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JAN - 6 2016

SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

January 6, 2016

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

Re: Christopher R. Bell, Respondent v. State of South Carolina, Petitioner
Civil Action No. 2014-CP-26-1206

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,

Jessica E. Kinard
Assistant Attorney General

JEK/nb

Enclosures

CC: Bobby G. Frederick, Esquire
South Carolina Department of Corrections
The Honorable Melanie Huggins-Ward, Horry County Clerk of Court
The Honorable Jimmy A. Richardson, Fifteenth Circuit Solicitor
Office of Appellate Defense
Ms. Trisha Allen, Victim Services

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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-26-1206

Christopher Ryan Bell, #357083,.....Respondent,

v.

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

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable G. Thomas Cooper, Jr.'s order dated September 18, 2015 and filed September 23, 2015 granting post-conviction relief to the Respondent. During a file audit, attorney for Petitioner first received notice of the order upon seeing it in the file on December 15, 2015 without an accompanying letter, email, Form 4 order, or date received by the office. The same day, she contacted opposing post-conviction relief counsel, Bobby G. Frederick, Esq. regarding his receipt of the order. Mr. Frederick stated that he had not received the order, nor was he aware of the fact that it had been signed and/or filed. Neither attorney ever received a hard copy of the order from the Horry County Clerk of Court, despite the copy in circulation bearing a stamp stating "copies mailed" and the Public Index stating that copies were mailed on September 23,

2015. Respondent was not successful in finding the date of receipt by her office – a prerequisite in filing a notice of appeal - until January 5, 2016, at which time an employee found an email dated December 5, 2015 and attaching the order. A Form 4 order is listed on the Public Index as being dated August 11, 2015, but this notes that the case was taken under advisement, as Judge Cooper ordered proposed orders to be submitted by the parties. No separate Form 4 order is indicated as having been filed as a certificate of service with the order granting relief. A copy of the order on appeal is attached to this notice.

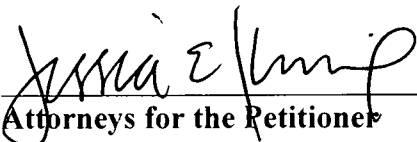
Because of the severe discrepancies in the possible dates of receipt and notice of this final order, Petitioner respectfully requests that this Honorable Court accept this notice of appeal and allow these proceedings.

Respectfully submitted,

ALAN WILSON
Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar # 77889

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

By: 
Attorneys for the Petitioner

Columbia, South Carolina

January 6, 2016

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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
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Christopher Ryan Bell, #357083,.....Respondent,

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

PROOF OF SERVICE

I, Jessica E. Kinard, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Bobby G. Frederick, Esq.
Frederick Law Offices
1053 London Street
Myrtle Beach, South Carolina 29577

I further certify that all parties required by Rule to be served have been served this 6th day of January, 2016.



JESSICA E. KINARD
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

copies mailed

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Christopher R. Bell, #357083)
)
v.)
)
State of South Carolina.)
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IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-26-1206

**ORDER GRANTING POST-
CONVICTION RELIEF**

HORRY COUNTY
2015 SEP 23 PM 1:13
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 28, 2014. Respondent filed its Return on or about June 2, 2014. The Court convened an evidentiary hearing into the matter on August 10, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by attorney Bobby G. Frederick. Joshua L. Thomas of the South Carolina Attorney General's Office represented Respondent.

Testifying at the hearing were: LeGrand Carroway (plea counsel), Nancy Livesay (Fifteenth Circuit assistant solicitor), and Christopher R. Bell. The Court also reviewed the application, the return, the Horry County Clerk of Court's records regarding Applicant's conviction, excerpts from the trial transcript, and had before it the exhibits introduced at the hearing.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to his conviction and sentence from Horry County. In March 2013, the Horry County Grand Jury indicted Applicant for first degree burglary (2013-GS-26-1332), criminal conspiracy (2013-GS-26-1330), and armed robbery (2013-GS-26-0329). W. LeGrand Carroway, Esquire,

GL

represented Applicant in this matter. Applicant was arraigned on July 26, 2013, in the absence of his attorney, and rejected a plea offer of armed robbery with a recommended ten year sentence. On September 13, 2013, Applicant entered a plea before the Honorable Larry B. Hyman and was sentenced to concurrent terms of fifteen years for first degree burglary, ten years for armed robbery, and five years for criminal conspiracy.

