Erick Wannamaker

V

State Of South Carolina

RE. Pro Se
Johnson Brief
response

Attention Clerk of Court. Will you please file this brief and forward to the proper persons for review. Thanks.

Erick Wannamaker # 321756
4848 Goldmine Hwy
Kershaw SC 29067

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APR 14 2016
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Honorable Maite Murphy, Circuit Court Judge

ERICK WANNAMAKER
PRO SE PETITIONER

V

STATE OF SOUTH CAROLINA
RESPONDENT

APPELLATE CASE NO. 2015-001772

PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI

PRO SE. ERICK WANNAMAKER # 321756

RECEIVED
APR 14 2016
S.C. SUPREME COURT

ISSUE PRESENTED

STATEMENT (PRO SE STATEMENT)

ARGUMENT (PRO SE ARGUMENT)

CONCLUSION

ARGUMENTS

1) The P.C.R court erred in failing to find plea counsels ineffective for not insuring that Petitioner Wannamaker's guilty plea was entered freely, voluntarily, and knowingly because he thought he had to serve only 65% of the sentence with good time and work credits.

2) The P.C.R court erred in failing to find plea counsels ineffective for not providing Petitioner Wannamaker with the correct information inreference to his right to appeal instead only informed petitioner that he is allowed to file a P.C.R under Ineffective Assistant of Counsel

3) The P.C.R court erred in failing to find plea counsels ineffective for not objecting when solicitor reneged on negotiated plea of zero to ten, instead solicitor reneged by asking the Judge to "concider that cap" the cap being 10 years.

4) The P.C.R court erred in failing to allow Petitioner's second attorney Peggy Hinds to testify and give her testimony of her recollection of Petitioner Wannamaker plea offer, promises and allegations. Counsel Hinds was subpenaed by the court to be present and was present during the P.C.R hearing. If Attorney Hinds had testified, P.C.R Judge Murphy decision would have been different.

Reference Cases.

Strickland v Washington, 466 U.S. 668, 104 S. Ct 2052 (1984)

Butler v State, 286 S.C. 441, 334 S.E.2d 813 (1985)

Cherry v State, 300 S.C. 117-118, 386 S.E.2d 624 (1989)

Ard v Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)

Johnson v State, 325 S.C. 182, 480 S.E.2d 733 (1997)

Smith v State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006)

Hill v Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985)

Boykin v Alabama, 395 U.S. 238, 89 S. Ct 1709 (1969)

State v Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982)

State v. Armstrong, 263 S.C. 594, 211 S.E.2d, 889 (1975)
Craddock v State 327 S.C. 303, 491 S.E.2d 251 (1997)
Brown v State 412 S.E.2d 399 (S.C. 1991)
Santobello v NY. 404. US. 257 (1971)
Jordan v State, 297 S.C. 52, 374 S.E 2d 683 (1988)
Turner v State cite as 517 S.E.2d 442 (SC. 1999)
Wolfe v State 326. S.C 158, 485, S.E 2d 367 (1997)
Satterwhite v State, 325 S.C 254, 481 S.E.2d 709 (1997)
Smith v State 2010-164866, 386 S.C 562, 689 S.E 2d 629
Smith v State 407. SC 270, 754 S.E 2d 900. SC. App. 2014
Thompson v State 340 S.C. 112, 115, 531 SE.2d 294, 296 (2000)
Criminal Law Key 273 1 (1) 641. 13 (5)
Criminal Law Key 641. 13 (5)

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, 104 S. Ct. 2052 (1984); Butler v State, 286 S.C. 441, 334 S.E 2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v Washington, supra.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v State, 300 S.C. 117-118, 386 S.E.2d 624 (1989). A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. And v Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); Johnson v.

State, 325 S.C. 182, 480 S.E.2d 733 (1997). The applicant must show that there is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Smith v State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006); Hill v Lockhart, 474 US. 52, 106 S.Ct. 366 (1985)

Support

In Craddock v State, 327 S.C. 303, 491 S.E.2d 251 (1997) the Supreme Court ruled that where a defendant pleads guilty in exchange for trial counsel's promise of a certain sentence, and does not receive that sentence, his guilty plea is invalid.

(2) Criminal Law Key 641. 13 (5) Advising defendant to plead guilty and accept 15 yrs sentence was IAC thus rendering guilty plea involuntary, where attorney mistakenly believed that the defendant would serve 14 years sentence for revocation of probation even though attorney would have recommended guilty plea had attorney correctly understood effect of plea, defendant would not have pleaded guilty if he had know that he was subjecting himself to an additional eight years in prison. U.S.C.A Const. Amend 6. Turner v State cite as 517 S.E 2d 442 (SC 1999)

(3) Criminal Law Key 641 13 (5) A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Wolfe v State 326 S.C 158, 485, SE 2d. 367 (1997)

(4) Criminal Law Key 641 13 (5) Defendant claiming IAC by recommending guilty plea on the basis of counsel would have benefited defendant or how there was a reasonable probability that the result would have been better; the defendant would have pled guilty had trial counsel accurately informed him of the situation. Tuner v State cite as 517 S.E 2d 442 (SC 1999)

Petitioner Wannamaker plea counsels was ineffective for not insuring that petitioner understood clearly that his ten year cap sentence offer was on 85% sentence instead of a 65% sentence.

