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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-176 (S.C. Ct. App. filed April 1, 2015)

CHARLES RAY DEAN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

AMENDED RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS

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THE STATE'S QUESTION PRESENTED

The Court of Appeals erred in reversing the PCR judge's denial of relief where Dean failed to credibly prove he relied on erroneous advice from his counsel that a thirty-year sentence required only 85% service since it was undisputed that Dean pled guilty without recommendations or negotiations and he was never promised a thirty-year sentence.

COUNTER QUESTION PRESENTED

Where it was undisputed that neither trial counsel nor Dean knew that sentences for murder must be served "day-for-day" and both Dean and trial counsel testified that Dean would not have pled guilty but for his reliance on the erroneous advice that he would serve 85% of his sentence, did the Court of Appeals correctly reverse the PCR court's denial of relief?

STATEMENT OF THE CASE

On January 24, 2008, Charles Dean (“Dean”) was indicted in Horry County for the murder of his wife, Jill Dean. App. 125. On August 2, 2010, Dean entered a plea of guilty but mentally ill before the Honorable Larry B. Hyman. App. 36, ll. 6 – 11. Nancy R. Livesay represented the State. App. 1. Johnny Gardner represented Dean. App. 1. Judge Hyman accepted Dean’s GBMI plea and sentenced him to thirty years’ imprisonment. App. 36, ll. 6 – 11; App. 40, ll. 8 – 16. Dean did not appeal.

On June 16, 2011, Dean filed a PCR application. App. 41. On July 21, 2011, the State filed its Return. App. 51. On January 23, 2012, a hearing was held before the Honorable George C. James, Jr. App. 54. Paul Archer represented Dean and Christina J. Catoe represented the State. App. 54. On May 1, 2012, Judge James denied Dean’s PCR application. App. 111-22. On April 11, 2014, the Court of Appeals granted Dean’s petition for certiorari and ordered further briefing. On February 3, 2015, a panel of the Court of Appeals consisting of Judges Thomas, Konduros, and Geathers heard oral argument. App. 191. On April 1, 2015, the court reversed in an unpublished *per curiam* opinion. App. 191. Dean v. State, Op. No. 2015-UP-176, (S.C. Ct. App. Apr. 1, 2015). On May 18, 2015, the Court of Appeals denied the State’s petition for rehearing. App. 203. The State now petitions this Court for certiorari.

ARGUMENT

Where it was undisputed that neither trial counsel nor Dean knew that sentences for murder must be served “day-for-day” and both Dean and trial counsel testified that Dean would not have pled guilty but for his reliance on the erroneous advice that he would serve 85% of his sentence, the Court of Appeals correctly reversed the PCR court’s denial of relief.

No Reasons Exist for this Court to Grant Certiorari

None of the reasons for granting certiorari exist in this case. Rule 242(b), SCACR. When this Court considers a petition for certiorari from a decision by the Court of Appeals in a PCR case, it applies the same considerations as in a petition from a direct appeal. Rule 243(l), SCACR (“Review of any final decision of the Court of Appeals shall be by a petition for a writ of certiorari under Rule 242, SCACR.”). No novel issues of law exist. Rule 242(b)(1), SCACR. The Court of Appeals’ unpublished *per curiam* decision contained no dissent. Rule 242(b)(2), SCACR. The Court of Appeals applied settled law from this Court and the United States Supreme Court to reach its decision. Rule 242(b)(3) and (5), SCACR. Although Dean’s Sixth Amendment right to counsel is a substantial constitutional right, the effect of the court’s reversal is that the violation of Dean’s constitutional rights has now been remedied. Rule 242(b)(4), SCACR.

