008 forward.

Sincerely,



Margaret T. Sullivan,
Court Reporter
504 Henderson St.
Sumter, S.C. 29150

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

IKEEF BRAILSFORD,

PETITIONER,

V.


STATE OF SOUTH CAROLINA,

RESPONDANT,

CERTIFICATE OF SERVICE

I certify that a true copy of the pro-se petition for writ of certiorari in this case has been served on THE SUPREME COURT OF SOUTH CAROLINA at:

THE SUPREME COURT OF SOUTH CAROLINA
PO Box 11330
Columbia, S.C. 29211


Ikeef Brailsford, #264172
Petitioner

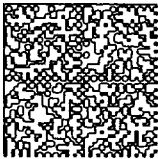
July 30, 2014

I Keef Brailford, #264172

Livesay Pre-Release

P.O. Box 580

Una, S.C. 29378



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The Supreme Court of South Carolina

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