



ALAN WILSON  
ATTORNEY GENERAL

September 30, 2015

RECEIVED

SEP 30 2015

S.C. Supreme Court

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

**Re: Vernell Harris, Respondent v. State of South Carolina, Petitioner**  
**Civil Action No. 2012-CP-21-2004**

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 to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. Correspondence with the court reporter regarding the transcript.

Sincerely,

  
J. Croom Hunter  
Assistant Attorney General

JCH/nb

Enclosures

CC: Matthew N. Tyler, Esquire  
South Carolina Department of Corrections  
The Honorable Connie Reel-Shearin, Florence County Clerk of Court  
The Honorable E.L. Clements, III, Twelfth Circuit Solicitor  
Office of Appellate Defense  
Ms. Trisha Allen, Victim Services

STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. Supreme Court  
SEP 30 2015  
RECEIVED

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-21-2004

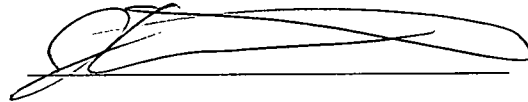
Vernell Harris, #341357, .....Respondent,

v.

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

**NOTICE OF APPEAL**

The State of South Carolina appeals the order of the Honorable Edgar W. Dickson, dated September 2, 2015 and filed September 16, 2015. Petitioner received written notice of entry of this order on September 24, 2015.



J. Croom Hunter  
Assistant Attorney General  
S.C. Bar No. 101253

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

Other Counsel of Record:

Matthew N. Tyler, Esquire  
P.O. Box 1931  
Florence, SC 29503

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

**RECEIVED**

SEP 30 2015

The Honorable Edgar W. Dickson, Circuit Court Judge **S.C. Supreme Court**

Case No. 2012-CP-21-2004

Vernell W. Harris, #341357, .....Respondent,

v.

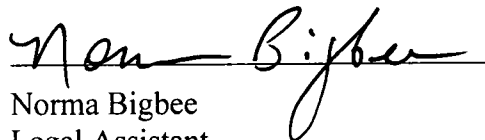
State of South Carolina, .....Petitioner.

**PROOF OF SERVICE**

I, Norma Bigbee, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Matthew N. Tyler, Esquire  
P.O. Box 1931  
Florence, SC 29503

I further certify that all parties required by Rule to be served have been served on this date, September 30, 2015.



Norma Bigbee  
Legal Assistant  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 Vernell W. Harris, *341357* )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Defendant. )  
 )

IN THE COURT OF COMMON PLEAS  
 CASE NO.: 2012-CP-21-02004

**ORDER DENYING MOTION TO  
 ALTER OR AMEND**

FILED  
 2015 SEP 16 PM 12:56  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, SC

This Court, considering the Motion to Alter or Amend Judgment pursuant to Rule 59(e) S.C.R.C.P. filed by the Respondent State of South Carolina, hereby declines and denies such motion and reaffirms this Court's Order filed May 11, 2015 granting post-conviction relief.

It is this Court's position that Mr. Harris received ineffective assistance of counsel in this case. Although a sentence reduction hearing before the Honorable William Seals took place January 27, 2015, as noted by the Respondent in their Motion to Alter/Amend, this was not the sole issue causing concern for this Court, as the applicant Vernell Harris relied upon the promise of a sentence reduction hearing when he took the guilty plea. This is evident not only through the transcript of record from the guilty plea, but also through his plea counsel's testimony at the PCR hearing, as well as the testimony of Mr. Harris at the PCR hearing. This Court further notes that during the January 27, 2015 hearing before Judge Seals, Judge Seals determined that Mr. Harris was not entitled to a downward departure due to the State failing to move for a reduction within one (1) year after sentencing, as required by statute, and Mr. Harris' sentence not being able to be reduced any lower, as he received the mandatory minimum for Burglary first.

CERTIFIED: A TRUE COPY  
*Cynthia Reed Strickland*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.


It is undisputed that the State must be the party to move for the reduction; however, it is the duty and obligation of plea counsel to make sure the State enforces the plea bargain that their client relied upon. Here, Mr. Harris relied upon the promise that he would receive a sentence reduction hearing when he took the guilty plea. Pleas<sup>es</sup> counsel (Attorney Anderson) had a duty to enforce the bargained for promise of a sentence reduction hearing, which should have taken place within one (1) year of Harris having been sentenced. Further, pleas<sup>e</sup> counsel owed a duty to Mr. Harris to advise Mr. Harris as to the benefits and disadvantages of accepting the plea bargain, and in doing so pleas<sup>e</sup> counsel should have realized the potential conflict between the sentence reduction statute and the fact that a mandatory minimum sentence cannot be suspended. Mr. Harris, to his detriment, relied upon the State's offer and plea counsel failed to provide adequate assistance in securing a satisfactory plea offer and further failed to make sure said offer was enforced.