It is reasonable for petitioner to assume that his ABHAN conviction would be a 65% sentence because of his previous ABHAN conviction in 2007 which was a 65% sentence.

Appendix (App) Pg. 47 (24-25) and
Petitioner Wannamaker (24). But so I was asking about, you Know, the law being (25) changed being 85 to 65 and 65 to 51 and we talked about it.

App. Pg 48. (1-3)
Petitioner Wannamaker (1) They said I have to check on it. I have to check on it. So (2) when I was incarcerated on my last incarceration for ABHAN, (3) it was nonviolent.

App. Pg 48 (4-11)
Petitioner Wannamaker (4) So, you Know, I've been reading the law books and going (5) to the law library recently, so, you Know what I'm saying? I (6) Kind of Know the difference in the law changing in 2010 and (7) the law before that now, but I didn't Know that then, but I (8) was under the assumption that it was a nonviolent offense.

(9) So I asked them, you Know, "Am I gonna be non-violent? (10) Am I gonna be nonviolent and did the law change?"

(11) They said they was gonna check on it.

App Pg 50 (23-25) - Pg 51 - (1-2)
P.C.R Attorney Waller, Question (23) So you testified that you asked both Mr Mellard and (24) Ms. Hinds about the

charge being 85 or 65 percent. Did you (25) ever get an answer to that?

App. Pg 51 (1-2)
Petitioner Wannamaker's Answer. (1) No. They just said they was gonna look into it. They (2) was gonna look into it.

Petitioner Wannamaker on many occassions asked his attorneys about the law being changed and at what percentage 85 or 65 would he be serving if he was sent to the Department Of Corrections., Petitioner never got an answer and if petitioner's attorneys fail to provide the correct information about his plea and his expected year of release than Petitioner Wannamaker plea was not Knowingly and voluntarily. If Petitioner Wannamaker would have Know before he excepted his plea instead of assuming that his sentence would have be a 65% sentence with good time and work credits, that his sentence required him to do 85% of the sentence opposed by the judge, petitioner would have not plead guilty and insisted on going to trial.

Proof that Petitioner Wannamaker request a trial and requested to plea in self defense, State of South Carolina Department of Mental Health court order from Honorable Edgar Dickson a competency to stand trial evaluation. Conducted 2/29/12.

Above shows both counselors ineffective in claim of Involuntary and Unintelligent Guilty Plea and that there is a reasonable probability that but for counselor's errors, than petitioner Wannamaker would not have plead guilty

and would insisted on going to trial. Roscoe v State 345 S.C. 16, 20, 546 SE.2d 417, 419 (2001) (citations omitted)

An applicant alleging his guilty plea was induced by ineffective assistant of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases" Hill v Lockhart 474 US. 52, 56, 106 S.Ct 366, 369 (1985)

To find a guilty plea is voluntarily 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, 89 S.Ct 1709, 23 L.Ed.2d 274 (1969)

Responding to Honorable Maite Murphy Order of Dismissal In App. Pg 70-71 (page 3 of 9 of Order of Dismissal) Last paragraph reads as followed

Counsel (R. Douglas Mellard) testified Applicant did receive credit for the time he served pretrial and actually received credit for 661 days' service which is reflected on the sentencing sheet. Counsel Mellard testified the law regarding ABHAN in 2010 and described those changes. He also (continue to pg 71) testified he wrote a letter explaining to Applicant that he would be required to serve 85% of his sentence since ABHAN is now classified as a violent crime.

With all due respect, Honorable Maite Murphy misconstrewed Counsel Mellard's testimony and she also rewrote counsel Mellard's testimony to her own words because

Counsel Mellard did not ~~[illegible]~~ said he wrote a letter explaining to Applicant that he would be required to serve 85% of his sentence since ABHAN is now classified as a violent crime.

Appendix. Direct Examination by Mr. Mitchell to Counsel D. Mellard at P.C.R Hearing

App. Pg 62 (8-15)
Question by Mitchell (8) On the 85/65 percent, what did you advise Mr. Wannamaker (9) of the time that he would serve, or did you even advise him ~~[illegible]~~ (10) of that?

Answer by Counsel Mellard (11) If we advised him of anything, we advised him that it (12) would be 85 percent. I had sent him letters letting him Know (13) that the charges he was looking at, attempted murder, was 85 (14) percent. But we did -- we did try to work out where he would (15) get some credit for time served, try to help him out on that.

What Counsel Mellard said above is not what Judge Murphy documented him testifing in his testimony and that mistake may have ~~[illegible]~~ encouraged he verdit to counsel testimony being credible and persuasive on all matter. ~~[illegible]~~ Petitioner's Wannamaker P.C.R appeal should be over-turned and in the favor of petitioner due to Judge Murphy's inadiquate mistake or forgery of documents or even altering counsel's testimony to not rule in petitioner's favor. This exposer proves prejudice.

