

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Berkeley County
Roger E. Henderson, Circuit Court Judge

DERRICK J. MILES

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001997

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to request time served credit for petitioner during his time spent on house arrest before he pled guilty in the case.

STATEMENT

Petitioner Derrick J. Miles pled guilty to second degree burglary during the July 2013 term of the Berkeley County General Sessions Court before Judge Stephanie P. McDonald and was sentenced to a negotiated fifteen-year prison term. App. 1-12. Petitioner was represented by William Runyon at the plea proceeding, and Assistant Solicitor Colleen Dixon appeared on behalf of the state. No direct appeal was filed in the case.

On December 23, 2013, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 14-19. An amended PCR application was filed on June 19, 2015. App. 26. The respondent filed a return dated March 31, 2015, requesting that a hearing be held in the case. App. 21-24

A PCR hearing was convened on July 21, 2015, at the Charleston County Courthouse before Judge Roger E. Henderson. App. 28 – 68. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state.

On August 28, 2015, Judge Henderson issued an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel in the case. App. 71-79.

Petitioner appealed Judge Henderson's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to request time served credit for petitioner during his time spent on house arrest before he pled guilty in the case.

Petitioner was arrested and jailed for first degree burglary on October 25, 2011, but had been released on bail per an Order Setting Bond on June 29, 2012. App. 80; App. 82. On July 25, 2013, petitioner pled guilty to second degree burglary.

During the plea proceeding, the trial judge gave petitioner time served credit for the months that he spent in jail from October 25, 2011, to his release on bond on June 29, 2012. The judge's sentence follows:

Judge: Has he served any time on this?

Counsel: He was in Berkeley County jail for a year (365 days)...**prior** to being released on bond. App. 4, lines 10 – 18

Judge: The negotiated term is 15 years. I will give credit for the 365 days served. App. 12, lines 21 – 22.

However, at no point during the plea proceeding did trial counsel request time served for the **second** 365 days that followed jail time when petitioner was on house arrest (while out on bond) from June 2012 through July 2013. Petitioner pled guilty on July 25, 2013.

During the PCR hearing, petitioner testified that he did not receive his full time served credit, i.e., "one year in the county jail [**plus**] three hundred seventy-eight days under house arrest with GPS monitoring." App. 32, lines 15-22. In other words, petitioner received credit for time served while jailed, but failed to receive time served credit while out on bond during house arrest.

Petitioner's testimony explaining the same follows:

A. Yes, sir, I was expecting – I had 365 days that I did get credit for when I was in the Berkeley County Detention Center; but under the new law that was passed 45 days before I pled it allows, under 24-13-40 I believe, it allows for me to get the credit for the home

detention on GPS. I was only allowed to work and home. I couldn't even stop at a gas station and gas my company truck up. So I was supposed to get the credit for that time served too under that law.

Q. What discussion did you have with [trial counsel] about that?

A. No, all [trial counsel] said is I would get credit for all time served.

Q. So you thought that that meant the 365 plus the time on ankle monitor?

A. Yes, sir. App. 45, lines 1-17.

Trial counsel testified at the PCR hearing and admitted that he failed to request time served credit for petitioner from 2012-2013 during which time petitioner was on house arrest under the ankle monitor while out on bond, and agreed that "[he] probably should have called that to the court's attention." App. p.57, l. 18 – p. 58, l. 7.

The PCR judge ruled that petitioner failed to meet his burden of proof that counsel promised him credit for time served on house arrest or that he misguided him concerning the possible credit. App. 77.

S.C. Code Ann § 24-13-40 reads as follows:

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. *Provided, however*, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall no receive credit for time served prior to trial in reduction of his sentence for the second offense.

In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), the Court held that time served credit under § 24-13-40 could only be given to inmates serving time in a penal institution and not on home detention. However, on June 7, 2013, S.C. Code Ann. § 24-13-40, was amended to read as follows:

The computation of the time served...must be calculated from the date of the imposition of the sentence.....[and] full credit against the sentence must be given for time served prior to trial and sentencing and may be given for any time spent under monitored house arrest.

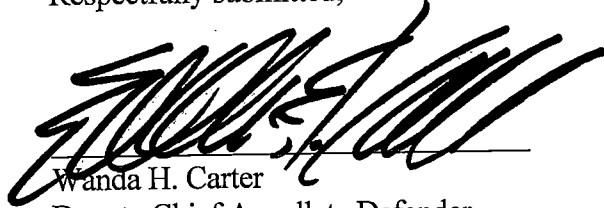
Consequently, S.C. Code Ann. § 24-13-40 as amended meant that Higgins was no longer controlling on the issue of whether to bestow time served credit while on home detention. Therefore, counsel erred in failing to request credit for time served for petitioner while he was on house arrest, which would have shaved an additional year off his sentence since he had already received a year's worth of credit for time served while in jail. The amendment went to effect on June 7, 2013, and petitioner pled guilty and was sentenced on July 25, 2013. Therefore, the amendment allowing house arrest time served was applicable in his case.

In the case at bar, counsel's error in failing to request that petitioner receive house arrest time served credit while he was out on bond constituted deficient legal representation of petitioner during his guilty plea proceeding in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as a result because due to counsel's error, petitioner's prison time has been extended beyond the time required of him to serve.

CONCLUSION

Based on the foregoing argument, counsel requests that this Court grant the petition and allow full briefing on the above-raised issue.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Roger E. Henderson, Circuit Court Judge

DERRICK J. MILES

PETITIONER,

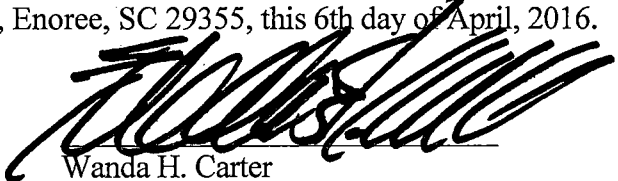
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Derrick J. Miles #307815, at Tyger River Correctional Institution, 200 Prison Road, Enoree, SC 29355, this 6th day of April, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of April, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.