In a plea bargain, the government takes on specific obligations, and if those obligations are not met, the Defendant may be entitled to withdraw his plea. Puckett v. United States, 556 U.S. 129 (2009). Plea counsel owes a duty to his client in protecting the client's rights to enforce a plea agreement. Custodio v. State, 644 S.E.2d 36, 40 (2007). In order for an applicant to assert ineffective assistance of counsel, he must prove that he was prejudiced by counsel's performance and that the outcome of his case would have been different but for counsel's ineffective assistance. Id. Regarding plea bargains and ineffective assistance of counsel, the applicant must show that he detrimentally relied upon the bargain offered and that counsel failed to have that bargain enforced. Id. "A defendant who provides beneficial information to law enforcement can be said to have relied to his detriment." Reed v. Becka, 511 S.E.2d 396, 402 (Ct. App. 1999).

Mr. Harris, the applicant, provided beneficial information, his plea counsel failed to provide adequate assistance in securing a satisfactory plea offer, and plea counsel did not make any effort that any plea offer was enforced. Consequently, this Court denies the Respondent's Motion to Alter or Amend, and the applicant's Motion granting post-conviction relief stands as set forth in this Court's May 11, 2015 Order.

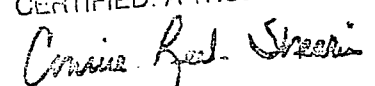
It is so ordered.

Date: 9/2/15

  
Edgar W. Dickson  
Circuit Court Judge  
Twelfth Judicial Circuit

2015 SEP 16 PM 12:56  
CONNIE KEEL-SHEARIN  
CCCP & G.S.  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

FILE

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF FLORENCE 2015 MAY 11 } PII 2: 02 CASE NO.: 2012-CP-21-02004

Vernell W. Harris,  
341357  
Plaintiff,  
  
vs.  
  
State of South Carolina,  
  
Defendant.

CONNIE REED, CLERK  
COURT CLERK  
FLORENCE COUNTY, S.C.

**ORDER GRANTING POST-CONVICTION RELIEF**

CERTIFIED: A TRUE COPY  
*Connie Reed*  
CLERK OF COURT C.R. & G.S.  
FLORENCE COUNTY, S.C.

This matter comes before the court upon the Post-Conviction Relief (PCR) application filed by Vernell Harris. In his application, Vernell Harris claimed ineffective assistance of the counsel retained to defend him, Henry Morris Anderson, Jr. A hearing in this matter was conducted October 8, 2014 in Florence County at which time Attorney Anderson was examined regarding his representation of Mr. Harris. Based upon the facts and evidence, this court grants Post-Conviction Relief to Mr. Harris.

**FACTS**

On August 4, 2011, and as part of a negotiated plea arrangement between Assistant Solicitor John Deberry and Attorney Anderson, Mr. Harris pleaded guilty before the Honorable William H. Seals, Jr. to indictment number 2011-GS-21-0014 for one (1) count of burglary in the first degree. As part of the plea arrangement, other indictments were dismissed.

Judge Seals accepted the plea, and as the transcript of record reflects, the prosecutor noted that, pursuant to Code §17-25-65, if Mr. Harris provided the State with useful information in solving crimes after a sentence, he may be eligible to come back into court for some consideration by way of sentence reduction. The prosecutor further noted "we wouldn't be opposed to that" and with the law enforcement representatives reflecting that Mr. Harris was

*1/5/15*

very cooperative during the investigation, and recognizing he could provide information as to leads on pending investigations of criminal activity, the record (Investigator Poston) reflecting "shortly after Mr. Harris came on board with the State, provided an immense amount of information....there's been a lot of crimes solved because of Mr. Harris." The record also reflects representations by law enforcement agents to the court that Mr. Harris helped close 40 burglary cases and he is "going to have additional information that he'll come forward with that will lead to some more arrests."

Mr. Harris was sentenced to 15 years based upon the negotiated recommendation, with credit allowed for 482 days, and with the sentence to run concurrent with other pleas. This court notes that counsel for Mr. Harris, Attorney Anderson, stated on the record "under 17-25-65 we anticipate that, you know, hopefully he'll be back in the near future to be before the court to see whether or not he's eligible for another time reduction."


