

2012-212349

**ORIGINAL**

STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIORARI TO BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Judge

**RECEIVED**

AUG 24 2012

Appellate Case No. 2012-212349

**S.C. Supreme Court**

Antonio D. Bordeaux.....Respondent,

v.

State of South Carolina, .....Petitioner.

**SUPPLEMENTAL APPENDIX**

ALAN WILSON  
Attorney General

KATHRINE H. HUDGINS  
Assistant Appellate Defender

J. RUTLEDGE JOHNSON  
Assistant Attorney General  
S.C. Bar #78871  
Post Office Box 11549  
Columbia SC 29211  
(803) 734-3737

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia SC 29201  
(803) 734-1343

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Judge

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Antonio D. Bordeaux.....Respondent,

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Post Office Box 11549  
Columbia SC 29211  
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S.C. Commission on Indigent Defense  
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Post Office Box 11589  
Columbia SC 29201  
(803) 734-1343

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Beaufort County  
Michael G. Nettles, Circuit Court Judge

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2006-CP-07-2548

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ANTONIO D. BORDEAUX,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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**BRIEF OF PETITIONER**

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HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR PETITIONER

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**ISSUE PRESENTED**

In light of the South Carolina Supreme Court's recent decision in Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), did the PCR court err in finding Respondent's sentences for burglary were illegal when the plea transcript indicates he pled guilty to two counts of first-degree burglary, but his sentencing sheets state he pled guilty to two counts of second-degree burglary?

### STATEMENT OF THE CASE

Respondent is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Respondent was indicted at the May 2004 term of the Beaufort County Grand Jury for two counts of armed robbery (2004-GS-07-846, 847) and two counts of burglary – 1<sup>st</sup> degree (2004-GS-07-844, 845). Anthony O. Dore, Esquire, represented him. On October 15, 2005, Respondent pled guilty as indicted to two counts of armed robbery and two counts of burglary – 1<sup>st</sup> degree. The State dismissed a murder indictment in exchange for the plea. The Honorable Perry M. Buckner sentenced him to confinement for twenty-four (24) years for each armed robbery and twenty-five (25) years for each burglary- 1<sup>st</sup> degree, suspended upon the service of twenty (20) years plus three (3) years probation. The sentences were to run concurrently.

Respondent filed a *pro se* notice of intent to appeal on October 31, 2005. By Order dated May 23, 2006, this Court dismissed the appeal for failure to provide a motion to file out of time and to order the transcript out of time. The Remittitur was issued on June 12, 2006.

Respondent filed a PCR application on September 29, 2006 and amended January 26, 2007. Petitioner made its Return on June 6, 2007. An evidentiary hearing into the matter was convened on April 18, 2008 at the Beaufort County Courthouse. Respondent was present at the hearing and represented himself *pro se*. Matthew J. Friedman of the South Carolina Attorney General's Office represented the State. By Order dated May 13, 2008, the Honorable Michael G. Nettles found that a sentencing sheet takes precedent over a sentencing transcript and that, consequently, Applicant had received an illegal sentence on the burglary charges. Judge Nettles granted relief in the form of a new trial on the burglary charges and denied all other claims.

Petitioner and Respondent each filed a motion to alter or amend pursuant to SCRCP 59(e). By form order dated October 3, 2008, Judge Nettles denied all 59(e) motions.

Petitioner filed a timely Notice of Appeal and a Petition for Writ of Certiorari on March 24, 2009. Respondent filed a Return to Petition for Writ of Certiorari on September 8, 2009. This Court granted the petition by Order dated September 16, 2010. This Court directed the parties to address the issue presented herein. This brief follows.

## ARGUMENT

**In light of the South Carolina Supreme Court's recent decision in Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), the PCR court erred in finding that Respondent's sentences for burglary were illegal when the plea transcript indicates he pled guilty to two counts of first-degree burglary, but his sentencing sheets state he pled guilty to two counts of second-degree burglary.**

Respondent was indicted for two counts of first-degree burglary. The plea transcript clearly reflects that he pled guilty as indicted to two counts of first-degree burglary. (App. p. 25, line 4 – p. 28, line 24). During the plea hearing, the solicitor indicated that the two sides had negotiated a cap, or maximum sentence, of twenty-five (25) years. (App. p. 4, lines 8-17). Respondent told the plea court that he understood the sentencing range for first-degree burglary, and he admitted that he was guilty of first-degree burglary. (App. p. 26, lines 10-15; p. 35, lines 6-10). The entire plea transcript is devoid of any indication that Respondent was pleading to second-degree burglary.

