



ALAN WILSON  
ATTORNEY GENERAL

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SEP 16 2015

**S.C. Supreme Court**

September 16, 2015

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

**Re: Edward Levern Briggs, Respondent v. State, Petitioner**  
**Case No. 2012-CP-45-0121**

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the PCR transcript from the court reporter.

Sincerely,

Daniel Gourley  
Assistant Attorney General

cc: Fulton Casey Dale Cornwell, Esquire  
South Carolina Department of Corrections  
Williamsburg County Clerk of Court  
Solicitor Ernest A. Finney  
Office of Appellate Defense  
Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-45-0121

Edward Levern Briggs, #349046, .....Respondent,

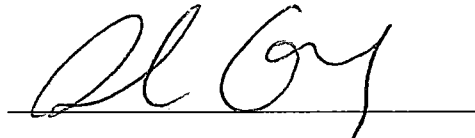
v.

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

**NOTICE OF APPEAL**

The State of South Carolina appeals the order of the Honorable George C. James, Jr., dated August 17, 2015, and filed August 28, 2015. Petitioner received written notice of entry of this order on September 8, 2015.

September 16, 2015



DANIEL GOURLEY  
Assistant Attorney General  
S.C. Bar No. 100934

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Other Counsel of Record:

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STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Edward Levern Briggs, #349046,

2012-CP-45-0121

Applicant,

v.

**ORDER GRANTING  
POST-CONVICTION RELIEF**

State of South Carolina,

Respondent.

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This matter comes before the court by way of a post-conviction relief (PCR) application filed on March 1, 2012.<sup>1</sup> Respondent made its return on April 15, 2013. An evidentiary hearing was convened on April 15, 2015, at the Sumter County Courthouse. The applicant was present and was represented by F. Casey Cornwell, Esquire. The respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The record indicates that the applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The applicant was true bill indicted at the August 2011 term of the Williamsburg County Grand Jury for attempted murder; possession of a weapon during violent crime; and possession of cocaine (2011-GS-45-0013). Verdell Barr, Esquire, represented the applicant and is referred to herein as "plea counsel". Mr. Barr is now deceased. On December 11, 2011, the applicant pled guilty to the lesser-included offense of assault and battery of a high aggravated

<sup>1</sup> The application was received by the respondent on January 29, 2013.

nature (ABHAN). The Honorable R. Ferrell Cothran, Jr., sentenced the applicant to ten years imprisonment. No direct appeal was filed.

### **ALLEGATIONS**

In his current application, the applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. Due Process violation.

### **SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, the applicant testified on his own behalf. This court also had before it a copy of the plea transcript, the Sumter County Clerk of Court records, the applicant's South Carolina Department of Correction records, the PCR application, and the return.

During the evidentiary hearing, the applicant testified that he met with plea counsel about three times. He stated that he was out on bond prior to trial. He recalled reviewing discovery with plea counsel. The applicant recalled that they were going to claim self-defense at trial. He stated that he did not give plea counsel any leads or witnesses to investigate on his behalf. He recalled telling the plea judge that he was satisfied with plea counsel's services and that he had no complaints against plea counsel.

The applicant recalled telling the plea judge that no one was threatening or coercing him to plead guilty. He recalled telling the plea judge that he wanted to plead guilty and was indeed guilty. He recalled agreeing with the factual recitation given by the Assistant Solicitor during the plea.

A handwritten signature in black ink, appearing to be 'B/S', is located in the bottom right corner of the page.

The applicant stated that as the trial was beginning, were beginning, plea counsel showed him a copy of the amended indictment.<sup>2</sup> Handwritten in the margins of the indictment were various sentencing ranges totaling to a fifty-five year maximum aggregate sentence. The applicant stated that he saw the fifty five year possibility and became frightened. The applicant stated that he pled guilty as a result of plea counsel advising him that he faced a possible fifty-five year sentence.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety and has considered the testimony presented at the post-conviction relief hearing. This court has further had the opportunity to observe the witnesses presented at the 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).

### INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must

<sup>2</sup> The amended indictment was introduced as Applicant's exhibit 1.



overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

**1. Involuntary guilty plea due to plea counsel advising the applicant that he faced a possible fifty-five year sentence.**

This court finds the applicant's allegation his guilty plea was rendered involuntary due to plea counsel's advice that he faced a potential fifty-five year sentence based on the indicted charges is meritorious. This court notes that the applicant was first indicted for ABHAN under S.C. Code section 16-3-600 (B) and for possession of a weapon during the commission of a violent crime. He was then indicted for attempted murder, the weapon charge, and possession of cocaine. The second indictment was true-billed August 18, 2011. The applicant claims he was not advised of the second indictment until the day of trial.

After a jury was selected on December 13, 2011, and before the trial judge ruled on a pre-trial motion to suppress the applicant's confession, the applicant pled on December 14, 2011 to

ABHAN (a lesser-included offense of attempted murder), in exchange for which the State dismissed the weapon charge and the cocaine charge.

At the PCR hearing, the applicant entered into evidence as his exhibit 1 the second indictment. This exhibit has handwritten in the right-hand margins the following sentencing ranges: Beside Count One (Attempted Murder)-"Not more than 30 yrs." Beside Count Two (Possession of Weapon During Comm'n of a Violent Crime)-"5 yrs." Beside Count Three (Possession of Cocaine)- "5yrs.-20 yrs. +/- \$20k."

