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SEP 23 2014

September 19, 2014

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Notice of Intent to Appeal, Daniel E. Dickson, Inmate #105841, Petitioner v. State of South Carolina, 2011-CP-10-4505

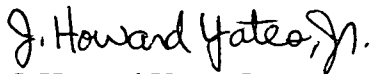
Dear Mr. Shearouse:

I am the Court appointed attorney for Daniel E. Dickson, Inmate #105841 at the Kirkland Correctional Institute. Mr. Dickson's Petition for Post-Conviction Relief was denied and I am appealing this denial. I have enclosed the following documents on his behalf:

1. Notice of Intent to Appeal
2. Proof of Service on Notice of Intent to Appeal on Ashleigh R. Wilson, Esq.
3. ~~A copy of the Order of Judge Stephanie P. McDonald denying Post-Conviction Relief~~

Thank you for your assistance.

Yours very truly,



J. Howard Yates, Jr.

JHY, Jr./enclosures  
cc: Daniel E. Dickson, #105841  
Ashleigh R. Wilson, Esq.  
Office of Indigent Defense



STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Presiding Judge

2011-CP-10-4505

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SEP 23 2014

S.C. Supreme Court

DANIEL E. DICKSON, #105841,

Petitioner,

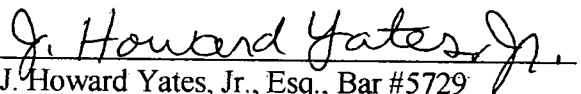
v.

STATE OF SOUTH CAROLINA,

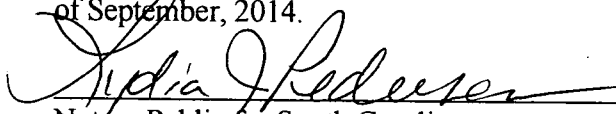
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Intent to Appeal in the above-entitled case has been served upon opposing counsel, Ashleigh R. Wilson, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 19<sup>TH</sup> day of September, 2014.

  
J. Howard Yates, Jr., Esq., Bar #5729  
Attorney for Petitioner  
42 Broad Street  
Charleston, S.C. 29401  
843-7236407  
843-7221814 (fax)  
Email: yatesj2@bellsouth.net

SWORN TO BEFORE me this 19<sup>th</sup> day  
of September, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 5-25-16

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AB  
AT  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Daniel E. Dickson, #105841, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

**RECEIVED**  
2011 CP-10-4505

SEP 23 2014

**S.C. SUPREME COURT**  
**ORDER OF DISMISSAL**

FILED  
2014 AUG 28 AM 8:56  
JULIE J. HARRINGTON  
CLERK OF COURT

Presiding Judge: The Honorable Stephanie P. McDonald  
Applicant's Attorney: J. Howard Yates, Jr., Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Trial Counsel: Rodney Davis, Esquire  
Date of Hearing: July 25, 2012  
Court Reporter: Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated June 27, 2011. The Respondent made its return on December 16, 2011. An evidentiary hearing on the matter was convened on July 25, 2012, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by J. Howard Yates, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Present and testifying were Rodney Davis, Esquire, and Peter McCoy, Esquire. Joseph Samuel Whitt, who is in the custody of the South Carolina Department of Corrections, testified by telephone. This Court had before it the trial transcript, the Charleston County Clerk of Court's records, the Applicant's records from the South Carolina Department of Corrections, Applicant's

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application, Respondent's return, the appellate record, and the transcript from the post-conviction relief hearing.

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SEP 23 2014

**PROCEDURAL HISTORY**

**S.C. SUPREME COURT**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the August 2008 term of the Charleston County Grand Jury for attempted armed robbery (2008-GS-10-6743) and at the October 2007 term for kidnapping (2007-GS-10-0830). He was represented by Rodney Davis, Esquire.

The Applicant proceeded to trial and was found guilty on November 22, 2008. The Applicant was sentenced by the Honorable R. Markley Dennis, Jr., to life without the possibility of parole on both charges after being served with a timely notice of the State's intention to seek life prior to trial.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Lanelle DuRant, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Dickson, Op. No. 2010-UP-348 (S.C. Ct. App. filed July 6, 2010).

**ALLEGATIONS**

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Failure to subpoena Eric Dickerson or any other witness at trial.
  - b. Failure to subpoena Applicant's medical records from MUSC.

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2. Failure of State to abide by terms of an agreement regarding Applicant's sentence.
3. Ex parte communication that occurred in the judge's chambers between the solicitors and one or more of Applicant's listed defense attorneys.