Respondent's two sentencing sheets for the first-degree burglary indictments read "burglary 2<sup>nd</sup> degree" and refer to the Criminal Docket Report (CDR) Code for second-degree burglary. The sentencing range for second-degree burglary is zero (0) to fifteen (15) years. The PCR court ruled that the sentencing sheets take precedent over the plea transcript because a sentencing sheet is essentially a contract between the defendant, the defendant's attorney, and the court. (App. p. 128). Accordingly, the PCR court held that Respondent received an illegal sentence and granted him a new trial with regard to the burglary pleas.

In Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), the Supreme Court of South Carolina held that, as a matter of first impression, due process requires that the judge's oral pronouncement of the sentence control over a conflicting written sentencing order. In the

present case, Respondent's sentence was the same in the oral pronouncement as it was on the sentencing sheet, but the offense listed on the sentencing sheet was different than the charge to which Respondent pled guilty. Petitioner submits that, pursuant to Boan, the plea transcript should control over the conflicting written sentencing sheet.

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence-presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). At the PCR hearing, plea counsel testified that it was his understanding that Respondent was pleading to two counts of armed robbery and two counts of first-degree burglary in exchange for a cap of twenty-five (25) years and the solicitor's dismissal of the murder indictment. (App. p. 104, line 13 – p. 105, line 1). The plea transcript reflects that Respondent and plea counsel were questioned about the terms of the plea negotiation and the nature of the charges. (App. p. 31, lines 7-24). Respondent and plea counsel verified that Respondent was pleading as indicted. (App. p. 25 line 19 – p. 26, line 15).

Petitioner submits that the PCR court erred in finding that a sentencing sheet takes precedent over the plea transcript and the terms of the negotiated sentence. Pursuant to Boan, the plea transcript should control over the conflicting sentencing sheet. Accordingly, this Court should reverse the PCR court.

**CONCLUSION**

For the foregoing reasons, the State respectfully submits that this Court should reverse the PCR court.

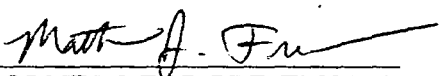
Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

By:   
ATTORNEYS FOR PETITIONER

Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

November 3, 2010.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Charleston County  
The Honorable Michael G. Nettles, Circuit Court Judge

ANTONIO D. BORDEAUX,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner has been served upon opposing counsel, Kathrine H. Hudgins, this 3<sup>rd</sup> day of November, 2010.

*Molly A. Flowers*

Molly A. Flowers  
Legal Assistant

SWORN to before me this  
3<sup>rd</sup> day of November, 2010.

*Lauren Meana* (L.S.)

Notary Public for South Carolina.

My Commission Expires: 9/25/19

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Certiorari to Beaufort County

Michael G. Nettles, Circuit Court Judge

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ANTONIO D. BORDEAUX,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

---

BRIEF OF RESPONDENT

---

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

In light of the South Carolina Supreme Court's recent decision in Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), did the PCR court err in finding that Respondent's sentences for burglary were illegal when the plea transcript indicates he pled guilty to two counts of first-degree burglary, but his sentencing sheets state he pled guilty to two counts of second-degree burglary?

STATEMENT

In May of 2004, the Beaufort County Grand Jury indicted Bordeaux for two counts of burglary first degree, two counts of armed robbery and one count of murder, indictments #2004-GS-07-844, 845, 846, 847. On October 15, 2005, Bordeaux appeared before the Honorable Perry Buckner and pled guilty to the burglary and armed robbery charges. Judge Buckner sentenced Bordeaux to 24 years concurrent for the armed robbery charges and concurrent 25 years suspended upon the service of 20 years with 3 years probation for the burglary charges. The direct appeal was not perfected.

On September 29, 2006, Bordeaux filed an application for post conviction relief. The application was amended on January 26, 2007. The State filed a return on June 6, 2007. On April 18, 2008, an evidentiary hearing was held before the Honorable Michael G. Nettles. In a written order dated May 13, 2008, Judge Nettles granted relief as to the burglary charges. Both the State and Bordeaux filed motions pursuant to Rule 59(e). Judge Nettles denied both motions. The State filed a timely notice of intent to appeal. The petition for writ of certiorari was filed on March 24, 2009. A return was filed on September 8, 2009. On September 16, 2010, the South Carolina Court of Appeals granted the State's petition for writ of certiorari. On November 3, 2010, the State filed the brief of petitioner. This brief of respondent follows.

