STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes II, Circuit Court Judge

Case No. 2012-213146

Isaac J. Walker,.....Petitioner,

v.

State of South Carolina, ... Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Isaac J. Walker requests that this Court grant rehearing in Isaac Jerome Walker v. State of South Carolina, (S.C. Supreme Court Order, filed September 11, 2014). This Court's Order denied the Mr. Walker's Petition for Writ of Certiorari. In making this decision, the Court may have overlooked or misapprehended two points:

1. **The Court May Have Overlooked or Misapprehended the Fact That Mr. Walker Admitted to the elements of Grand Larceny in His Testimony Before the PCR Court.**

Throughout Mr. Walker's testimony he insisted that he would have pled guilty to Grand Larceny. This is evinced best by Petitioner's statement at the evidentiary hearing: "Like I say, again, I would have accepted this plea. Ain't no way around it considering the circumstances of the case. I took her out there. She brought them guns. I was in my car." App. 337, ll. 11-14.

Furthermore, in response to questioning by PCR counsel, the Petitioner admitted that he went to the house with his co-defendant, they were there together, they left together and they left with the guns. App. 330-331.

Nothing in his testimony indicated that he did not believe he had engaged in actions that would satisfy the elements of grand larceny. His testimony made it clear, by his reaction, that he either knew or had reason to know that the co-defendant had just taken guns from the house that they did not belong to her. Petitioner told the PCR Court, on numerous occasions that he understood he had committed the crime of grand larceny:

> "Like I say, again, I would have accepted this plea. Ain't no way around it considering the circumstances of the case. I took her out there. She brought them guns. I was in my car." App. 337, ll. 11-14.
>
> " . . . I considered the circumstances of me panicking and leaving when she brought the guns over to my car and put them in there and I helped to get them in the car, I would have accepted the plea again to grand larceny if she had informed me." App. 346, ll. 19-24.
>
> "I told you I was sitting in my car when Lisa Godfrey brought them guns out to my car and I had to get them in the car, ma'am." App. 364; ll. 1-3.

During direct examination Petitioner admitted that he went to the house with his co-defendant, they were there together, they left together and they left with the guns. App. 330-331. Therefore, Petitioner appeared to admit and understand that under the facts of the case he was guilty of grand larceny. Consequently it was an abuse of discretion for the trial court to have found that Mr. Walker would not have accepted an offer to plead to grand larceny.

2. **The Court May Have Overlooked or Misapprehended the Fact Mr. Walker Never Had the Advice of Counsel in Making a Decision as to Whether or Not it Was in His Interest to Plead to Grand Larceny, the Options He Had in Making a Decision, or The Consequences of Not Accepting the Offer.**

In Missouri v. Frye, 132 S. Ct. 1399, 1408 (2012), Court held that the right to effective assistance of counsel extends not only to those situations in which a criminal defendant accepts a

plea bargain and waives his right to trial,[1] but also to situations where plea offers are rejected or allowed to lapse. *Id.* at 1409.

In support of its holding, the *Frye* Court explained:

> The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours 'is for the most part a system of pleas, not a system of trials,' *Lafler*, *post*, at 11, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process.

Id. at 1407.[2] The Court emphasized, "*In today's criminal justice system, . . . the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant*" and "*defense counsel have responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires.*" *Id.* at 1407 (emphasis added). Accordingly, "[a]nything less [than effective counsel during plea negotiations] . . . might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him.'" *Id.* at 1408 (citing *Massiah v. United States*, 377 U.S. 201 (1964) (quotation citation omitted)).

Mr. Walker, as the transcript shows, does not easily grasp some of the finer points of criminal or civil law. He, even more than most defendants, would have benefitted greatly from having the advice of counsel concerning an offer to grand larceny. Even if the Petitioner

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[1] *See Hill v. Lockhart*, 474 U.S. 52 (1985) (establishing the standard for ineffective assistance of counsel claims arising from a guilty plea); *see also Padilla v. Kentucky* 130 S.Ct. 1473 (2010) (finding ineffective assistance of counsel where counsel failed to advise a defendant regarding the deportation consequences of a conviction).

[2] The *Frye* Court noted, The "simple reality" is that "ours 'is for the most part a system of pleas, not a system of trials.'" *Frye* , 132 S.Ct. at 1407 (citing *Lafler*, 132 S.Ct. at 1388). Specfically, "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Id.*

maintained his innocence when initially presented with the offer of grand larceny, trial counsel could have discussed option of pleading nolo contendere or pursuant to North Carolina v. Alford. Had he been given the initial offer his attorney could have explained to him in detail the elements of grand larceny or accessory to grand larceny and she could have given him her opinion as to whether or not he should take the offer. Petitioner would have been given the option between facing 15 years to life or pleading to a maximum of 5 years in prison. App. p 16.

The reality is that many, if not most, defendants initially claim they are innocent and it is the job of defense counsel to carefully and fully explain to them any potential offers, the elements of the crime they are charged with, possible defenses to the charge and the benefits of pleading guilty. There is no testimony that any detailed discussion with Mr. Walker occurred concerning an offer to plead to Grand Larceny. In fact, the trial court found that no discussion concerning the offer ever occurred as the offer was never conveyed to Mr. Walker. Simply because a defendant initially proclaims their innocence does not absolve a defense attorney from explaining any offers received and the potential benefits of the offer.

Furthermore, The Attorney General's Office, during their questioning of Mr. Walker, misunderstood that he would have only been facing a five year penalty rather than a 10 year penalty had he accepted the first offer. App. 16, App. p. 350-1. That is a vast difference in exposure and Mr. Walker was never given an opportunity to be advised of the possibilities of straight indictment as he was never told about the initial offer.

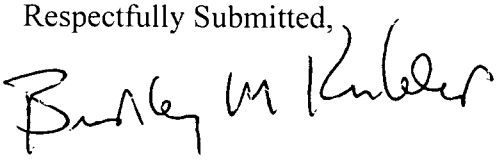
There is simply no basis for the PCR Court to conclude as a matter of fact, particularly in light of the fact that the Petitioner has admitted to actions that would constitute grand larceny, that the Petitioner would more likely than not to reject all offers and proceed to trial. Without having a discussion with his attorney concerning the offer and the repercussions of rejecting the

offer it is simply impossible for a PCR Court to determine that the Petitioner more likely than not would not have accepted a plea to grand larceny. Therefore, the PCR Court abused its discretion when finding as a fact that Petitioner would have not accepted an offer that he never received.

CONCLUSION

The PCR Court abused its discretion when finding as a fact that Petitioner would not have accepted an offer that he never received. Mr. Walker readily admitted to the elements of Grand Larceny at his PCR hearing. His attorney never explained the elements of Grand Larceny or the benefits of pleading guilty as the offer was never made to Mr. Walker. Options such as pleading nolo contendere or pleading pursuant to North Carolina v. Alford were never explained to him or negotiated by his attorney.

Respectfully Submitted,



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September 24, 2014

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CERTIFICATE OF SERVICE

I, Danita Martin, hereby certify that on September 24, 2014, I served copies of the Petition for Rehearing on the following parties by way of depositing copies of said motion in the US Mail with proper postage affixed:

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September 24, 2014

Danita Martin