At the hearing, Applicant proceeded solely on the allegations of the State's failure to abide by the terms of a purported agreement regarding his sentence. This Court finds that the Applicant failed to present any testimony or evidence in support of the remaining allegations. Therefore, this Court finds all remaining allegations were abandoned by the Applicant.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

The Applicant was present at the evidentiary hearing and testified that while in jail, Joseph Whitt admitted to him that he committed murder. (PCR T. 7:14-8:9). Applicant testified that he wrote the Solicitor's office about the information and that Peter McCoy, Burns Wetmore, and a third attorney from the Solicitor's office came to see him at the jail. (PCR T. 8:9-24). He testified that he offered to testify against Whitt in court and that the State was willing to come to court to speak for the Applicant in his own case. (PCR T. 11:1-3, 8-23). The Applicant testified that one of the Assistant Solicitors said that his charge would be dropped to a different charge. (PCR T. 14:4-6). The Applicant also testified that he spoke with Jennifer Evans from the

Attorney General's Office (who ultimately prosecuted Whitt's case) about assisting her with other cases. (PCR T. 13:6-11, 15:10-12).

The Applicant further testified that he had no indication that the Solicitor would seek life without parole and that he would not have put himself at risk and volunteered to provide information if he had known the State would seek this sentence. (PCR T. 14:13-22). It was Applicant's understanding that by volunteering to provide information, the State would assist him in his own case. (PCR T. 18:3-9). The Applicant testified that he was never shown a written offer from either Mr. McCoy or Ms. Evans stating that the State would provide him any benefit for his statement. (PCR T. 19:14-23, 21:5-10). Lastly, the Applicant testified that it was his belief that he had a "gentleman's agreement" with the State that one of his charges would get dropped and that the other would get "broke[n] down" so that he could plead to some lesser offense. (PCR T. 22:20-25).

Peter McCoy, Esquire, also testified at the evidentiary hearing. McCoy, who worked as a 9<sup>th</sup> Circuit assistant solicitor in June 2007, testified that he prosecuted Joseph Whitt's case until it was turned over to the Attorney General's Office. (PCR T. 25:24- 26:18). McCoy testified that he spoke with the Applicant about the case, that the Applicant was cooperative, and that the Applicant gave information which appeared to be accurate. (PCR T. 27:2-16). McCoy confirmed that he probably told the Applicant that he would be a potential witness who could be called at Whitt's trial, but that he never promised Applicant anything because to do so makes witnesses less credible on the witness stand. (PCR T. 29:2-19). McCoy testified that he did not recall talking with Attorney Davis (Applicant's trial counsel) about a proffer and that it would have been unusual for him to have done so since he was not the solicitor handling the Applicant's

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case. (PCR T. 30:5-16).<sup>1</sup> McCoy testified that he had no say in the outcome of the charges against the Applicant because the Attorney General's office was handling Applicant's prosecution. (PCR T. 36:23-37:1). McCoy testified that he was surprised that the Applicant was served with a notice that the State intended to seek life without parole (LWOP notice) after McCoy notified the prosecutor that Applicant had volunteered to be helpful. As Whitt eventually pled guilty, the information provided by the Applicant was never used, and the Applicant was never called as a witness. (PCR T. 35:10-23).

McCoy testified further that if the case had remained his, he was prepared to go to court to inform the judge of the Applicant's cooperation (if the Applicant pled guilty). (PCR T. 32:22-33:3). He testified that he did not recall if he indicated to Davis that he would speak on the Applicant's behalf, but that this was something that he would usually do. (PCR T. 37:7-20). McCoy testified that information about the Applicant's cooperation would not have been helpful once the Applicant was served with the LWOP notice. (PCR T. 33:21-24).<sup>2</sup> Lastly, McCoy testified that he never promised the Applicant that the State would give him any benefit as a result of his statement. (PCR T. 37:2-6). McCoy explained that it is not uncommon for individuals to cooperate with the State while thinking that they will receive assistance when no such promises have been made. (PCR T. 40:3-9).

Rodney Davis, Esquire, was also present and testified that both he and the Applicant had an implied understanding with the State that information about Applicant's cooperation would be provided in hopes of leniency. (PCR T. 43:10-19). Davis testified that he had a reasonable belief that the Solicitor's Office would help, but that McCoy had no direct control over the Applicant's

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<sup>1</sup> Michal Sahn, Esquire, was the solicitor assigned to prosecute Applicant's case.