ARGUMENT

The PCR court correctly found that Respondent's sentences for burglary were illegal when the plea transcript indicates he pled guilty to two counts of first-degree burglary, but the sentencing sheets, signed by Respondent, reflect a guilty plea to two counts of second-degree burglary. The present case is factually distinguished from the South Carolina Supreme Court's recent decision in Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010), where the Court found that a trial's fairness was compromised when the judge increased the defendant's sentence outside of his presence.

Both sentencing sheets, signed by Bordeaux, note the charge as burglary second degree and include the CDR code for burglary second degree. (App. p. 147, 150). During the PCR hearing Bordeaux testified that when he signed the sentencing sheets the charge listed was burglary second degree. (App. p. 95, lines 1-3). Bordeaux testified that after he signed the plea sheet for indictment 2004-GS-07-845, the fifteen years originally noted as the sentence had been scratched out by an unknown person. (App. p. 87, lines 19 – p. 88, lines 1-2). The sentencing sheet for indictment #2004-GS-07-845, notes the charge as burglary second degree. (App. p. 147). At the top of the sentencing sheet below the indictment number, the CDR code is noted as 79, the CDR code for burglary first degree. Bordeaux was originally indicted for burglary first degree. In the area noting the charge to which is being pled, however, the CDR code is listed as 86, the CDR code for burglary second, violent. The code section listed on the sentencing sheet is §16-11-312 (B), the code section for burglary second degree, violent. The charge is noted "as indicted" pursuant to a negotiated sentence. Both the serious and most serious boxes are checked with some notation under the most serious box. It appears that the term of the sentence on this sentencing sheet has been scratched through and changed to reflect a sentence of 25 years suspended upon the service of 20 years. (App. p. 150). The statutory maximum sentence for burglary second degree violent is 15

years. S.C. Code §16-11-312 (B). Burglary second degree is a serious offense. Burglary first degree is a most serious offense.

The sentencing sheet for indictment #2004-GS-07-844, also notes the charge as burglary second degree. (App. p. 147). As with the 845 indictment, at the top of the sentencing sheet below the indictment number, the CDR code is noted as 79, the CDR code for burglary first degree. In the area noting the charge to which is being pled, however, the CDR code is listed as 86, the CDR code for burglary second, violent. The code section listed on the sentencing sheet is §16-11-312 (B), the code section for burglary second degree, violent. The charge is noted "as indicted" pursuant to a negotiated sentence. Both the serious and most serious boxes are checked with some notation under the most serious box. The sentence noted is 25 years suspended upon the service of 20 years. (App. p. 147). As noted above, the statutory maximum sentence for burglary second degree violent is 15 years. S.C. Code §16-11-312 (B). Burglary second degree is a serious offense. Burglary first degree is a most serious offense.

At the beginning of the guilty plea, the assistant solicitor informed the judge that Bordeaux was pleading guilty to two counts of burglary first degree and two counts of armed robbery for a negotiated cap of 25 years. (App. p. 4, lines 8-17). Bordeaux was originally indicted for two counts of burglary first degree and two counts of armed robbery as well as murder. The State agreed to dismiss the murder charge against Bordeaux and his co-defendant, Wesley Washington. (App. p. 4, lines 18-21). The co-defendant, who pled guilty at the same time as Bordeaux, was allowed to plead to two counts of burglary second degree and two counts of armed robbery. (App. p. 2, lines 1-p. 3, lines 1-25).

In the order granting post conviction relief, the PCR judge wrote, "This Court finds no case law directly on point to determine which takes precedent when a sentencing sheet and plea

transcript conflict. This Court finds that the sentencing sheets take precedent over the plea transcript because a sentencing sheet is essentially a contract between the applicant, the applicant's trial counsel, and the court." (App. p. 128). The sentencing sheet reflects a guilty plea to burglary second degree with a sentence for burglary first degree. The 25 year sentence imposed for burglary second degree exceeds the statutory maximum of 15 years. The sentence is unlawful. The PCR judge correctly granted relief as to the two burglary second charges to which Bordeaux received an unlawful sentence.

