ALAN WILSON
ATTORNEY GENERAL

January 19, 2016

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

Re: Jason Sanford, # v. The State of South Carolina
Appellate Case No. 2015-000410

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari and Appendix** in the above-referenced case. By copy of this letter we are serving petitioner today.

Sincerely,

Patrick L. Schmeckpeper
Assistant Attorney General
S.C. Bar No. 102100

PLS/jcb
Enclosures

cc: Kathrine H. Hudgins, Esquire

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO ANDERSON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2015-000410

Jason Sanford, #340276, ... Petitioner,

v.

State of South Carolina, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General
S.C. Bar # 102100

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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ISSUE PRESENTED

1. Is there any evidence to support the PCR Court's finding that Petitioner's guilty plea was voluntary, where the plea colloquy was sufficiently comprehensive and cogent; and Petitioner did not need to be specifically advised of parole eligibility because it was a collateral consequence of his guilty plea?

STATEMENT OF THE CASE

Petitioner adopts Respondent's statement of the case.

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

There is ample evidence to support the PCR Court's finding that Petitioner's guilty plea was voluntary, where the plea colloquy was sufficiently comprehensive and cogent; and Petitioner did not need to be specifically advised of parole eligibility because it was a collateral consequence of his guilty plea.

Petitioner contends the PCR Court should have found the guilty plea involuntary because both plea counsel and plea judge did not advise Petitioner that the mandatory minimum sentence of thirty years would have to be served day-to-day. Petitioner attempts to link this lack of advisement to ineffective assistance of counsel in the context of a guilty plea and argues that plea counsel's failure to discuss parole *ineligibility* was the equivalent to providing erroneous parole information. Respondent submits that the issues raised by Petitioner are meritless and thus the decision by the PCR Court should not be disturbed.

A. Petitioner's lack of knowledge over the day-to-day nature of his sentence does not change the voluntary and knowledgeable nature of his plea.

The PCR Court was correct to dismiss Petitioner's argument regarding lack of awareness of "day-to-day" nature of his sentence, and Respondent submits the record fully supports the knowing and voluntary nature of Petitioner's plea. "To find a guilty plea is voluntary and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Boykin v. Alabama, 395 U.S. 238, 242 (1969). "[A] defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418 (2000) (citing Boykin, 395 U.S. at 243). Furthermore, "a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623 (1999).

Each of the above listed requirements was satisfied in Petitioner's guilty plea and affirmed at the evidentiary PCR hearing. It is possible to satisfy all the requirements laid out in Boykin and Pittman simply by looking at the plea colloquy. "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." Id. at 600. Additionally, "statements made during a guilty plea should be considered conclusive..." Crawford v. United States, 519 F.2d 347 (4th Cir. 1975). Petitioner unequivocally responded in the affirmative when directly asked by the PCR judge if he was waving his right to a jury trial, right to remain silent, right to put up a defense, and right to confront any of his accusers' testimony. (App. p. 8 lines 13-25; App. p. 9 lines 1-5). Thus the record clearly established that Petitioner knew the constitutional rights he was waiving. Additionally, not only did Petitioner clearly state that he knew he was pleading guilty to murder, (App. p. 11 line 11), but he even tried to explain to the PCR judge why he committed murder when the judge asked him why he would "take the life of somebody else." (App. p. 4 line 4). Finally, the plea judge clearly stated that the minimum sentence was thirty years and the maximum sentence was life. (App. p. 9 lines 9-10). Petitioner affirmed multiple times he knew the minimum sentence was thirty years and the maximum sentence was life at his PCR evidentiary hearing on December 01, 2014. (App. p. 58.)

No case law cited by Petitioner or Respondent requires that an individual must be informed of the collateral consequences of his sentence. The specific requirements to a valid and voluntary plea are clearly laid out and Petitioner's plea colloquy and testimony during the evidentiary PCR hearing satisfied all of the above requirements. Plea counsel did not literally have to confirm that Petitioner knew what a specific term of years of imprisonment might mean.

Such specificity goes far beyond the requirements laid out in Boykin, Pittman and Roddy.

B. Neither plea counsel nor plea judge is under any obligation to inform Petitioner of parole eligibility.

The PCR Court correctly denied and dismissed Petitioner's allegation that counsel's was ineffective for failing to advise him on parole eligibility. Respondent submits that Petitioner's distinction between failure to advise on parole eligibility and parole *ineligibility* to be groundless and semantical, and that parole ineligibility is a collateral consequence.

