THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Frank R. Addy, Jr., Presiding Judge

Case No.: 2014-000688

William C. Martin #332078 .....Appellant,

vs.

State of South Carolina .....Respondent.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF THE CASE

The Appellant was indicated on Indictment No. 2008-GS-32-1374 by the Lexington County Grand Jury on one Count of Felony DUI where Death Results, a violation of S.C. Code 56-5-2945.

The Appellant was tried in the Lexington County Court of General Sessions, on December 1,2,3, 2008, in the matter of the State of South Carolina v. William Conrad Martin, before the Honorable Deadra L. Jefferson. Appellant was convicted and sentenced to Fifteen (15) years and a fine in the amount of Ten Thousand and One Hundred Dollars ($10,100.00). The sentence to be served at a South Carolina Department of Corrections facility.

Appellant timely filed and served his Notice of Intent to Appeal on December 10, 2008; with an Amended Notice filed on December 11, 2008. The South Carolina Court of Appeals affirmed the Trial Courts decision in a written Opinion No. 4788 filed February 3, 2011.

STATEMENT OF FACTS

The Appellant is currently serving a fifteen (15) year sentence, having been found guilty by Jury trial on the charge of Felony Driving Under the Influence, death result.

Appellant was involved in an automobile accident about a mile and a half from his home. He was approaching a vehicle that was pulling out of their driveway. They collided (App. p. 649, lines 1-4) and the driver of the second vehicle was seriously injured. Appellant was originally charged with Felony Driving Under the Influence Great Bodily Injury. However, about two and a half months later the victim passed away (App. p. 649, lines 11-15). Appellant was then charged with Felony Driving Under the Influence, Death result.

Appellant retained counsel and was released on Bond. The Appellant testified at Post-Conviction Relief that he did not understand the criminal process. He met with Counsel on two or three occasions (App. p. 650, lines 1-5). While they talked about the case there was no discussion of the evidence that the State had against him (App. p.650, lines 22-25). He did not know the elements of the crime and what the State was going to prove at trial (App. p. 651, lines 3-8). He and trial counsel did not discuss the medical evidence, but he only became aware of the importance of the medical testimony after the case proceeded to trial (App. p. 651, lines 12-19).

The Victim in this case was in the hospital for an extended period of time. He believed that her medical difficulties were the result of an underlying medical condition not directly related to the accident (App. p. 651, lines 20-25). He was told by trial counsel that the family had a malpractice suit against the hospital associated with her passing (App. p. 652, lines 1-12).

The Appellant testified that he had very limited knowledge of the legal system. He had never been in General Sessions Court before and he did not really understand what was going on (App. p. 652, lines 17-24). He stated that he relied on trial counsel wholly for any decisions that needed to be made regarding his case. (App. p. 653, lines 7-14)

In preparation of his case the Appellant and trial counsel discussed his charges and he was told that he had a pretty good chance of winning at trial. He was told that he had as high as a seventy (70%) percent chance of being successful and based upon this information he felt comfortable with allowing his attorney to make decisions on his behalf. (App. p. 653, lines 15-19)

The Appellant stated that he was given a plea offer of three to six years on a plea to Felony Driving Under the Influence great bodily injury. This first offer was made after the victim had passed away but prior to his being charged with Felony Driving Under the Influence Death result. The State was still willing to offer a plea of great bodily injury despite the victim passing. (App. p. 654, lines 5-17)

In regards to the first plea offer the Appellant testified that he told Counsel "I didn't know what he had to work with I mean that's why I hired him." (App. p. 654, lines 22-24) The Appellant left the decision regarding the plea to trial Counsel because he was told by counsel that he could do better. It was his understanding that trial Counsel was telling him that he could win the case. But the Appellant did voice his concern that if he (counsel) couldn't do any better that I want to take the offer, because I didn't want to be away from my family longer than I had to be. (App. p. 651, lines 2-17)

Trial counsel informed the State that there was "no deal" and rejected the first offer. The case was later set for trial. (App. p. 652, lines 1-5)

After being noticed for trial, the Appellant, his sister, ex-wife and father-in-law met with trial counsel. At that meeting Appellant was told he had a good chance at trial (App. p. 657, lines 4-11). This was consistent with what he had been told all along.