As the Court of Appeals recognized, there was no dispute in the testimony below that Dean received erroneous sentencing advice a person convicted of murder only needed to serve 85% of his sentence. App. 193-95 (Court of Appeals’ Opinion). App. 57, ll. 5 – 21 (Dean’s testimony at the PCR hearing). App. 79, l. 20 – 80, l. 12 (Plea counsel’s testimony at the PCR hearing). Plea counsel and Dean both testified that immediately after the plea, when they learned that a murder sentence was day-for-day, Dean wanted to immediately withdraw his plea. App. 108, ll. 12 – 19 (Dean). App. 95, ll. 4 – 17 (plea counsel). Plea counsel testified: “Mr. Dean asked to go back

out there and right or wrong I made the decision not to go back out there because my belief was that judge was not going to at that time let him withdraw the plea.” App. 95, ll. 4 – 17. Despite the uncontradicted testimony, the PCR court denied relief based on its own finding that because Dean faced a potential life sentence, even though he received erroneous sentencing advice about the low end of his sentencing range, Dean could not prove prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

The State’s petition attempts to show that the Court of Appeals ignored a credibility finding by the PCR judge and therefore ignored the standard of review in PCR cases. State’s Pet. Cert. at 14 – 18. However, as the Court of Appeals recognized, no adverse credibility finding by the PCR court existed with respect to Dean or plea counsel’s testimony. App. 197. The PCR court disagreed with Dean’s legal argument that he had been prejudiced, stating that it “strain[ed] credulity.” App. 197. The Court of Appeals correctly found this was an error of law and not based on the testimony or observations of the trial court. App. 197. The forty-eight year old Dean, relying on counsel’s erroneous sentencing advice, was willing to plead guilty to murder and gamble that he would receive a thirty-year sentence, would serve only 85%, and have a realistic possibility of release. App. 86, ll. 3 – 14. However, had he known that he would serve a minimum of thirty years, Dean would have instead gambled on a trial and hoped for a voluntary manslaughter conviction. App. 95, l. 18 – 96, l. 10. App. 65, ll. 20 – 22. App. 81, ll. 4 – 7. The Court of Appeals’ decision corrected the PCR court’s legal error.

A recent decision of this Court confirms the correctness of the Court of Appeals’ reasoning. Smith v. State, ___ S.C. ___, ___ S.E. 2d ___, Op. No. 27551, Shearouse Adv. Sheets No. 29, 2015 WL 4549512 (July 29, 2015). In Smith, the defendant agreed to plead guilty with the promise from the State to remain silent during sentencing. Id. The State breached its promise and recommended

the maximum sentence. Id. This Court upheld the Court of Appeals' reasoning that the defendant would not have pled guilty "had he known the solicitor was going to breach the agreement." Id. The reasoning in Smith applies here. Even if the solicitor had remained silent, the defendant in Smith still faced a possible sentence (thirty years) that exceeded the sentence he received (twenty-four years). Id. See also S.C. Code Ann. § 16-3-50. If this fact did not negate the claim for relief in Smith, neither should it negate Dean's claim. The Court of Appeals' analysis in this case is based on settled law, was confirmed in Smith, and no reason exists for this Court to grant the State's petition.

Relevant Facts

The Facts Surrounding Jill Dean's Death

Since this case involves a guilty plea and a PCR, the facts of the incident obviously were not developed through witnesses subject to the adversarial testing of a trial. Therefore, Dean will point out the source of the facts provided about the death of Dean's wife, Jill Dean ("Wife"). However, the basic facts do not seem to be in serious dispute. An altercation occurred at the marital home and Dean killed Wife. From Dean and plea counsel's memory, it appeared Dean had the strong possibility of receiving a self-defense charge or the lesser-included offense of voluntary manslaughter. Dean challenged his guilty plea for Wife's murder as involuntary because of plea counsel's erroneous advice regarding sentencing, but these facts should be considered when weighing whether Dean's plea was voluntary because Dean had a very realistic possibility of a voluntary manslaughter conviction had the case been tried.

The solicitor provided the State's version of Wife's death at the guilty plea. App. 29, ll. 2 – 20. On October 17, 2007, Wife, their daughter Brittany Dean ("Brittany"), and Brittany's boyfriend arrived home early in the morning. App. 29, ll. 2 – 20. Dean entered from the rear of

the home. App. 29, ll. 2 – 20. The solicitor described Dean as “assaulting” Wife. App. 29, ll. 7 – 8. Brittany stabbed Dean in the back App. 29, ll. 8 – 10. Brittany and her boyfriend then went across the street to call 911. App. 29, ll. 15 – 16. The police arrived and found Dean sitting on the porch. App. 29, ll. 16 – 19. Dean came down from the porch and the police handcuffed him, apparently without incident. App. 29, ll. 18 – 19. The police entered the house and found Wife’s body. App. 29, ll. 18 – 20. Her throat was cut and she had multiple stab wounds. App. 29, ll. 18 – 20. After the solicitor’s recitation of the facts, Judge Hyman asked Dean, “All right, well you tell me, did you stab and kill your wife?” App. 29, ll. 24 – 25. Dean replied, “I guess so, sir.” App. 30, l. 1.

