



ALAN WILSON
ATTORNEY GENERAL

May 8, 2015

RECEIVED

MAY - 8 2015

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Vander Davon Meetze, v. State of South Carolina
2013-CP-40-3117

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.

Sincerely,

Megan Harrigan Jameson
Assistant Attorney General

MHJ/sbm
Enclosures

cc: Thomas R. Young, Esquire
Robert A. Walden, Esquire
The Honorable Jeanette W. McBride, Clerk of Court of Richland County
The Honorable Daniel E. Johnson, Fifth Circuit Solicitor
SCCID, Division of Appellate Defense
David M. Tatarsky, Esquire
Trisha Allen, Victims Services

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable Robert E. Hood, Circuit Court Judge
Case No. 2013-CP-40-3117

RECEIVED

MAY - 8 2015

S.C. Supreme Court

VANDER DAVON MEETZE,

Respondent,

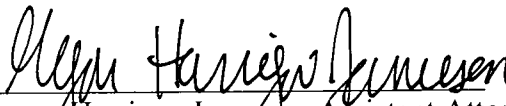
v.

STATE OF SOUTH CAROLINA

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order Denying Respondent's Rule 59(e) Motion for Reconsideration of the Honorable Robert E. Hood, Presiding Judge, dated April 27, 2015, filed May 5, 2015, and received by the State on May 8, 2015, in the matter of Vander Davon Meetze v. State of South Carolina, Case No. 2013-CP-40-3117.


Megan Harrigan Jameson, Assistant Attorney General
South Carolina Bar No. 100108
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3319

May 8, 2015

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAY - 8 2015

The Honorable Robert E. Hood, Circuit Court Judge
Case No. 2013-CP-40-3117

S.C. Supreme Court

VANDER DAVON MEETZE,

Respondent,

v.

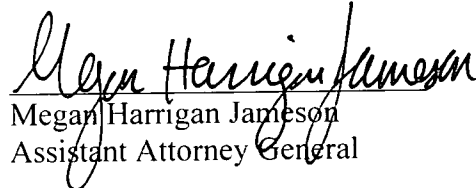
STATE OF SOUTH CAROLINA

Petitioner.

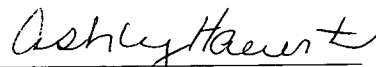
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 8, 2015, to Thomas R. Young, Esquire, and Robert A. Walden, Esquire, his attorneys of record, to the address below.

Thomas R. Young, Esquire
Law Offices of Tom Young, Jr., PC
Post Office Box 651
Aiken, SC 29802


Megan Harrigan Jameson
Assistant Attorney General

SWORN to before me this
8th day of May, 2015


Notary Public for South Carolina.
My Commission Expires: 3-7-23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003117

Vander Davon #00351032 Meetze

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 6 May 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Roy Young Jr.

Megan Harrigan Jameson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette Williams

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Vander Davon Meetze, #351032,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-3117

ORDER

FILED
MAY -5 PM 2:55
COURT OF COMMON PLEAS
RICHLAND COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before the Court upon Respondent's Rule 59(e) Motion for Reconsideration. A hearing was held on March 3, 2015 at the Richland County Courthouse. Appearing on behalf of Respondent was Megan Harrigan Jameson, Esquire of the S.C. Attorney General's Office. Appearing on behalf of the Applicant was Andrew Walden, Esquire. After considering the issues raised by Respondent in its Rule 59(e) Motion, and diligent review of the record, memoranda, case law, exhibits, and arguments of counsel, I deny Respondent's Motion to Reconsider and uphold my original Order granting the Applicant post-conviction relief.

FACTS

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the April 2010 term of the Richland County Grand Jury for murder (2010-GS-40-9525). Nathaniel Roberson, Esquire, represented Applicant. On April 24, 2012, Applicant proceeded to jury trial before the Honorable R. Knox McMahon. On April 25, 2012, Applicant decided to forgo trial and plead guilty to the lesser-

included offense of voluntary manslaughter. Sentencing was deferred to allow a pre-sentencing investigation and report to be completed. On May 24, 2012, Judge McMahon sentenced Applicant to twenty-one (21) years imprisonment. No direct appeal was taken.