Applicant filed an Application for Post-Conviction Relief (PCR) on February 28, 2014, alleging ineffective assistance of counsel - specifically that he informed his attorney that he wished to accept the ten year plea offer in July of 2013, his attorney instructed him that the arraignment was "just a roll call," his attorney instructed Applicant to simply tell the prosecutor "not guilty," and that, following the July arraignment, his plea offer was withdrawn and he was ultimately sentenced to fifteen years instead of ten.

II. Summary of Testimony

Plea counsel (Carroway) testified at the PCR hearing that he was retained to represent Applicant prior to Applicant's July 26, 2013, arraignment, that he had sent a letter of representation and discovery motions to the assistant solicitor prior to the arraignment, and that he had spoken with the assistant solicitor on the phone prior to the arraignment. Carroway testified that he is not from Horry County and that he did not understand the process for an arraignment in Horry County. He testified that, in his home county and other counties in which he has practiced law, plea offers are never taken off the table until a case appears on the trial roster. Carroway testified that, prior to the arraignment, he advised Applicant that the hearing was simply a "roll call," that Carroway did not go to roll calls, and that Applicant should appear at the roll call and not speak to the assistant solicitor other than to say "not guilty" if pressed.

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Carroway further testified that Applicant called him on the date of the arraignment, from the courthouse, and that Carroway advised applicant to just say "not guilty."

Carroway testified that Applicant intended to plead guilty, and that Applicant would have pled guilty on July 26, 2013, but for Carroway's faulty advice. Carroway further testified that it was also his intent for Applicant to plead guilty, that the case was never going to be a trial, and that he had informed the assistant solicitor of the same. Carroway testified that, following the arraignment, he traveled to Horry County and met with the assistant solicitor in person, and that the assistant solicitor refused to reinstate Applicant's plea offer of ten years.

Carroway testified that he was present at Applicant's plea hearing and that he did not raise the issue at the plea hearing. He did not request that the original plea offer be reinstated and he did not object to proceeding on the new plea offer of fifteen years.

The assistant solicitor (Livesay) testified that, although she had spoken with Carroway on the telephone, she could not say with certainty whether it was before or after Applicant's arraignment. She produced a letter of representation sent by Carroway which was dated after the date of the arraignment, but did not produce the discovery motions or other documents filed by Applicant's attorney. She did not testify as to any personal knowledge regarding when Carroway undertook representation of Applicant or what Carroway's advice to Applicant was. She did confirm that Carroway was not present on the date of Applicant's arraignment and, if she was aware that Carroway represented Applicant, she made no attempt to contact him before proceeding with Applicant's arraignment.

Applicant testified that he retained Carroway prior to his July 26, 2013 arraignment, that Carroway advised him the arraignment was just a "roll call," and that he should just go to it and tell them "not guilty" if they pressed him. He testified that he called Carroway from the

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courthouse once he realized it was not a roll call, and that Carroway again advised him to just say "not guilty." Applicant testified that it was his wish to plead guilty to the ten year plea offer, and that he only pled not guilty based on his attorney's advice. He testified that, following the arraignment, the plea offer of ten years was withdrawn.

Applicant testified that he informed the Court during the July 26, 2013, arraignment that he had retained Carroway to represent him, that Carroway was not present, and that Carroway had told him to just plead not guilty. *See also* Transcript of Arraignment, p.4, lines 3-19. Applicant further testified that he requested ten days to make his decision and communicate with his attorney, which was rejected by the Court. *See also* Transcript of Arraignment, p.4, line 25 – p.5, lines 1-4.