The PCR hearing testimony reflects that in follow up correspondence, after the plea, Attorney Anderson wrote to Mr. Harris confirming that he would work towards the sentence reduction hearing, as Mr. Harris had continued to work (post-plea) with law enforcement to solve many crimes in the Florence County area. Further, investigators with whom Mr. Harris had worked to solve these crimes (specifically including Investigator McFadden of the Florence County Sheriff's Department) were in favor of a sentence reduction for Mr. Harris in light of his cooperation. The record further reflects that Mr. Anderson made no effort to seek a sentence reduction for Mr. Harris despite the records reflecting, on numerous occasions, that he had represented to Mr. Harris that he would do so, both at the plea hearing and after the plea had been accepted.

2/5/20

The Honorable Edgar Dickson presided over the PCR hearing and requested that the State schedule a sentence reduction hearing before Judge Seals, pursuant to the negotiated plea offer that Mr. Harris accepted. Judge Seals determined that Mr. Harris was not entitled to a reduction due to the State failing to timely file a motion to reduce as required by law and due to the fact that Mr. Harris received the minimum sentence for Burglary First Degree, a charge which cannot be suspended below the mandatory minimum. The January 27, 2015 order further stated that while it appeared that a sentence reduction was contemplated by the parties prior to the plea, the presiding court lacked the authority to assist in the matter and further relief must be granted by the PCR judge.

#### ANALYSIS

As the PCR record reflects, Attorney Anderson acknowledged that his duty of representation extends beyond the day of the plea, and he has an obligation to effectively represent Mr. Harris within the canons of ethics, to the best of his abilities, and this duty includes timely filings of motions, appeals and pursuit of a reduction of sentence under §17-25-65 S.C. Code (Annotated). Section 17-25-65, among other things, requires the state to move within one (1) year of sentencing for a reduction sentence if the defendant provides substantial assistance in investigating or prosecuting another person, and further allows reduction of a sentence beyond the one (1) year time limit if the defendant's substantial assistance involved information not known to the defendant until one (1) year after sentencing, or information was provided to the defendant that did not become useful to the state until later, as well as other circumstances, and notes that the motion is to be filed by the circuit solicitor. This court recognizes that the solicitor may not move for a sentence reduction hearing for an individual such as Mr. Harris who has

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entered a plea and is serving time, however, zealous and effective representation by defense counsel, in following up and making sure that this motion is filed, is both logical and necessary.

This court finds that there were a number of discussions between Attorney Anderson and Mr. Harris following his plea, which included issues related to both a possible appeal and sentence reduction. However, Attorney Anderson failed to take any action whatsoever with regard to a motion under §17-25-65. Under the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L Ed. 2d 674 (1984), a PCR applicant alleging ineffective assistance of counsel must show (1) trial counsel “failed to render reasonably effective assistance under prevailing professional norms” and (2) “there is a reasonable probability, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” This court finds that Attorney Anderson was ineffective in his post-plea representation of Mr. Harris, and that such ineffective assistance has prejudiced Mr. Harris, denying him the opportunity to have his sentence reduction, as was both discussed on the record during the course of his plea and later as between Mr. Harris and Attorney Anderson both verbally and in written correspondence. Attorney Anderson acknowledged that his defense of Mr. Harris, including taking of all measures to achieve the best result for his client, was neglected, and further agreed that in this instance all such measures were not taken, specifically as to noting Petitioner’s cooperation and requesting the solicitor to pursue the statutory reduction. As noted in Strickland supra, in determining a claim of ineffective assistance of counsel, the focus is on “the fundamental fairness of the proceeding whose result is being challenged.” Further, with guilty pleas, counsel’s alleged deficiency turns on whether the plea was voluntarily, knowingly and intelligently entered. Hyman v. State, 723 S.E. 2d 375, 379 (2012) (citing Anderson v. State, 535 S.E. 2d 649, 651 (2000)). In order for a defendant to

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knowingly and intelligently enter into a plea, he must fully understand the consequences of said plea. State v. Hazel, 271 S.E. 2d 602, 603 (1980) (citing Boykin v. Alabama, 395 U.S. 238 (1969)).