At the PCR hearing, Dean testified regarding what he remembered about the night of Wife’s death. Dean and Wife had been in a fight and Dean was moving out of the marital home. App. 58, l. 24 – 60, l. 4. Dean was alone at the house packing his belongings. App. 59, ll. 7 – 9. Dean’s puppy began making noise, so he went outside to check on it. App. 59, l. 7 -60, l. 4. When Dean walked back inside, Wife, Brittany, and Brittany’s boyfriend “were coming through the door.” App. 60, l. 1 – 65, l. 5.

Dean thought he could discuss things with Wife and they began talking in the hallway. App. 60, ll. 7 – 10. Wife had the phone. App. 60, ll. 7 – 10. Dean was still talking to Wife in the hallway when “the next thing I know Brittany, I suppose, stabbed me in my back.” App. 60, ll. 7 – 10. Dean said, “Brittany, you stabbed me in my back,” then turned to look at Wife who had a child’s scooter “and then she was swinging it at me and she’s laughing.” App. 60, ll. 21 – 24. Dean said, “And that’s the last thing I remember, that was my wife.” App. 61, ll. 1 – 2. The knife used to kill Wife was the same one Dean pulled out of his back. App. 61, ll. 6 – 9. Dean had defensive

wounds on his arm. Tr. 68, l. 23 – 59, l. 18. Dean’s wife previously stabbed him and he brought a criminal domestic violence charge against her. App. 63, l. 19 – 64, l. 9.

Plea counsel testified at the PCR hearing that Dean’s version of events was consistent with the discovery provided to him by the State. App. 75, l. 9 – 76, l. 11. Brittany and her boyfriend gave statements to the police and were expected to testify. App. 75, ll. 9 – 22. Plea counsel stated “there was no doubt that [Dean] was stabbed.” App. 76, ll. 6 – 7. Plea counsel could not remember if Brittany admitted to stabbing Dean. App. 76, ll. 3 – 6. The evidence showed that Dean took his own knife out of his pocket, but already had blood on his hands when he reached into his pocket because blood was found on items in his pocket. App. 89, ll. 1 – 8. Plea counsel inferred this meant that Dean was “stabbed before he got his knife out of his pocket.” App. 89, ll. 1 – 12. Dean was treated in the hospital for the knife wound in his back and defensive wounds on his forearms. App. 89, l. 17 – 90, l. 15. Plea counsel stated that one of things Dean asked him “early on” was whether his wife was dead. App. 74, l. 22 – 75, l. 8.

Facts from the Blair Hearing

Immediately prior to taking the plea, a hearing was held pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). App. 3, ll. 5 – 6. Dr. Richard Frierson (“Frierson”) testified that while Dean had the ability to distinguish right from wrong, he could not conform his conduct to the requirements of the law because of a brain injury. App. 14, ll. 19 – 21. A car hit Dean when he was a child. App. 12, ll. 10 – 16. Dr. Frierson said the car accident “resulted in a significant brain injury to Mr. Dean.” App. 12, ll. 10 – 16. A neurosurgeon had to operate on Dean “to repair a defect in his skull.” App. 12, ll. 16 – 19. Dean also required “extensive rehabilitation” to relearn how to walk and talk. App. 12, ll. 10 – 21.

Dr. Frierson said Dean's brain damage was "clearly visible" in both a CT scan and in an MRI. App. 13, ll. 2 – 9. The damaged portion of Dean's brain also performs abnormally when tested with an EEG. App. 13, ll. 9 – 16. The frontal lobe affects a person's ability to control their anger and prevent violent behavior. App. 13, l. 17 -14, l. 18. Dr. Frierson detailed a history of events in Dean's life following the accident showing he had "great difficulty controlling anger." App. 13, l. 11 – 14, l. 18. Following Dr. Frierson's testimony, Judge Hyman found that Dean was competent to stand trial and that his mental illness had been adequately established. App. 18, ll. 7 – 15.