<sup>2</sup> Under the LWOP statute, § 17-25-45, once the proper notice has been served, if the defendant has been convicted of an eligible offense, he "must be sentenced to a term of imprisonment for life without the possibility of parole...".

case. (PCR T. 45:10-17). Davis testified that if the case resolved, he believed that McCoy would let both the solicitor handling the case and the plea judge know that the Applicant had cooperated with the State. (PCR T. 46:1-4).

Davis testified that there was no indication that the State would seek life without parole during the early stages of the Applicant's prosecution. (PCR T. 46:5-14). He further testified that it is ultimately the defendant's decision to cooperate with the State and that he still would have allowed the Applicant to cooperate even if he had known they were seeking life without parole. (PCR T. 47:5-15). Davis testified that he is not a proponent of proffers with the 9<sup>th</sup> Circuit solicitor's office and that a proffer would not have provided the Applicant any benefit in this situation. (PCR T. 48:16-49:2). Davis testified ultimately that the State was within its authority to seek life without parole and that he tried, repeatedly, to get the Solicitor to remove the life without parole notice. (PCR T. 49:3-7, 17-23).

Davis testified that he never received any written statement or offer from the Solicitor's Office, and that the best they could get from the State would be for McCoy to tell the prosecutor and the judge about the Applicant's cooperation. (PCR T. 51:22-52:22). He testified that he reviewed the Applicant's rap sheet and that the Applicant was indeed eligible for a life without parole sentence. (PCR T. 53:14). Davis confirmed that he knew that McCoy had no control over how the Applicant's case was prosecuted, but that the Applicant's cooperation only provided a benefit if the Applicant pled to charges not prosecuted under an LWOP notice. (PCR T. 55:10-13, 65:4-23).

Lastly, Joseph Samuel Whitt testified by phone from the South Carolina Department of Corrections. Whitt testified that he did not speak with the Applicant about his father's death. (PCR T. 72:2). He testified that he knew that the Applicant had offered to testify against him at

trial, but that the Applicant's testimony did not affect Whitt's decision to plead guilty. (PCR T. 74:22-75:7).

This Court finds credible the testimony of both Rodney Davis and Peter McCoy. Here, the Applicant has failed to carry his burden of proving that the State failed to abide by the terms of any agreement regarding the Applicant's sentence as no such agreement with the State ever existed with regard to the Applicant. It was within the State's discretion to seek a sentence of life without the possibility of parole.

A criminal defendant has "no right to be offered a plea." Lafler v. Cooper, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). The decision whether to offer a plea bargain is within the solicitor's discretion. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (*citing* State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1996)). Our Supreme Court has recognized that plea agreements rest on contractual premises. State v. Gates, 299 S.C. 92, 94-95, 382 S.E.2d 886-87 (1989). Unless intended by both parties, terms and conditions should not be read into a plea agreement. State v. Compton, 366 S.C. 671, 678, 623 S.E.2d 661, 665 (Ct. App. 2005). Even in case involving an actual agreement, parties are free to withdraw offers until performance occurs. Reed v. Becka, 333 S.C. 676, 687, 511 S.E.2d 396, 402 (Ct. App. 1999). A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. Id. at 668, 511 S.E.2d at 403.

Until formal acceptance has occurred, the plea is not binding on the defendant, the State, or the Court. Id. This general rule is subject to a detrimental reliance exception. Custodio v. State, 373 S.C. 4, 11, 644 S.E.2d 36, 39 (2007); Reed, 333 S.C. at 688, 511 S.E.2d at 403. Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 44, 454 (2007). State

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prosecutors are obligated to fulfill the promises that they make to defendants when those promises serve as inducements to defendants to plead guilty or otherwise act to their detriment. Santobello v. New York, 404 U.S. 257, 262 (1971). However, a defendant may not attempt to create a firm commitment out of mere plea negotiations. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 687 (1996). The State is not bound to accept a defendant's terms simply because a defendant reveals otherwise undiscoverable facts in the hope of securing a favorable plea agreement. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 444, 454 (2007).<sup>3</sup>