In signing the sentencing sheets as they appeared, Bordeaux had every reason to believe that he was pleading guilty to burglary second degree, despite any colloquy that took place afterwards during the guilty plea. This is especially true in light of the fact that during the plea the judge references burglary first degree and Bordeaux was originally indicted for burglary first degree. The negotiated cap of 25 years is not determinative of the issue as Bordeaux was also pleading guilty to two counts of armed robbery.

The State's reliance on State v. Sosbee, 371 S.C. 104, 637 S.E.2d 571 (Ct.App. 2006), in the petition for writ of certiorari is misplaced. The issue in Sosbee involved erroneous listings on the sentencing sheet after the indictment had been amended. The indictment was amended without objection. Importantly, Sosbee did not plead guilty but instead was found guilty by a jury of the offense contained in the amended indictment. Under those circumstances, the South Carolina Court of Appeals found the errors to be scrivener's errors. The listings on Bordeaux's sentencing sheets are not scrivener's errors. The listings support Bordeaux's testimony that when he signed the sentencing sheet and agreed to plead guilty, he believed he was pleading guilty to burglary second degree, as noted on the sentencing sheet. The burglary second notations on the sentencing sheet rendered any purported guilty plea to burglary first degree involuntary.

In Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010), the South Carolina Supreme Court wrote:

We are persuaded by the reasoning of those courts, and find a trial's fairness is compromised when a trial judge increases a defendant's sentence outside his presence. Accordingly, in a situation such as the one on appeal, due process requires the judge's oral pronouncement control over a conflicting written sentencing order. Here, the trial judge announced one sentence from the bench in the presence of the defendant, but later increased that sentence in his written order. If trial counsel had made the appropriate motion regarding the sentencing discrepancy, the oral pronouncement would have controlled and Petitioner would have received the twenty-year sentence. Thus, Petitioner has demonstrated a reasonable probability the result would have been different if trial counsel had made the appropriate motion. Accordingly, we hold Petitioner has established the required elements for a claim of ineffective assistance of counsel, and the PCR judge erred in denying his petition.

The present case is distinguished from Boan. The plea judge in the present case did not impose a different sentence on the sentencing sheet than the oral pronouncement of sentence in the defendant's presence as the trial judge did in Boan. The sentence announced at the plea and written on the sentencing sheet was the same, 25 years. The sentencing sheet, however, reflects a plea to burglary second, which carries a maximum penalty of 15 years. In the present case the judge sentenced Bordeaux for burglary first degree on a burglary second degree sentencing sheet. In this case, the PCR judge correctly found that the sentencing sheet, signed before Bordeaux entered his plea, was essentially a contract. Bordeaux had every right to rely on the terms of the contract as a guilty plea to burglary second degree.

In State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 444, 454 (Ct.App.2007), the South Carolina Court of Appeals wrote:

State prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty. Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). South Carolina has recognized

the principles set forth in Santobello; when an accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled. See Sprouse v. State, 355 S.C. 335, 338, 585 S.E.2d 278, 280 (2003); State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994); see also State v. Mathis, 287 S.C. 589, 592, 340 S.E.2d 538, 540 (1986) (“The public interest of encouraging settlement of criminal cases without necessity of trial favors permitting an accused to plead guilty to the offense charged without prejudicing his position if it is later withdrawn.”) (quoting State v. Wright, 103 Ariz. 52, 436 P.2d 601, 604-05 (1968)).


Bordeaux was induced to plead guilty by the sentencing sheets reflecting that the burglary guilty pleas were to burglary second degree. Bordeaux believed he was pleading guilty to burglary second degree. (App. p. 87, lines 6-11). Any purported plea to burglary first degree was rendered involuntary by the sentencing sheet reflecting pleas to burglary second degree. The PCR judge correctly granted relief as to the two burglary second charges to which Bordeaux received an unlawful sentence.

In PCR proceedings, the burden of proof is on the applicant to prove the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). There is evidence in the record to support the PCR judge's grant of relief.

CONCLUSION

Based on the above argument, the grant of relief by the PCR judge should be affirmed.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER.

This 12th day of May, 2011

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Certiorari to Beaufort County

Michael G. Nettles, Circuit Court Judge  
\_\_\_\_\_

ANTONIO D. BORDEAUX,

RESPONDENT,


v.

