

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

S.C. Supreme Court

Robin B. Stilwell, Circuit Court Judge  
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CHRISTOPHER BERNARD ANDERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002409  
\_\_\_\_\_

BRIEF OF PETITIONER  
\_\_\_\_\_

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ATTORNEY FOR PETITIONER:

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### ISSUE PRESENTED

Trial counsel erred in failing to object to the solicitor's "substantial sentence" recommendation made during the plea proceeding because no sentencing recommendations were connected to the plea agreement and petitioner was prejudiced as a result since he received a substantial sentence indeed in the case.

## STATEMENT

Petitioner Christopher Bernard Anderson pled guilty to manufacturing crack cocaine, possession with intent to distribute crack cocaine, and trafficking in cocaine (all second offenses) during the June 2011 term of Greenville County General Sessions Court before Judge Letitia H. Verdin. Charles Shultz represented petitioner at trial and Assistant Solicitor Joyce K. Monts appeared on behalf of the state. Petitioner received concurrent sentences of eighteen years on each conviction. App. 1-16. Petitioner did not enjoy the benefit of a direct appeal in his case.

On June 14, 2012, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 18-14. The respondent filed a return dated October 8, 2012, requesting that a hearing be held in response to petitioner's PCR application. App. 25 – 28.

A PCR hearing was convened on August 27, 2013, at the Greenville County Courthouse before Judge Robin B. Stilwell. App. 30 - 58. Caroline Horlbeck represented petitioner at the PCR hearing and Assistant Attorney General Karen C. Ratigan appeared on behalf of the state.

On October 8, 2013, Judge Stilwell issued an Order of Dismissal in the case. App. 60 – 67. Petitioner appealed Judge Stilwell's Order of Dismissal and filed a Petition for Writ of Certiorari dated July 23, 2014. This Court granted the Petition by Order dated October 24, 2014. This Brief of Petitioner follows.

## ARGUMENT

Trial counsel erred in failing to object to the solicitor's "substantial sentence" recommendation made during the plea proceeding because no sentencing recommendations were connected to the plea agreement and petitioner was prejudiced as a result since he received a substantial sentence indeed in the case.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, on August 21, 2009, police responded to a particular house on a prostitution call and while in the house performing a protective sweep found petitioner at the kitchen table in the house parked in front of a pile of white powder, scales, baking soda, and pyrex dishes. Hence, the drug offenses charged against him. App. 10, l. 7 – p. 11, l. 3.

During the PCR hearing, petitioner complained about trial counsel's handling of the plea offers and sentencing negotiations in the case. Petitioner testified that he hired trial counsel a week before the plea proceeding hoping that counsel would obtain a probation sentence and house arrest for him at sentencing. App. 33, l. 17 – 24. App. 33, l. 25 – p. 5, l. 24. Petitioner stated that he was told that he could possibly receive probation as a sentence and that counsel promised he would make these sentencing requests. App. 39, l. 6 – 21; App. 40, l. 21 – p. 42, l. 2. Also, petitioner added that it was his understanding that the solicitor would make no recommendations, but then at the sentencing phase the solicitor recommended a high sentence, i.e. "substantial time" for petitioner. App. 41, l. 3- App. 43, l. 4. Petitioner concluded that trial counsel was ineffective in failing to object when the solicitor asked for "substantial time" because the agreement was that the solicitor would not make any recommendations at sentencing. App. 42, l. 2 – 12; App. 45, l. 4 – 23; See also, App. 11, lines 20-24.

Trial counsel testified and explained that his plea negotiations involved the reduction of the drug charges down from to a second offense to a third offense. App. 24, lines 16 – 25. Moreover, counsel admitted that the solicitor reneged on their deal that there would be no sentencing recommendations made at the plea proceeding.

Counsel testified regarding the sentencing matter as follows:

Q. Okay. And your understanding of the plea agreement was that the State was not going to make a recommendation is that fair to say?

A. Yes.

Q. And you testified that you were surprised and caught off guard when suddenly that State pops up and asks or tells the Court that the police wanted substantial jail time, is that correct?

A. That is correct.

Q. All right. And you believe now that would have been a basis for an objection on your part?

A. Yes.

Q. And you didn't object, did you?

A. I did not. App. 57, lines 3-17.

Q. Now, during the plea when Ms. Monts stated that the officers wanted quote, substantial time, did you feel there was a basis to object to that statement?

A. Yes, yes, I did.

Q. Were you surprised that she asked for a harsh sentence?

A. Yes.

Q. Do you feel that that violated any kind of agreement that you had?

A. I was just surprised. I mean, I thought as long as she was pleading a case and that the Defendant pled guilty to it, I knew he was looking at time so yes, it did kind of catch me off guard. App. 55, l. 12-24.

The PCR judge ruled that petitioner failed to establish any of his claims of ineffective assistance of counsel in the case because there was “no sentence recommendation in [the] case”... and that the request for substantial jail time did not “violate the spirit of any agreement made between two parties.” App. 65.

To the contrary, the agreed upon “no sentencing recommendation” meant silence, i.e. no sentencing requests were supposed to have been made by the solicitor at sentencing, and that the plea judge was supposed to have made his sentencing decisions independently. Therefore, a breach of the agreement occurred when the solicitor requested “substantial time” at the sentencing phase of the plea proceeding. Furthermore, counsel erred in failing to object to this breach.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. See both Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Smith v. State 407 S.C. 270, 754 S.E.2d 900 (2014).

In both Thompson and Smith, the Court struck down both guilty pleas where the plea agreements in both cases were violated because both of the solicitors promised silence and no specific sentencing recommendations, but yet both solicitors recommended the maximum sentence of thirty years at sentencing after both defendants plead guilty to voluntary manslaughter. See also, State v. Jordan, *supra*, where the Court reversed a plea conviction after the solicitor’s promised to neither oppose nor recommend probation in exchange for the defendant’s plea; but nevertheless

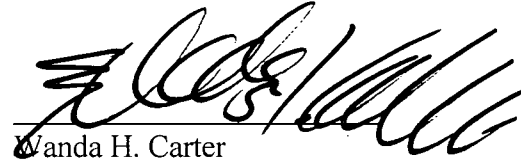
made a recommendation against probation at sentencing in the case. Compare Sprouse v. State, supra, where the Court reversed due to a plea agreement breach where the solicitor's classification of the defendant's second-degree burglary offense as violent deviated from the plea agreement. Also, compare Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the Court reversed where there was no enforcement of the plea agreement of a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was reliance on the plea bargain by the defendant when he pled guilty in the case.

In the case at bar, a plea agreement breach occurred after the solicitor promised silence at sentencing, but recommended "substantial time" nonetheless; and counsel's error in failing to object to the same constituted ineffective assistance of counsel in the case. Counsel's error in this instance violated petitioner's right to due process of law and competent legal counsel, both of which are rights guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as a result because counsel's error led to his receipt of a hefty sentence of substantial time indeed in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that the PCR Court's decision be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 24th day of November, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

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CHRISTOPHER BERNARD ANDERSON,

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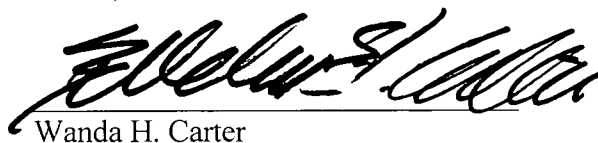
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the brief of petitioner, in this case has been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Christopher Bernard Anderson #237423, at Kirkland Correctional Institution 4344 Broad River Road, Columbia, SC 29210, this 24th day of November, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day  
of November, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022