The Guilty Plea

The guilty plea hearing took place the same day as the Blair hearing. Before accepting the plea, plea counsel told Judge Hyman he had discussed the possible penalties for murder with Dean. App. 23, ll. 11 – 14. Plea counsel said he discussed the possible defenses. App. 24, l. 23 – 25, l. 1. Before accepting the plea, the trial court told Dean he would be looking at a sentencing range of "30 years to life" and Dean said he understood. App. 32, ll. 3 – 6. Dean said he understood that the solicitor was making no recommendation. App. 32, ll. 10 – 13. Dean then responded positively to multiple questions regarding plea counsel's performance and interaction with him. App. 32, l. 18 – 33, l. 23. After further advisement of his rights, Judge Hyman accepted Dean's plea of guilty but mentally ill. App. 16, ll. 6 – 11.

After accepting the plea and hearing from Wife's mother, the State, and plea counsel on sentencing, the trial judge remarked that a sentence would be "day for day." App. 35, l. 12 – 37, l. 16. Dean then expressed remorse and his sister spoke on his behalf. App. 37, l. 18 – 39, l. 9. Judge Hyman remarked that the case was "a sad, sad, sad situation" and then gave Dean the

minimum sentence of thirty years. App. 40, ll. 2 – 10. Immediately after stating his sentence, Judge Hyman said:

Mr. Dean, that's probably going to be a life sentence for you at 48. It will probably be the rest of your life because you're not eligible for parole on that. You have to serve it day for day, so it's 30 days to serve, 30 years to serve, I keep saying days but it's 30 years and that's an awfully long time.

App. 40, ll. 8 – 16. Judge Hyman then wished Dean luck and the plea hearing concluded. App. 40, ll. 15 – 19.

The Aftermath of the Guilty Plea

Both Dean and plea counsel testified at PCR about what happened immediately after the plea hearing. Dean remembered learning for the first time from the judge, not his attorney, that a thirty year sentence was “day for day.” App.65, l. 23 – 66, l. 10. After the hearing, he told plea counsel he “wanted to go back in front of the judge” and withdraw his plea. App. 108, ll. 12 – 19. Plea counsel refused to take him back to court. App. 108, ll. 12 – 19. Dean was then whisked away to a psychiatric unit where he had no contact with the outside world. App. 108, ll. 12 – 19. Dean stated that when he finally was able to communicate again with plea counsel and tell him he “wanted to pull my plea,” plea counsel told him it was too late. App. 108, ll. 12 – 24.

Plea counsel agreed with Dean about what happened immediately after the plea. App. 95, ll. 2 – 17. Plea counsel did not hear the judge state that the sentence would be 100% until after the plea had been accepted. App. 95, ll. 2 – 17. Plea counsel stated:

What I did hear was at the end of it where the judge said it all which that caught us all by surprise because we had talked about this even in chambers and when we got back to lock up Mr. Dean was highly upset with me because the judge said that at the end of the plea. If the judge would have said that at the beginning of the plea there is no doubt in my mind that the plea would have never taken place. . . . But he said it at the end **and Mr. Dean asked to**

go back out there and right or wrong I made the decision not to go back out there because my belief was that judge was not going to at that time let him withdraw the plea.

App. 95, ll. 4 – 17 (emphasis added).

At the PCR hearing, plea counsel testified as follows:

Q. All right, and did you ever discuss with, with Mr. Dean whether or not the murder plea would be eighty-five percent or a hundred percent, did you ever discuss those collateral type consequences?

A. Yes, we did.

Q. And what did you tell him about that?

A. Okay, I, keep in mind that we were trying to get this case into a manageable time or sentence for him and if the Solicitor thought twenty-five years was fine we weren't necessarily agreeing with that but twenty-five years would certainly be better than life, and towards the end of our trial preparations another lawyer who I trust had made the comment that it would only be eighty-five percent under the new law so we did talk about that.