At the evidentiary hearing, Applicant expressly abandoned and waived all grounds for relief beyond his allegation that his plea was unknowing and involuntary based on the fact that he was actively misinformed by all parties at his plea as to parole eligibility. Applicant refers to the record, as indicated herein, as the main evidence to support these grounds for PCR.

TESTIMONY PRESENTED AND TRIAL TRANSCRIPT

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel Nathaniel Roberson, Esquire (hereinafter "Trial Counsel") and prosecuting Assistant Solicitor Dolly J. Garfield, Esquire (hereinafter "Solicitor Garfield"). This Court also had before it a copy of the Applicant's plea transcript, the records of the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and Applicant's PCR Counsel's Bench Memorandum.

Testimony

During the evidentiary hearing, Applicant testified that Trial Counsel was retained to represent him shortly after his arrest. He testified that he only met with Trial Counsel five times prior to his guilty plea. He testified that Trial Counsel reviewed discovery with him, including various witness statements, but did not provide him with a copy of discovery materials. He testified that he felt his Trial Counsel was not prepared for trial and that he asked the Trial Court for new counsel. He testified that this request was denied. Applicant further testified that he was originally charged with murder. Trial Counsel informed him that murder carried a sentencing

range of a mandatory minimum of thirty years imprisonment, which must be served day-for-day, up to a maximum sentence of life without parole. He testified that Trial Counsel advised him that the lesser-included offense of voluntary manslaughter carried a sentence range of a mandatory minimum of two years imprisonment up to a maximum sentence of thirty years imprisonment. He testified that he understood that his guilty plea was being entered without any recommendation or negotiation as to sentence range, but that he thought the sentence would be parole eligible. He testified that Trial Counsel did not define what parole eligibility meant, but that based on his discussions with family, friends, and other various members of the community, he understood that parole eligibility meant that after he served one-third of his sentence, he would be eligible for early release. He testified that he thought that the "worst case scenario" would be that he would only have to serve ten years of a thirty year sentence before becoming parole eligible. He testified that he now understands that voluntary manslaughter is not parole eligible and requires an inmate to serve at least eighty-five percent of his sentence. He testified that if he had understood this at the time of his guilty plea, he would not have pled guilty and would have continued forward with his trial.

Applicant testified that he recalls his guilty plea proceeding clearly because it was taken during his trial. Applicant testified that he recalls all parties at the hearing stating that voluntary manslaughter was parole eligible before he made his decision to plead guilty and that he would not have pled guilty if he had not been misinformed. He acknowledged that his understanding as to what parole eligibility meant came from various other sources in the community, not Trial Counsel. He testified that that he recalled telling the plea court that he wanted to plead guilty,

that he was guilty, and admitted to kicking the victim several times while he was on the ground injured. He testified at that he is indeed guilty.

Following Applicant's testimony, Respondent presented testimony from the prosecuting Assistant Solicitor Dolly J. Garfield, Esquire (hereafter "Solicitor Garfield"). Solicitor Garfield testified that she has been practicing law for sixteen years and is the Chief Prosecutor for the City of Columbia. She testified that she oversees ten other attorneys at the Fifth Circuit Solicitor's Office and has extensive experience prosecuting violent and most serious crimes. Solicitor Garfield testified that she was the lead prosecutor assigned to Applicant's case and that assisting her on the trial team were Katherine Luck Campbell and Meghan Walker, also from the Fifth Circuit Solicitor's Office. She testified that this case involved Applicant kicking and beating the victim, who needed hospitalization for a broken jawbone. She testified that the victim ultimately died a few days later as a result of a specific strain of pneumonia that is only contracted within a hospital setting. She testified that the victim in this case had a very low intellect and was developmentally delayed. She testified that at the time of the altercation, the victim was walking alone following a verbal altercation between Applicant's mother and the victim. She testified that multiple witnesses gave statements to law enforcement that Applicant was the sole aggressor and that during and immediately following the beating, Applicant made threats to other observers.