STATE OF SOUTH CAROLINA,

PETITIONER

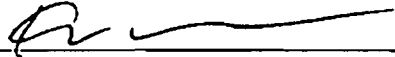
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the brief of respondent has been served on Matthew J. Friedman,  
Esquire, this 12th day of May, 2011.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day  
of May, 2011.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 2, 2013

# The South Carolina Court of Appeals

Antonio D. Bordeaux, Respondent,

v.

State of South Carolina, Petitioner.


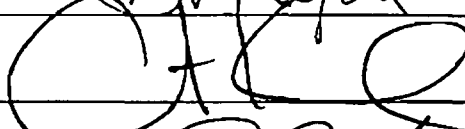
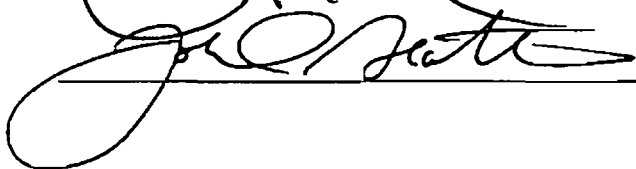
Appellate Case No. 2008-106806

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins  
James Rutledge Johnson  
Matthew J. Friedman  
Alan McCrory Wilson  
John W. McIntosh

FILED

May 24, 2012

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal From Beaufort County  
Michael G. Nettles, Circuit Court Judge

---

Antonio D. Bordeaux,

Respondent,

vs.

State of South Carolina,

Petitioner.

---

**PETITION FOR REHEARING**

---

Pursuant to SCACR Rule 221, the Petitioner, the State of South Carolina, asks for rehearing on the following points that this Court may have overlooked or misapprehended in its decision.

First, this Court has jurisdiction to decide this case pursuant to SCACR 205, and thus, should rule on the issues presented and argued. This Court reversed the decision of the PCR court and remanded it for further proceedings. The State submits a remand is unnecessary because of this Court's findings that the PCR judge committed an error of law when he ruled that the sentencing sheets took precedence over the plea transcript. A remand would waste judicial resources by ordering another PCR hearing for an issue that was decided by this Court.

Because this Court found the unambiguous plea transcript's integrity was not called into question, it should extend this logic of Tant to this case and hold the

Respondent's sentencing sheets should reflect the plea judge's oral pronouncement during the plea hearing. Tant v. SCDC, 395 S.C. 446, 718 S.E.2d 753 (2011) ("If there is some ambiguity in the sentencing sheets, SCDC may examine the transcript of record to determine the intent of the sentencing judge."). see also Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (2010) (Judge's oral pronouncement controls over a conflicting written sentencing order). Therefore, this Court should hold the Respondent pled guilty to two counts of first degree burglary and order the sentencing sheets be corrected to reflect such a finding.

Further, the Respondent was not prejudiced by this scrivener's error. When the Respondent pled guilty to the first degree burglary charges, he received concurrent sentences of twenty-five years suspended upon the service of twenty years. He also pled guilty to two counts of armed robbery to which he was sentenced to twenty-four years' incarceration. Inasmuch as the Respondent claims his sentences for first degree burglary were illegal, he is still serving twenty-four years for armed robbery. Thus, the Respondent has suffered no prejudice through his first degree burglary sentences.

**CONCLUSION**

For all of the foregoing reasons, this Court should grant this petition for rehearing and affirm the Respondent's convictions and sentences.

Respectfully submitted,


ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

BY:

  
J. Rutledge Johnson

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 15, 2012

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Beaufort County  
Michael G. Nettles, Circuit Court Judge

Antonio D. Bordeaux,

Respondent,

vs.

State of South Carolina,

Petitioner.


**PROOF OF SERVICE**

I, Anne Henley, certify that I have served the within Petition for Rehearing on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire  
Assistant Appellate Defender  
SC Office of Appellate Defense  
Edgar Brown Building  
1205 Pendleton Street, Room 306  
Columbia, S. C. 29201

I further certify that all parties required by Rule to be served have been served.

This 15th day of May, 2012.

  
Anne Henley  
Legal Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Antonio D. Bordeaux,                      Respondent,

v.

State of South Carolina,                      Petitioner.

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Appeal From Beaufort County  
Michael G. Nettles, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-284  
Heard March 29, 2012 – Filed May 9, 2012

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**REVERSED AND REMANDED**

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Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior  
Assistant Deputy Attorney General Salley W. Elliott,  
Assistant Attorney General Matthew J. Friedman,  
and Assistant Attorney General J. Rutledge Johnson,  
all of Columbia, for Petitioner.