It was only after the trial began that the Appellant realized that "it didn't look good". The State had a very organized presentation and presented medical testimony that the Victim died as a result of the accident. The Appellant was concerned about the medical testimony as he believed the victim had passed from other causes. (App. p. 658, lines 3-25, p. 659, lines 7-23 and p. 660, lines 1-18)

The Appellant testified that he was offered a second plea, after the trial stated (App. p. 660, lines 19-20). He was informed that the trial Judge had consulted with his attorney about a plea. The Appellant stated that while he was not privy to the Judge's comments, he was informed of this offer by his attorney. "They came over and said that she had agreed on 10 years, but his attorney told him that if he (counsel) wasn't going to accept three to six, so he's not going with ten (10)" . Mr. Martin further testified that he was never given an opportunity to accept the ten (10) year plea. (App. p. 660, lines 21-25 and p. 661, lines 1-14).

On cross examination, the Appellant started that he never turned the first plea offer down. (App. p. 667, lines 1-3)

There is support for the Appellants stated understanding in Trial Counsel's testimony. He stated that the theory of defense was an issue of causation. Causation of the accident and causation of the death (App. p. 674, lines 3-14). The victim contracted

an infection while in the hospital and these facts presented a question of a possible intervening cause of death. (App. p. 675, lines 2-11)

In regards to the second plea offer, Trial counsel testified that obviously the Appellant heard the ten (10) year plea offer. He noted that if the Appellant was concerned "why didn't he say, Theo, why don't you go back and take it". (App.p. 678, lines 1-14) Counsel's testimony supports the Appellant's contention that he was telling the Appellate that there was a good chance of winning the case. He goes further to allege that it was not one of the worst cases that he had seen and he didn't know what part of the evidence contributed to the conviction (App. p. 678, lines 15-22). Counsel states that "and on a given day, he might have won that case, truthfully." (App. p. 685, lines 1-6).

Jackie Williams, the Appellant's sister testified at the PCR hearing. She stated that she was with the Appellate when he met with trial counsel. That she did not ever see the State's evidence in the case and that her brother did not know what the evidence was. She further testified that she remembered that in discussing the first plea offer of three to six years, her brother asked trial counsel if he should take the plea. That "Mr. Williams told him that he paid him to win the case." (App. p. 688, lines 13-25 and p. 689, lines 1-18)

QUESTION PRESENTED

Did the PCR Court err in denying the Applicant's PCR on the basis that trial counsel failed to adequately convey plea offer (s) to the Appellant.

ARGUMENT

The unique question in this case is not did trial counsel convey the State's two plea offers to the Appellant? Clearly, the offers were conveyed. However, the question is was counsel deficient in advising the Appellant not to accept the plea offers and not providing the Appellant with sufficient information to make an informed decision regarding the plea.

It is clear that the court has held that counsel's failure to convey a plea offer constitutes deficient performance. Davie v. State, 381 SC 601, 675 S.E.2d 416 (2009). In Davie the Court found that a case by case approach effectively achieves the ultimate goal of assessing whether but for Counsel's deficient performance a defendant would have accepted the State's proposed plea offer and that he would have benefited from the offer.

The Court in Kolle v. State 386 SC 578, 690 S.E. 2d 73 (2010) discussed the issue of counsel's deficiency in failing to properly advise the defendant regarding a State's plea offer. However, Kolle is different than the case at hand, in that Kolle went on to plea at a later date and received a greater sentence.

However, the legal concepts are the same. The question is counsel's failure to properly advise or misadvise regarding a plea offer which in turn results in the Defendant receiving a much larger sentence. In Kolle the Court found that counsel was deficient in advising the Defendant that the State's initial plea offer was not a "good deal". The Court

found that Kolle's plea offer was clearly significantly better than the sentence Kolle faced on the charge.

The Appellant testified that he was unfamiliar with the legal system. So much so that he accepted the advice of his attorney without question. He lacked the information necessary to understand the significance of the plea offers and the potential risk at trial. That counsel's desire to try the case did not give the opportunity to intelligently weigh the risk and benefit of accepting either plea offer.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Court grant the Petition for Certiorari.

Respectfully submitted,

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August 6, 2014

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CERTIFICATE OF SERVICE BY MAIL

I, Tommy A. Thomas, Attorney for the Applicant, hereby certify that I hand delivered a copy of the Appendix and Petition for Writ of Certiorari to J. Walt Whitmire, Esq. with the Office of the Attorney General at:

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