Q. All right, so you, did you specifically tell Mr. Dean that it would be eighty-five percent?

A. I don't remember the exact words but that was discussed.

App. 79, l. 20 – 80, l. 12. Plea counsel's testimony corroborates Dean's testimony at the PCR hearing:

Q. All right, I understand that at the time in the plea of thirty years you were under the impression that that was eighty-five percent; is that correct?

A. Yes, sir.

Q. And how old were you at the time that this happened?

A. Forty-eight, sir.

Q. All right, so if you took the thirty years, you'd be what, seventy-eight?

A. Yes, sir.

Q. All right, if you went to trial and even got a life sentence that's about, I don't know what's a life expectancy is in prison but I don't think you live to be ninety, but in any event you felt that if you knew this you obviously would have taken your chance and gone to trial; is that right?

A. Correctly, sir.

App. 57, ll. 5 – 21.

Discussion

The Court of Appeals properly reversed because no evidence supported the PCR court's conclusion that Dean could not prove deficient performance or prejudice under the two-pronged approach of Strickland v. Washington, 466 U.S. 668 (1984). Dean's guilty plea was unknowing and unintelligent because he relied on the erroneous advice of his attorney. "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). The Supreme Court has "never applied a distinction between direct and collateral consequences to define the

scope of constitutionally ‘reasonable professional assistance’ required under Strickland.” Id. at 1481 (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984)).

This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant’s trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. Hinson found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

This case is analogous to Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988). In Jordan, the defendant pled guilty based upon the expectation that the solicitor would neither recommend nor oppose a sentence of probation. Id. at 53, 374 S.E.2d at 684. At the plea, a different solicitor represented the State and vigorously opposed probation. Id. The Supreme Court found plea counsel’s failure to move to withdraw the sentence constituted ineffective assistance of counsel and reversed. Id. at 54-55, 374 S.E.2d at 684-85.

As in Jordan, Dean entered the plea hearing expecting an eighty-five percent sentence. Plea counsel did not hear the judge state that the sentence would be day-for-day until after the plea had been accepted. App. 95, ll. 2 – 17. Both plea counsel and Dean’s testimony about the immediate reaction by Dean to learning the sentence would be 100% and not 85% shows this is not a case of “buyer’s remorse.” App. 95, ll. 2 – 17.

The PCR court did not find that either Dean or plea counsel’s description of the aftermath of the plea hearing was not credible. This immediate reaction by Dean defeats the State’s primary argument: that Dean’s willingness to plead guilty for a twenty-five year sentence, but

not a thirty year sentence, is a recent invention. The State argues that it was not believable that Dean's decision to plead guilty rested on a five-year difference. However, both Dean and plea counsel's testimony show that five years, in fact, made all the difference to Dean.

The Court of Appeals also correctly found that Dean was prejudiced by counsel's error. In order to prove prejudice under Strickland in a plea context, "a defendant must show the outcome of the plea process would have been different with competent advice." Lafler, 132 S.Ct. at 1384. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 130 S.Ct. at 1485. However, the primary focus remains on whether the plea was involuntary and that he would not have otherwise pled guilty. Lockhart, 474 U.S. at 56-57. In Lockhart, the Court noted that prejudice could be shown if it would have caused plea counsel to change his recommendation. Id. at 59. Plea counsel testified that he made a mistake not taking Dean's case to trial. App. 86, ll. 3 – 8.

Under questioning from the court, plea counsel unambiguously testified that Dean would not have pled guilty had he known he would have to serve thirty years instead of twenty-five. App. 95, l. 18 – 96, l. 10. Dean also emphatically testified that he would not have pled guilty had he known he would have to serve the full thirty years. App. 65, ll. 20 – 22. Therefore, the only evidence before the PCR court is that Dean would not have pled guilty. See Alexander, at 543, 402 S.E.2d at 485 ("In fact, the only evidence in the record on [the prejudice] point is petitioner's own testimony that had plea counsel not misinformed him . . . he would not have pled guilty. Thus the second part of the test has been met."); see also Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (1999) (finding prejudice based on defendant's testimony that he would not have pled guilty despite plea counsel's assertion that even if he had understood defendant's potential sentence, he still would

have advised defendant to plead guilty). The Court of Appeals recognized that the only evidence before the PCR court was that erroneous advice by trial counsel rendered Dean's plea involuntary.