Appellate Defender Kathrine H. Hudgins, of  
Columbia, for Respondent.

**PER CURIAM:** In this post-conviction relief (PCR) action, the State appeals the PCR court's granting of a new trial to Respondent Antonio Bordeaux on two first-degree burglary charges. The State argues Bordeaux pled guilty to these charges, and, therefore, it challenges the PCR court's conclusion that Bordeaux's sentences were illegal because they exceeded the maximum penalty for second-degree burglary. We reverse and remand.

"[A]ny evidence' of probative value is sufficient to uphold the PCR judge's findings." Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (citation omitted). However, reversal is appropriate when the PCR court's decision is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

In the present case, Bordeaux was indicted for two counts of first-degree burglary. He was also indicted for two counts of armed robbery and one count of murder. The plea transcript indicates that the State had agreed to a dismissal of the murder charge and a cap of twenty-five years of imprisonment in exchange for Bordeaux's plea of guilty to two counts of first-degree burglary and two counts of armed robbery. The sentencing sheets indicate that the plea court sentenced Bordeaux to twenty-four years for each count of armed robbery and twenty-five years for each count of first-degree burglary, with all sentences to run concurrently.

However, each sentencing sheet for the respective burglary offenses contained internally inconsistent information as to whether Bordeaux had pled guilty to first-degree burglary or second-degree burglary. Bordeaux alleged in his PCR application that his sentence for twenty-five years was illegal because he pled guilty to second-degree burglary and the twenty-five-year sentence exceeds the maximum sentence for second-degree burglary. Bordeaux also claimed that plea counsel was ineffective for failing to object to the sentence.

At the PCR hearing, plea counsel testified that he did not object to the sentences imposed because they were "within the negotiation." He explained: "We had negotiated for a cap of twenty-five years . . . ." Further, the PCR court specifically found that plea counsel was not ineffective for

failing to object to Bordeaux's sentence because Bordeaux pled guilty to first-degree burglary. However, the PCR court also concluded that the twenty-five-year sentence was illegal because it exceeded the maximum sentence for second-degree burglary. In reaching this conclusion, the PCR court ruled that the sentencing sheets took precedence over the plea transcript because "a sentencing sheet is essentially a contract between the applicant, the applicant's trial counsel, and the court."

We are unable to reconcile the PCR court's finding that Bordeaux pled guilty to first-degree burglary with its subsequent conclusion that the twenty-five-year sentence was illegal because it exceeded the maximum sentence for second-degree burglary. The PCR court based its conclusion that plea counsel was not ineffective for failing to object to Bordeaux's sentence on the finding that Bordeaux pled guilty to first-degree burglary. If Bordeaux pled guilty to first-degree burglary, then his sentence was not illegal. On the other hand, if Bordeaux pled guilty to second-degree burglary, as the PCR court implied when it concluded the sentence was illegal, then plea counsel would have been ineffective for failing to object to an illegal sentence. Therefore, it is necessary to remand this case to the PCR court for clarification as to the offenses to which Bordeaux pled guilty.

Further, in the absence of any challenge to the integrity of the plea transcript, the PCR court committed an error of law in ruling that the sentencing sheets took precedence over the plea transcript because "a sentencing sheet is essentially a contract between the applicant, the applicant's trial counsel, and the court." See Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) ("When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing." (emphasis added)). Given the sanctity with which statements given under oath are regarded,<sup>1</sup> we decline to lend credence to any position that would favor

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<sup>1</sup> See Blackledge v. Allison, 431 U.S. 63, 74 (1977) (holding that solemn declarations in open court "carry a strong presumption of verity"); see also State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) ("[A]ll plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement."); cf. Edmonds v. Lewis, 546 F.2d

ambiguous sentencing sheets over an unambiguous plea transcript whose integrity has not been called into question. Therefore, on remand, the PCR court must give appropriate weight to the plea transcript in determining the offenses to which Bordeaux pled guilty.

**REVERSED AND REMANDED.**

**PIEPER, KONDUROS, and GEATHERS, JJ., concur.**

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566, 567-68 (4th Cir. 1976) ("[T]he accuracy and truth of a prisoner's denial of any threats inducing his plea of guilty, given during an examination on the record at his sentencing . . . will be considered conclusively established by that proceeding . . . unless he offers (by the allegations of his petition) a valid reason why he should be permitted to depart from the apparent truth of his earlier statement." (citations and quotation marks omitted)).