This court finds that the applicant Harris was deprived of effective assistance of counsel due to the conditions of his plea agreement not being upheld. Applicant accepted a negotiated plea offer from the State that included a possible sentence reduction in exchange for Mr. Harris providing the State with useful information in solving other crimes. Mr. Harris upheld his end of the negotiated offer, but the State did not follow through as required by law (see South Carolina Code §17-25-65). Pursuant to the South Carolina Rules of Professional Conduct, an attorney's duties and obligations to his client extend until the conclusion of all matter undertaken for the client. Rule 1.3 CMT. 4, RPC, Rule 407, SCACR. In this case, although the applicant Harris had been convicted and sentenced, the matter had not concluded as the plea agreement provided additional actions that were to take place after sentencing. Defense counsel was ineffective for not remaining diligent in his continued representation of applicant, as he should have followed up with the State and pursued the outcome that applicant was promised. Therefore, applicant is entitled to the relief requested.

Consequently, the Post-Conviction Relief of Vernell Harris is hereby granted, and this case is to be remanded to the court of General Sessions for proceedings consistent with this ruling.

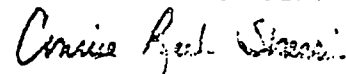
**IT IS SO ORDERED.**



EDGAR W. DICKSON  
CIRCUIT COURT JUDGE  
TWELFTH JUDICIAL CIRCUIT


Orangeburg, South Carolina  
April 30, 2015

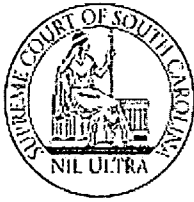
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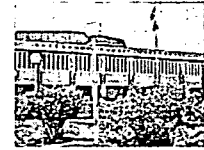
CLERK OF COURT C.R. & G.S.  
FLORENCE COUNTY, S.C.

2015 MAY 11 PM 2:02  
CLERK OF COURT C.R. & G.S.  
FLORENCE COUNTY, S.C.

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## Sumter County Third Judicial Circuit Public Index



Sumter County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

### Herbert Lee Bell VS South Carolina State of

Case Number:	2014CP4302350	Court Agency:	Common Pleas	Filed Date:	11/05/2014
Case Type:	Common Pleas	Case Sub Type:	Post Convict Rel 500	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	07/29/2015	Disposition Judge:	James, George C. Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

### Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Bell, Herbert Lee					Plaintiff		07/30/2015
<input checked="" type="checkbox"/> Bell, Herbert Lee #315885	Lee Correctional Inst/Ria-250-A 990 Wisacky Hwy Bishopville SC 29010				Plaintiff Pro Se		11/11/2014
<input checked="" type="checkbox"/> South Carolina State of					Defendant		11/06/2014
<input checked="" type="checkbox"/> Wilson, Alan McCrory	PO Box 11549 Columbia SC 292111549				Defendant Attorney		11/06/2014

### Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
	Final Order/Dismissal	Order		07/30/2015 -09:57	07/29/2015 -09:57	
Bell, Herbert Lee	Response To Conditional Order	Filing		06/05/2015 -15:19	07/29/2015 -15:19	
Bell, Herbert Lee	Letter/Requesting Copies	Filing		05/29/2015 -11:16	07/29/2015 -11:16	
Bell, Herbert Lee	Amended/Amended PCR	Filing		03/12/2015 -14:14	07/29/2015 -14:14	
	Order/Conditional Order of Dismissal	Order		03/09/2015 -09:32	07/29/2015 -09:32	
South Carolina State of	Return and Motion to Dismiss	Filing		02/25/2015 -16:18	07/29/2015 -16:18	
Wilson, Alan McCrory	Letter/Requesting copies	Filing		02/17/2015 -10:40	07/29/2015 -10:40	
Bell, Herbert Lee	Motion to Amend PCR App	Filing		11/26/2014 -09:06	07/29/2015 -09:06	
Bell, Herbert Lee		Filing				

	<b>Post Conviction Relief</b>		<b>11/05/2014 -09:53</b>	<b>07/29/2015 -09:53</b>	
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ALAN WILSON  
ATTORNEY GENERAL

September 30, 2015

The Honorable Connie Reel-Shearin  
Florence County Clerk of Court  
180 N. Irby St., MSC-E, Rm. B11  
Florence, SC 29501

**Re: Vernell Harris, Respondent v. State of South Carolina, Petitioner**  
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Dear Ms. Reel-AShearin:

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2. Proof of service of notice of appeal on the Respondent.
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Sincerely,

J. Croom Hunter  
Assistant Attorney General

JCH/nb

Enclosures

CC: Matthew N. Tyler, Esquire  
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