The applicant claims plea counsel wrote the foregoing sentencing ranges on the amended indictment and showed them to him just before jury selection. Applicant testified these numbers "frightened" him, and though he wanted a trial, he decided to plead guilty because plea counsel told him he would be facing a total of fifty-five years if convicted at trial.

This court notes sentencing ranges for attempted murder and the weapon charge are correct. However, the correct sentencing range for possession of cocaine, 1st offense is zero to three years. For possession of cocaine, 2nd offense, the range is 0-5 years, and for 3rd offense, the range is 0-10 years. The record is silent as to whether the cocaine possession charge was a 1st, 2nd, or 3rd offense, and that charge was dismissed as part of the plea deal. Based on the comments in the plea transcript that the applicant had a minimal criminal record, this court assumes the cocaine charge was a first offense.

Notably, the only 5-20 year sentencing range for a drug offense accompanied by a fine of up to \$20,000.00 is PWID/ Distribution of Marijuana, 3rd offense. Trafficking marijuana, 2nd offense carries a range of 5-20 years and a maximum fine of \$50,000.00.

The applicant claims plea counsel wrote these ranges in the margins. Plea counsel is now deceased, so the applicant's testimony is all the record contains on this issue. The original

indictment was for ABHAN and Possession of a Weapon During Comm'n of a Violent Crime. Handwritten in the margin beside the ABHAN count and the weapon count were the numbers 10 and 5, respectively. Interestingly, the "10" for ABHAN was incorrect, as ABHAN was codified as a felony in SC Code Section 16-3-600 effective June 2, 2010, with a sentencing range of 0-20 years.

This court finds credible the applicant's testimony that plea counsel wrote the numbers in the margins of the two indictments. Therefore, the applicant was not advised of the correct sentencing ranges. The applicant has therefore established the first prong of Strickland. As to the prejudice prong, he must establish that but for plea counsel's errors, he would not have pled guilty. The only evidence in the record is the applicant's testimony that he would not have pled guilty had he known he was facing a maximum of 38 years as opposed to a maximum of 55 years. In Alexander v. State, 303 SC 539, 402 SE2d 484 (2006), our Supreme Court addressed a PCR claim centering upon incorrect sentencing information provided by plea counsel. In that case, on the issue of whether the applicant would have pled guilty if he had not been misinformed, the Court noted that "[t]he only evidence in the record on this point is that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty. Thus, the second part of the test has been met."

This court still must weigh the applicant's credibility on the issue of whether he would have gone to trial had he had correct sentencing information (see Roscoe v. State, 345 SC 16, 546 SE2d 417 (2001), comparison of trial counsel's advice that applicant faced 70 years to life as opposed to correct range of 75 years to life). In Manley v. United States, 588 F. 2d (4th Circuit 1978), the prosecutor and the plea judge stated on the record during the plea that the defendant was facing 90 years in prison for several drug offenses, when the actual maximum was only 60



years. When remanding that case to the District Court for further inquiry on the issue of whether the defendant actually knew the correct maximum at the time of the plea, the Court of Appeals stated that a thirty year error in sentencing advice could not satisfy the requirement that the defendant have a complete understanding of the correct possible sentence. Manley cites Hammond v. United States, 528 F. 2d 16, 18 (4th Circuit 1975) for the proposition that "a mistake of a few years in advice about the length of what would otherwise be a long term would not constitute ineffective assistance of counsel." This proposition is also cited with approval in Roscoe v. State, 345 SC at 21.

This Court concludes that a mistake of seventeen years as to the maximum sentence is more than "a mistake of a few years", and this court find's credible the applicant's testimony that he would not have pled guilty if he had known the correct maximum sentence. Based on the foregoing, this court finds that the applicant's post-conviction relief application must be granted.

#### **ALL OTHER ALLEGATIONS**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations; therefore, he has abandoned any such allegations.

#### **CONCLUSION**

Based upon these findings of fact, and based upon the applicable law of this State, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the applicant's application for post-conviction relief is **GRANTED**.

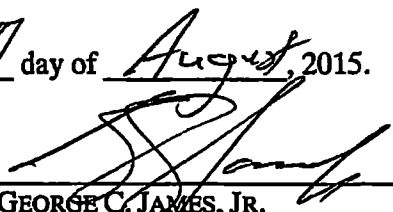
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the applicant's conviction under indictment number 2011-GS-45-13 is set aside and that the applicant shall be given a new trial on this indictment. The two dismissed counts are reinstated.



**IT IS THEREFORE ORDERED:**

1. The applicant's application for post-conviction relief is granted; and
2. The State is entitled to try the applicant on all three indicted charges.

**AND IT IS SO ORDERED** this 17 day of August, 2015.



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GEORGE C. JAMES, JR.  
Presiding Judge  
Third Judicial Circuit

Sumter, S.C.



STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2012-CP-45-0121

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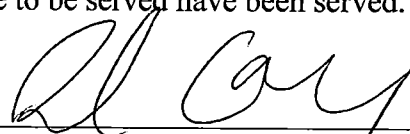
**PROOF OF SERVICE**

I, Daniel Gourley, certify that I have served the within Notice of Appeal on Respondent, Edward Levern Briggs, by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record at the following address:

Fulton Casey Dale Cornwell, Esquire  
448 Deerwood Street, Unit 9A  
Columbia, South Carolina 29205

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

September 16, 2015

  
\_\_\_\_\_  
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