Solicitor Garfield testified that the Applicant was indicted for murder, but the State made an initial plea offer for the lesser-included offense of voluntary manslaughter without any recommendation or negotiation as to sentence length. She testified that Applicant originally turned down this offer and a jury was selected for his trial. She testified that following jury

selection, Applicant accepted the State's offer for a plea to voluntary manslaughter without any negotiations or recommendation as to sentence length. She testified that she recalled discussing parole eligibility on the record with the plea court and Trial Counsel, and that her meaning of "parole eligible" in this context was that Applicant would be eligible for early release under the community supervision program after serving eighty-five percent of his sentence, as opposed to murder, which requires a defendant to serve thirty years, day-for-day, without any possibility of early release. She testified that she has been before Judge McMahon numerous times and worked with Counsel multiple times, and she believes that this was the meaning all parties were attributing to the term "parole" in the context for Applicant's case.

Following Solicitor Garfield's testimony, Respondent presented testimony from Trial Counsel. Trial Counsel testified that he has been practicing law for more than twenty years and approximately seventy percent of his practice is criminal defense. He testified that he has ample experience representing clients charged with both violent and most serious crimes. He testified that he was retained by Applicant days following his arrest and that he met with Applicant between eight to ten times before his guilty plea. Counsel testified that he also met with various members of Applicant's family, as his standard practice is to meet with parents or a trusted friend or family member whenever a client is charged with a crime carrying a sentence of more than ten years. He testified that he thoroughly explained the elements of murder, what the State would be required to prove at trial, and Applicant's constitutional rights to Applicant and his family members. He testified that he advised Applicant and his family members that murder carries a mandatory minimum sentence of thirty years, which must be served day-for-day, up to a maximum sentence of life without parole. He testified that he also explained that the lesser-

included offense of voluntary manslaughter carries a mandatory minimum of two years imprisonment up to maximum sentence of thirty years imprisonment. He testified that he explained to Applicant and his family members that a significant benefit of pleading to voluntary manslaughter was that Applicant would be eligible for early release after serving eight-five percent of his sentence. He testified that he never advised Applicant of a particular sentence he would serve or exactly when he should expect to become eligible for parole. He adamantly denied ever informing Applicant or any member of Applicant's family that Applicant would be eligible for parole or any type of early release after serving one-third of his sentence. Counsel agreed with the characterization provided to the Court by Garfield regarding the term "parole" as discussed by the court and both parties, with all having the understanding that Applicant would be eligible for early release after serving approximately eight-five percent of his sentence as opposed to murder, which requires day-for-day service would a possibility of early release.

Applicant, Solicitor Garfield and Trial Counsel were the only witnesses at the evidentiary hearing.

Trial Transcript

The Applicant relies heavily on the court record to prove his grounds for PCR. The proper portion of the trial transcript that is applicable to this decision is as follows:

The Court: And, of course, he's indicted for murder. What is his potential minimum and maximum sentence on murder?

Mr. Roberson: Your Honor, as I understand it if he's convicted of murder the minimum is 30 and I believe the max is life.

The Court: Is there any eligibility for parole on any of these offenses -

Mr. Roberson: Your Honor, I

The Court: Any of those sentences?

Mr. Roberson: Your Honor, I believe this is a most serious offense and as a result of that parole just isn't a reality. I think you must serve because of it is murder and because it's in the most serious category he has to serve the 30 which is the minimum

The Court: And how is your -how old is Mr. Meetze?

Mr. Roberson: 22 years old.

The Court: 22?

The Defendant: Yeah.

The Court: Now, you said there was a plea offer to voluntary manslaughter?

Mr. Roberson: Yes, Your Honor.

The Court: And what - what is the minimum sentence and the maximum sentence on voluntary manslaughter?

Mr. Roberson: Your Honor, I shared with them the statutory language and I believe the minimum is two and the maximum is 30.

The Court: Is there any offer as to a range of sentencing?

Ms. Garfield: No, sir.
The Court: So it's two to 30?
Ms. Garfield: Yes, sir.
The Court: Be up to the sentencing judge?
Ms. Garfield: Yes, sir; that's right.
The Court: Is voluntary manslaughter parole eligible?
Mr. Roberson: I believe it is, Your Honor.
The Court: You agree with that, Solicitor?
Ms. Garfield: Yes, sir.