It is a settled matter of law that counsel in not obligated to advise a defendant on parole eligibility. Much of the case law that Petitioner cites supports Respondent's argument. "This court has repeatedly acknowledged that normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea." Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (citing Griffen v. Martin, 278 S.C. 620, 300, S.E.2d 482 (1983). The South Carolina Supreme Court specifically touched upon "ineffective assistance of counsel" language in Knox v. State when it said that "[c]ounsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing." 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000) (citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). An applicant for post-conviction relief must show that he relied on improper or incorrect advice concerning parole eligibility to be entitled for relief. Griffen, 278 S.C at 621. Even if a judge gave erroneous parole advise that could mislead a defendant, a guilty plea cannot be automatically reversed "without something more." Hunter v. State, 316 S.C. 105, 109, 447 S.E.2d 203, 205 (1994).

Petitioner attempts to make the argument that the failure to advise in regard to parole *eligibility* is distinct from failure to advise in regard to parole *ineligibility*, and thus expose plea counsel to ineffective assistance of counsel claims. This argument is without merit, as the law of

this state makes no such distinction.[1] Moreover, both of the cases Petitioner cites to support his distinction between parole eligibility and parole ineligibility involve instances where counsel actively misinformed defendants about parole eligibility. See Hinson v. State, 297 S.C 456, 377 S.E.2d 338 (1989)(Counsel said ten-year parole eligibility applied to "common law" murder.); Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (Counsel incorrectly advised defendant on prison time he was facing.). These cases are clearly distinguishable from the present case. Here, Petitioner's plea counsel at the PCR evidentiary hearing specifically said that he "[didn't] give advice on parole eligibility," (App. p. 90 line 13), and the Plea judge never brought up parole eligibility during the plea. Because no misinformation concerning parole eligibility (or parole ineligibility) was given to Applicant throughout his criminal proceedings, this petition should be dismissed.

Petitioner, citing Padilla v. Kentucky,[2] further argues that the Supreme Court of the United Sates has not made the distinction between direct and collateral consequences in defining the scope of "reasonable professional assistance;"[3] and therefore, that this Court also should refuse to make such a distinction. Such an argument, however, is adequately addressed by this state's precedent, under which attorneys have no Sixth Amendment duty to advise clients of collateral consequences of their convictions or guilty pleas. See Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). Further, the Supreme Court of South Carolina has pointed out that the United States Supreme Court

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[1] The term "parole ineligibility" has, however, been specifically addressed in an unpublished opinion by the South Carolina Court of Appeals. In State v. Salters a defendant who was convicted of murder argued he was not fully informed of the consequences of his guilty plea because the plea judge did not inform him of his *parole ineligibility.* State v. Salters, 2008 WL 9837301 (S.C. Ct. App. 2008). The Court affirmed the plea sentence, and gave no credence to the "ineligibility" distinction.

[2] Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010).

[3] Under the Strickland Test, first, the defendant must prove that plea counsel's performance was deficient using a "reasonableness under prevailing professional norms" standard. Second, plea counsel's deficient performance must have prejudiced the defendant to such a degree that the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

emphasized, on multiple occasions, that Padilla's underlying rational was "that deportation is unique and such a detrimental and drastic consequence it should be treated differently than any other consequence," and "does not broadly apply to other potential consequences of a guilty plea." Hamm v. State, 403 S.C. 461, 465 n. 3, 744 S.E.2d 503, 505 n. 3 (2013). Because plea counsel did not, according to South Carolina law, violate professional norms in regards to parole advisement, plea counsel's performance was not deficient under Strickland v. Washington. 466 U.S. 668, 688 (1984). Furthermore, Petitioner demonstrated in both the plea colloquy and at the PCR hearing that he was aware of the nature and consequences of his plea. Petitioner's plea was voluntary.

Therefore, this petition for writ of certiorari should be dismissed.

CONCLUSION

For the reasons stated above, this Court should affirm the PCR court's ruling and deny the requested petition for writ of certiorari.

Respectfully submitted,
ALAN WILSON
Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General
S.C. Bar # 102100

Post Office Box 11549
Columbia, S.C. 29211
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By: _____
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APPEAL FROM ANDERSON COUNTY
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Jason Sanford, #340276,.....Petitioner,

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State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

Katherin H. Hudgins, Esquire
S.C. Commission of Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

This 19th day of January, 2016.

JENNA C. BROWN
LEGAL ASSISTANT