Dean's and plea counsel's testimony regarding the facts of the case demonstrate not only that Dean had nothing to lose by going to trial, he actually had a chance of success at receiving either a not guilty verdict or a guilty verdict on a lesser-included offense. Plea counsel substantiated Dean's version of events. App. 74, ll. 17 – 18. Plea counsel testified that he was confident that had they gone to trial, the trial judge would have charged the jury on manslaughter and self-defense. App. 76, l. 16 – 79, l. 7. Plea counsel admitted that his performance was deficient and prejudiced Dean, stating, "I mean there's no doubt in my mind that, that we should have tried the case and that's it in a nutshell we should have tried it. We were here, we were ready to go and he pled." App. 81, ll. 4 – 7.

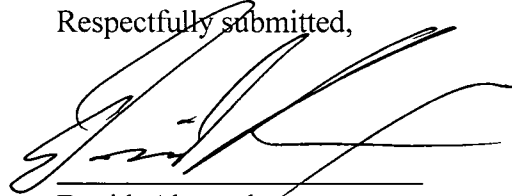
As plea counsel pointed out, given Dean's age (48), thirty years was effectively a life sentence so Dean had nothing to lose by going to trial. App. 81, ll. 4 – 7. Pleading guilty was not "rational under the circumstances." Padilla, 130 S.Ct. at 1485. Combined with plea counsel and Dean's unequivocal testimony that Dean would not have pled guilty but for the erroneous advice regarding sentencing, these facts demonstrate prejudice. See Rolen v. State, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) (finding prejudice from attorney's failure to move to withdraw a guilty plea even though it was likely the judge would not have allowed withdrawal because "the plea judge was not able to exercise his discretion"); Crabbe v. State, 546 S.E.2d 65, 66 (Ga. Ct. App. 2001) (reversing guilty plea because attorney told defendant that he would be eligible for parole within ten years when the actual number was twenty years); Moore v. Bryant, 237 F.Supp.2d 955, 960 (C.D. Ill. 2002) (reversing defendant's guilty plea because of attorney's advice that defendant would serve 50% of his sentence instead of 85%).

As the Court of Appeals recognized, the PCR court's holding on the prejudice prong used reasoning that has been discredited by this Court. The PCR court held that since Dean knew he was facing a potential life sentence, that it "would strain credulity that if the Applicant had been told that the thirty-year minimum sentence was to be served day for day, that he would not have pled guilty." App. 120. This Court rejected such a rationale in Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991). In Ray, plea counsel was ineffective for erroneously advising the defendant that he faced a sentence of life without parole. Id. at 375, 401 S.E.2d at 152. The State argued that since the defendant faced a possible seventy-five year sentence, he could not have been prejudiced by the erroneous advice. Id. at 376, 401 S.E.2d at 152-53. The Ray Court dismissed the State's reliance on a "possible" maximum sentence because had the defendant proceeded to trial, he could have faced a much shorter sentence. Id. See also Smith v. State, ___ S.C. ___, ___ S.E. 2d ___, Op. No. 27551, Shearouse Adv. Sheets No. 29, 2015 WL 4549512 (July 29, 2015). Just as in Ray, had Dean proceeded to trial, he could have received a shorter sentence on a lesser-included offense or been acquitted. Therefore, the PCR court's prejudice finding was not based on any finding of fact or a credibility determination, but on speculation and discredited reasoning. The Court of Appeals recognized the error and reversed. This Court should deny the State's petition for certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

This 10th day of September, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-176 (S.C. Ct. App. filed April 1, 2015)

CHARLES RAY DEAN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-212092

CERTIFICATE OF SERVICE

I certify that a true copy of the amended return to petition for writ of certiorari to the Court of Appeals in this case have been served on Christina J. Catoe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Charles Ray Dean #342070, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 10th day of September, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 10th day
of September, 2015.

Karen Kuntel

(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.