The testimony and record in this case reflect that no promises or plea offers were made to the Applicant with regard to either his charges or resulting potential sentences. Peter McCoy provided credible testimony that the State never made any promise of a plea offer (or other beneficial action) to the Applicant in exchange for his cooperation in Whitt's prosecution or any other matter. (PCR T. 37:2-6). The record reflects that McCoy informed the prosecutor of Applicant's offers to cooperate. (PCR T. 35:14-18). Rodney Davis provided credible testimony that the most the Applicant could have expected was for McCoy to inform the prosecutor and plea judge about the Applicant's cooperation. (PCR T. 51:22-52:22). There were no discussions with the State nor any promises made regarding a specific plea offer, recommendation, or sentencing range. (Trial T. 42:1-8). The trial transcript reflects that after being informed of the Applicant's cooperation in the Whitt prosecution, Applicant's trial judge concluded prior to the

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<sup>3</sup> See also Whipple, 324 S.C. at 48, 476 S.E.2d at 686 (though solicitor agreed to consider a plea agreement if Whipple provided substantial mitigation evidence, he never promised a life sentence nor was a plea agreement ever reached); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *cert. denied*, 456 U.S. 938, 102 S.Ct. 1996, 72 L.Ed.2d 458 (1982) (that solicitor's plea negotiations involved considering a life sentence did not prevent State from seeking death penalty) *overruled in part on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

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trial that there had been no specific plea offer made by the State and that there was no enforceable agreement. (Trial T. 79:12-80:16).

This Court finds that, at best, the Applicant hoped to receive a benefit from the State for his cooperation in Whitt's case, but that he was never promised any benefit in exchange for his cooperation with the State. Significantly, the State did not approach the Applicant in an effort to obtain his cooperation; the Applicant reached out to the State in hopes that he could obtain some favorable consideration in his prosecution for kidnapping and attempted armed robbery.

This Court also finds that Applicant has failed to carry his burden of proving detrimental reliance. Here, although the Applicant initiated certain discussions and the State participated in them, the State made no offer or agreement upon which the Applicant could have actually relied.

While it appears that the Applicant hoped his cooperation with the State might secure a beneficial plea offer with McCoy's help, ultimately, as McCoy was not the solicitor prosecuting the Applicant's case, he had no control over the resolution of this case. Further, under the facts of this case, the Court cannot find improper the prosecutor's decision to proceed to trial under an LWOP notice. South Carolina Code §17-25-45(G) states that "the decision to invoke sentencing under this section [the LWOP statute] is in the discretion of the solicitor." The record reflects the absence of any agreement between the Applicant and the State precluding the prosecuting solicitor from seeking life without the possibility of parole. It further reflects that the Applicant was eligible for life without parole based on his prior convictions. Thus, Applicant has failed to carry his burden of proving that the State failed to abide by the terms of an agreement with regard to his sentence.

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All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds that Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the Applicant has abandoned any such allegations, and they are hereby denied and dismissed.

CONCLUSION

Applicant has not established any constitutional violation or deprivation either before or during his trial and sentencing proceedings. Counsel was not deficient, and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

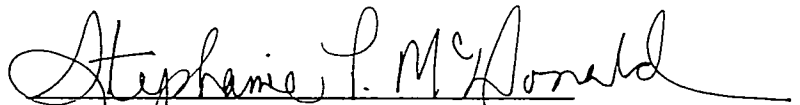
This Court advises the Applicant that he must file a Notice of Intent to Appeal within thirty (30) days from the receipt of this Order if he wishes to secure appropriate appellate review. Applicant's attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow once a Notice of Intent to Appeal has been timely filed.

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**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice;  
and
2. That the Applicant remain in the custody of the Respondent State of South Carolina.

**AND IT IS SO ORDERED** this 25<sup>th</sup> day of August, 2014

  
The Honorable Stephanie P. McDonald  
Presiding Judge  
9th Judicial Circuit

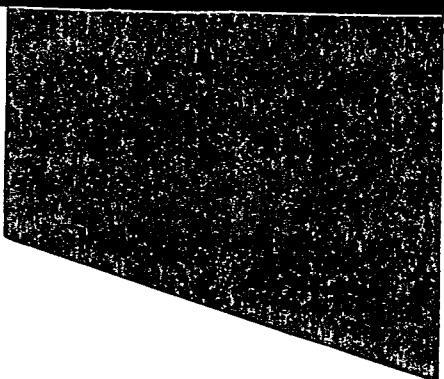
August 25, 2014  
Charleston, South Carolina

From:

Sh. Howard Yates, Jr., 309 -

P.O. Box 571

Charleston, SC 29402



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To: The Honorable Daniel S. Ravnsbur

Clark, SC, Supreme Court

P.O. Box 11330

Columbia, SC 29211

Ready **P**ost.