

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2014-001764

RECEIVED

JUN - 1 2015

S.C. Supreme Court

DIANE ELIZABETH BROWN, 344449,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

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ARGUMENT

Question

I

Plea Counsel did testify that he was not sure whether the mitigation package was delivered to the judge the day before the plea hearing or the morning of the plea. App. p. 179, ll. 6-10; App. p. 186, ll. 10-20. In his Post-Conviction Relief testimony he conceded, “It was a lot of stuff, no doubt.” App. p. 186, ll. 21-25.

The Post-Conviction Relief testimony of Petitioner, and that of her husband, Bob Brown, confirms that these important materials¹ were not delivered to the Court until sometime before lunch on the day of the plea proceeding which was scheduled for immediately after lunch. Their testimony further establishes that these materials were mailed to Plea Counsel approximately a week before the plea date. App. p. 205, ll. 12-21; App. p. 206, l. 16- p. 213, l. 10; App. p. 219, l. 9- p. 220, l. 4; App. p. 221, l. 13- p. 225, l. 23.

Contrary to the assertions of Respondent, the remarks of the presiding judge do not confirm “that he had reviewed all the material prior to sentencing.” Return to Petition, p. 7, last paragraph. Respondent, as noted above, states that the presiding judge remarked *twice* that he had reviewed all the material prior to Petitioner’s sentencing. That is a significant overstatement of the record of this plea proceeding. In the first portion of the record referenced by Respondent,² Plea Counsel is referencing “at least twenty-eight letters that I term character letters.” App. p. 69, ll. 16-18. Those letters, introduced as Petitioner’s Exhibit No. 1, are found at App. pp. 232-265 and constitute thirty-three (33) pages of the one

¹ Marked as Court’s Exhibits 1-4 at the plea proceeding, and Petitioner’s 1-4 at the PCR hearing, are found at App. p. 232-364.

² There is apparently a typographical error in Respondent’s citation to this portion of the plea record as found in the Appendix. Petitioner assumes Respondent intended to reference. App. p. 69, l. 16-p. 70, l. 7 *not* App. p. 70, l. 16-p. 70, l. 7 as appears in the Return.

hundred thirty-three (133) total pages of mitigation material provided to the Court. As Plea Counsel was addressing these letters, the judge stated “I’ve looked at them”. App. p. 70, ll. 4-7. Respondent also cites to another portion of the plea record for the proposition that the sentencing judge confirmed *twice* that he had reviewed *all* the mitigation materials provided to the Court “prior to sentencing.” In that portion of the plea record, Plea Counsel is talking, once again, about the letters written on behalf of Petitioner. In response to Plea Counsel’s own statement that “I know Your Honor has read all those letters,” the presiding judge responded, “I’ve read them”. App. p. 99, l. 22-p. 100, l. 4³. Thus, the portions of the record cited by Respondent, at best, confirm that the sentencing judge had “*looked at*” the letters written on Petitioner’s behalf by page seventy (70) of a one hundred and three (103) page proceeding and had “read them” by page one hundred (100) of the hearing. These references do not establish that the judge read all one hundred thirty-three (133) pages of the mitigation materials, nor do they establish that the letters were read prior to the sentencing proceeding. At best, these remarks from the bench confirm that the letters (33 pages) were read sometime before sentence was imposed.⁴

Petitioner once again asserts that Plea Counsel failed to provide her effective assistance of counsel prior to and during her plea proceeding in that he failed to present the Court with important evidence in mitigation in time for this crucial material to be thoroughly reviewed by the sentencing judge. While it may be acceptable for defense lawyers to provide the Court some such evidence at the time of a plea, it is not reasonable to present a judge a large amount of such evidence without insuring that the Court receives the material in time to adequately review it before determining the appropriate penalty to impose.

³ The Return cites to this exchange in paragraph 3 and paragraph 4 of page 7. Both times it is cited as appearing at App. p. 100, l. 99- p. 100 l. 4. This is apparently a typographical error.

⁴ The record reflects that the hearing was recessed for “approximately five minutes” immediately prior to sentencing. App. p. 100, l. 12- p. 101, l. 1.

**Question
II**

Petitioner rests on the arguments and authorities presented in her Petition for Writ of Certiorari concerning Question II.

CONCLUSION

For all the reasons set forth above, as well as those argued in the Petition for Writ of Certiorari, the Petitioner now prays that this Honorable Court will grant the Writ and give her the opportunity to more fully brief the issues summarized therein.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 26th day of May 2015.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

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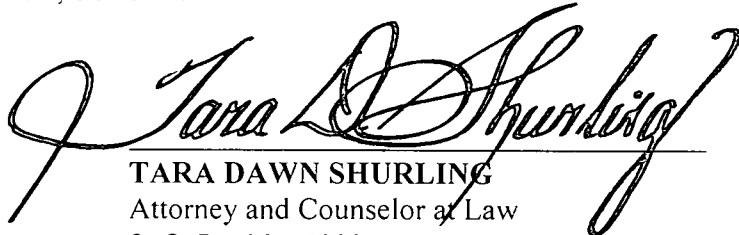
THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to State's Return to Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, this 26th day of May, 2015, by mailing one (1) copy in a stamped envelope properly addressed to:


Daniel Gourley, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211



TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 26th day
of May, 2015.


Notary Public for South Carolina
My Commission Expires: 2/28/24

LAW OFFICE OF



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May 26, 2015

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JUN - 1 2015

S.C. Supreme Court

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

RE: Diane Elizabeth Brown, 344449 v. State of South Carolina
2014-001764

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to State's Return to Petition for Writ of Certiorari and my Certificate of Service in the above-captioned case. I would appreciate your clocking and returning the extra two (2) copies of the Reply in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive, flowing style.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Daniel Gourley, Assistant Attorney General (w/enclosures)
Diane Elizabeth Brown, 344449 (w/enclosures)
Robert Brown (w/enclosures)