

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

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MAR 12 2015

S.C. Supreme Court

JEFFREY D. GILLILAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001859

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in rejecting two plea offers from the solicitor on petitioner's behalf without first communicating the offers to petitioner because but for counsel's missteps, a reasonable probability exists that petitioner would have accepted at least one of the offers presented in the case.

STATEMENT

Petitioner Jeffrey D. Gilliland pled guilty to incest and second degree criminal sexual conduct with a minor during the September 2011 term of the Greenville County General Sessions Court before Judge G. Edward Welmaker. Petitioner was sentenced to imprisonment for an aggregate term of twenty years in the case. App. 1 – 22. Daniel H. Farnsworth represented petitioner at the plea proceeding, and Assistant Solicitor Christine K. Sustakovitch appeared on behalf of the state. Petitioner's appeal was dismissed for failure to provide an explanation for his appeal per SCACR, Rule 203(d)(1)(B)(iv).

On September 13, 2012, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court alleging ineffective assistance of trial counsel in his case. App. 24 – 30. The respondent filed a return dated March 26, 2013, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 31 – 34.

A PCR hearing was convened on June 20, 2014, at the Greenville County Courthouse before Judge Robin B. Stilwell. App. 37 – 67. Petitioner was present at the hearing and represented by Caroline Horlbeck, and Assistant Attorney General Karen C. Ratigan appeared on behalf of the state. On August 1, 2014, Judge Stilwell signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 69 – 75.

Petitioner appealed Judge Stilwell's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in rejecting two plea offers from the solicitor on petitioner's behalf without first communicating the offers to petitioner because but for counsel's missteps, a reasonable probability exists that petitioner most likely would have accepted at least one of the offers presented in the case.

During the PCR hearing, petitioner testified that he received two plea bargains: one for a fifteen-year sentence and another for a ten-year sentence in exchange for his guilty pleas on the charges filed against him. Petitioner added, however, that trial counsel rejected the plea offers on his behalf before communicating and discussing the offers with him. Petitioner stated that counsel informed him of the two plea offers that he (counsel) rejected after the fact and explained that "he could do better than that," and that he would probably get the same or a better sentence that what was handed down to him in Laurens County previously on sex charges where he pled guilty and received a ten-year (nonviolent) sentence. App. 41, l. 3 – 7; App. 42, l. 1 – p. 45, l. 25; App. 50, l. 1 – 22; App. 56, l. 16 – 23. Petitioner indicated in effect that he might have accepted one of the offers in order to avoid a harsher sentence via his assertion that he "did not want to go in there and get his head knocked off." App. 57, lines 1-15.

Trial counsel testified that he did not turn down the two plea offers on petitioner's behalf, but explained that the solicitor was "playing pretty tough," and that the offers were for fifteen and ten years, (both violent), respectfully, complete with the sex registry requirement, and that he knew petitioner did not want any sentence that was classified as violent and required him to register as a sex-offender. App. 64, l. 14 – 22; App. 61, l. 9 – p. 62, l. 9.

The PCR judge ruled that petitioner did not "meet his burden of proving that plea counsel did not convey [the] two pleas offers from the state" and found credible counsel's testimony that he

advised petitioner of the two offers, but that petitioner rejected them because he wanted offers that included a non-violent classification and no sex offender registry requirement. App. 73.

Apparently, there seemed to have been some miscommunication regarding the conveyance of the plea offers in the case due to the fact that counsel knew petitioner was adamant about not accepting any plea bargains that included violent offense classifications and a sex offender registry requirement connected to them. In other words, it is plausible that although counsel claimed he conveyed the offers to petitioner, he could have mentioned petitioner's plea bargain requests to the solicitor in the process of plea negotiations, and if such requests were made known or brought out, then this in effect would have been tantamount to rejecting the two offers on petitioner's behalf before conveying them to petitioner.

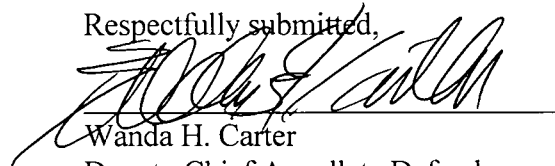
A defendant has a right to effective assistance of counsel during the plea bargaining process as the Sixth Amendment requirement of competent counsel in criminal matters applies to plea negotiations. Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Missouri v. Frye, counsel did not convey the plea offer to the defendant and as a result, the plea offer expired. Compare Davie v. State, 381 S.C. 601; 675 S.E. 2d 416 (2009), where the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (due to counsel's error) until after the plea offer had expired, and that he would have accepted that plea offer had it been communicated to him.

A guilty plea must represent a voluntary and intelligent choice among the alternative causes of action open to the defendant. Hill v. Lockhart, 474 U.S. 52 (1985). Here, counsel erred in rejecting the plea offers before communicating them to petitioner. This constituted a violation of petitioner's right to receive effective legal assistance in his case as guaranteed under the Sixth Amendment. See Hill v. Lockhart, *supra*. Petitioner was prejudiced because he indicated that he might have accepted a plea offer in the case and avoided a greater sentence but for counsel's error in this regard.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

JEFFREY D. GILLILAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001859

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeffrey Doyle Gilliland states:

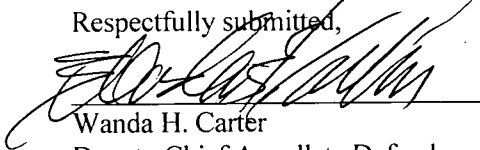
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 20, 2014. In her opinion seeking certiorari from the order of dismissal is without merit.

3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Jeffrey Doyle Gilliland.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 12th day of March, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

JEFFREY D. GILLILAND,

PETITIONER,

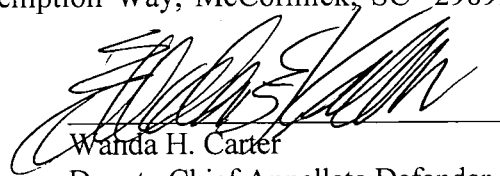
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

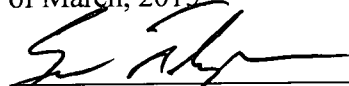
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jeffrey Doyle Gilliland, #335786, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 12th day of March, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of March, 2015



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.