(Trial Transcript 7:10-25; 8: 20-25)(emphasis added).

This excerpt reveals the crux of this PCR hearing. As indicated, the Applicant was initially told that murder was not parole eligible and then he was told that voluntary manslaughter was parole eligible. The Court finds this persuasive.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record, considered Respondent's Motion for Reconsideration and heard the arguments at the Motion hearing. This Court has further had the opportunity to observe the witnesses presented at the original PCR hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Unknowning and Involuntary Plea Based on Active Misinformation of Parole Eligibility

Parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. *Randall v. State*, 356 S.C. 639, 591 S.E.2d

608 (2004). However, if a defendant is actively misinformed about parole eligibility he is entitled to relief if he relied on the misinformation. *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983); see *Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989) (relief granted on this ground); *Brown v. State*, 306 S.C. 381, 412 S.E.2d 399 (1991) (plea vacated where trial judge misinformed defendant about parole eligibility). Therefore, to find a guilty plea is voluntary and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991).

Notwithstanding the arguments present by Respondent in its Motion for Reconsideration, and after careful review based on the case law enumerated above and the record of the case, this Court upholds its original finding that the Applicant was actively misinformed of his parole eligibility. Voluntary manslaughter, a "no parole offense," is not parole eligible. S.C. Code Ann. § 24-13-100, § 16-1-100, §16-3-50. In *Brown*, the court stated: "We think that when a trial judge misinforms a defendant that he is eligible for parole, his plea does not represent 'a voluntary and intelligent choice among alternative courses of action' available to him'." *Id.* at 383, citing *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970). *Brown* was later modified by *Hunter v. State*, which required "something more" than erroneous parole advice from the bench to automatically reverse a guilty plea. *Hunter v. State*, 316 S. C. 105, 447 S.E.2d 203 (1994). In *Hunter*, however, the trial judge correctly explained the minimum criteria for parole eligibility although the petitioner was not actually eligible for parole, and petitioner received correct parole information from his trial counsel prior to the guilty plea. *Hunter* is a

"stark contrast" from the misstatement of law presented in *Brown* and in the matter before this Court. *Id.* at 316 S.C. 110, 447 S.E.2d 206.

Respondent argues that Trial Counsel did not provide erroneous advice regarding parole eligibility. Further, Respondent argues that the meaning that the parties gave to the term "parole eligible" was meant to indicate that Applicant would be eligible for early release after serving 85% of his time instead of having to serve his sentence day-for-day. I find this argument unpersuasive.

Here, all parties in the Trial Court actively misinformed the Applicant as indicated in the transcript. Even though Trial Counsel testified that he did not inform Applicant of his lack of parole eligibility prior to the plea, Trial Counsel during the plea affirmed the Court's statement that voluntary manslaughter was parole eligible. (See Trial Transcript 9: 21-25).

Further, Applicant stated that he relied on that misinformation and would not have pled guilty had he been informed otherwise. Applicant stated he had a general knowledge of what parole eligibility meant from his family and the general community, but that general knowledge is not applicable in this instance.

The Trial Court's active misinformation, Trial Counsel's affirmation of that misinformation, and Applicant's statement that he would not have pled guilty if he had been correctly informed as to his lack of parole eligibility created an unknowing and involuntary plea. These factors took away the Applicant's opportunity to make a voluntary and intelligent choice as to procedural alternatives.

CONCLUSION

Based on the above, and notwithstanding Respondent's Rule 59(c) arguments, this Court finds and concludes that the Applicant has established that his plea was involuntary and unknowing based on the active misinformation from all parties at his Trial in regards to parole eligibility. The testimony provided and the court record does not offer any evidence to refute this finding. Further, the testimony from the Applicant indicates that the active misinformation provided during the hearing played a significant role in his decision to plead guilty. Therefore, this application for post-conviction relief must be granted.

Based on all of the above, I hereby **DENY** Respondent's Rule 59(c) Motion for Reconsideration.

IT IS SO ORDERED.

AND IT IS SO ORDERED this 27 day of APR, 2015.



ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

Columbia South Carolina