Applicant further testified that attorney Tom Floyd from the Horry County Public Defender's Office stood with him at the July 26, 2013, arraignment. Applicant testified that Mr. Floyd did not represent him, because he had previously retained Carroway. Applicant further testified that he had never met with Mr. Floyd or discussed his case with Mr. Floyd. Mr. Floyd did not testify at the PCR hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly, and finds that there was ineffective assistance of counsel and resulting prejudice under Strickland v. Washington, 466 U.S. 668 (1984) and Hill v.

Lockhart, 474 U.S. 52 (1985). Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

As a preliminary matter, this Court finds that the uncontradicted testimony of Carroway and Bell establishes that Carroway's representation of Bell began at some point prior to the July 26, 2013, arraignment, that Carroway did not appear at the arraignment, and that Carroway's advice to Bell was to simply say "not guilty." The testimony further establishes that at the time Carroway provided this advice to Bell, Carroway was aware that Bell wished to plead guilty and accept the plea offer and that Carroway did not intend to try Bell's case.

It is well established that the Sixth Amendment right to counsel extends to plea bargaining – during plea negotiations defendants are entitled to effective assistance of competent counsel. Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012).

"[This] constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice." Cooper at 1385. Furthermore, it does not matter that sentencing does not concern the defendant's guilt or innocence – ineffective assistance of counsel at sentencing can result in Strickland prejudice, because any amount of additional jail time imposed has Sixth Amendment significance. Id. At 1386. Whether or not Bell is guilty, he is entitled to effective assistance during plea bargaining and sentencing.

Furthermore, Bell was prejudiced by his attorney's deficient performance, because he ultimately received a fifteen year sentence instead of the ten year sentence that he would have received if his attorney had appeared for Bell's arraignment. The question is "whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea

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bargain and that he would have benefited from the offer.” Davie v. State, 381 S.C. 601, 613 (2009).


A defendant must show actual prejudice, although it is not necessary in all cases to establish prejudice through objective evidence. Id. Bell’s own self-serving testimony that he wished to accept the plea offer and would have but for his attorney’s deficient performance is sufficient to establish prejudice. Id. However; in this case his testimony was additionally supported by objective evidence through the testimony of plea counsel, who testified that Bell wished to accept the plea offer and that he also wished to accept the plea offer and would have, but for his failure to appear at Bell’s arraignment and his professed confusion about the nature of the legal proceedings.

Having found ineffective assistance and resulting prejudice, the only question that remains is what the appropriate remedy is. Because the ineffective assistance and resulting prejudice to Bell were limited in this case to plea bargaining and sentencing, Bell is not entitled to a new trial, and this Court finds that it is appropriate to order specific performance of the original plea offer from the July 26, 2013 arraignment, which was to plead to armed robbery, with a recommendation of ten years and dismissal of the remaining charges that were pending in the Fifteen Circuit Solicitor’s Office on July 26, 2013.

IV. CONCLUSION

Based on the foregoing, the Court finds ineffective assistance and resulting prejudice in this case and orders that Applicant’s conviction and sentence are vacated, and he is entitled to a new sentencing hearing with specific performance of the original plea offer in his case.

IT IS SO ORDERED.



September 18, 2015.



The Honorable G. Thomas Cooper, Jr.
Presiding Judge



ALAN WILSON
ATTORNEY GENERAL

January 6, 2016

The Honorable Melanie Huggins-Ward
Horry County Clerk Of Court
Common Pleas Division (pcr)
PO Box 677
Conway, SC 29528-0677

Re: Christopher R. Bell, Respondent v. State of South Carolina, Petitioner
Civil Action No. 2014-CP-26-1206

Dear Ms. Huggins-Ward:

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

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Assistant Attorney General

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Enclosures

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