Documentation to help support that Judge Murphy

verdict was not fair and exact in her decision to deny Petitioner's P.C.R.

App. Pg 73 (order of dismissal page 6 of 9)

Violent / Non-Violent Offenses

Applicant alleges he was improperly advised that he would serve 65% rather than 85% of his sentence. This Court finds Applicant's testimony not credible and in turn finds Counsel Mellard's testimony credible and persuasive on the matter. Counsel Mellard testified he advised Applicant he must serve 85% of his sentence because ABHAN is classified as a violent offense. See S.C. Code Ann § 16-1-60 (2012). Applicant has failed to show that Counsel was deficient in any regard

Applicant also has failed to meet his burden of proof in showing he would have gone to trial but for Counsel's alleged misadvise. This allegation is denied and dismissed with prejudice.

Responce to above (Judge Murphy decision to deny and dismissial with prejudice)

App. Pg 62 (8-15) proves that what Judge Murphy verdict to Counsel's testimony is not the same, therefore her ~~ruling~~ ruleing on this matter is also incomplete and ~~incorrect~~ not correct and fall under improfessionalizim of the P.C.R Judge.

Proof of petitioner seriousness to go to trial is Mental Health court order evaluation, and Counsel Hinds testimony would have support my allegation if allowed to testified at P.C.R hearing.

Proof that Counsel Mellard did not informed petitioner Wanamaker of his inquiring question concerning him doing 65% of the sentence opposed by the Judge in the Department of Corrections with work credits and good time earned credits. Neither did counsel explained to petitioner that the ABHAN petitioner was to plea to was at 85%

App. Pg 64 (13-16)

P.C.R Attorney J. Waller Question (13) Do you have anything in your file or do you recall (14) discussing with him the differences between the new ABHAN (15) versus the old ABHAN?

Counsel Mellard's Answer - (16) No, hm-mm

In the above statement P.C.R Counsel asked Trial/Plea Counsel do he recall discussing with petitioner the difference between the new ABHAN versus the old ABHAN? Counsel replied No... Counsel admits to not informing petitioner of the difference with makes petitioner assume that he would be 65% since his last and previous incarceration was for ABHAN and it was 65% than, petitioner throught he would still be 65%.

This statement conflicts with P.C.R Judge Murphy's opinion that counsel Mellard testimoney credible on all matters when in above statment he admits to not discussing with petitioner the difference between the new ABHAN versus the old ABHAN. P.C.R Judge erred in not noticing Counsel's statement when making her decision to dismiss petitioner's P.C.R.

That statement also proves that counsel didn't explained to petitioner the correct information and with-held inquiring

information from petitioner and due to his ineffectiveness petitioner Wannamaker did not intelligently and or voluntarily excepted his plea and if petitioner had Knew that his sentence was to serve at 85% petitioner would have than had to make that decision to either except that plea or insisted on taking the case to trial, and petitioner Wannamaker would have taken the case to trial, in all the information provided above proves that counsel fell below professional norms. Strickland v Washington 466 US. at 694, 104 S.Ct @ 2068 Cherry v State, 300 SC. 117-118, 386 - S.E 2d 624 (1989

In Craddock v State 327 S.C 303, 491 S.E.2d 251 (1997) the Supreme Court ruled that where a defendant pleads guilty in exchange for trial counsel's promise of a certain sentence and does not recieve that sentence his guilty plea is invalid..

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury Boykin v Alabama, 395 US. 238, 89 S.Ct 1709 (1969)

The record must show with certain certainty that the plea is "an intentional relinquishment or abandonment of a Known right of privilege" State v Patterson, 278 SC. 3.19 295 S.E 2d 264 (1982)

Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional right and a realistic picture of all sentencing possibilities. State v Armstrong, 263 SC. 594, 211, SE 2d 889 (1975)

(Part E. Guilty pleas issues)

a) Guilty plea must be an informed and intelligent decision of the defendant. Boykin v Alabama, 395 US. 238 (1969)

b) Notice of element: Defendant must receive an adequate notice, whether from the court or counsel, of at least the critical elements of offense to which he is pleading guilty.

(plea vacated where misadvised by counsel on mandatory parole terms for murder which motivated the entry of the plea:) Hill v Lockhart, 474 U.S. 52 (1984)

(Parole eligibility)

c) The court's advice concerning parole eligibility should be accurate In Brown v State 412 S.E 2d 399 (SC 1991) the defendant was entitled to a new trial where during the plea the trial judge erroneously advised the defendant he would be eligible for parole after 1/3 when in fact he was ineligible under the Omnibus Act as a second violent offense.

(6. Plea bargaining)

b) Plea bargain must be Kept.
Validity of plea is vitiated if prosecutor's promise are not carried out. Santobello v. NY, 404 US. 257 (1971). Jordan v. State, 297 S.C. 52, 374 S.E 2d 683 (1988)

(2) Criminal Law Key 641. 13 (5)
Advising defendant to plead guilty and accept 15 yrs sentence was IAC thus rendering guilty plea involuntary, where attorney mistakenly believed that the defendant would serve 14 yrs sentence for revocation of probation even though attorney

would have recommended guilty plea, had attorney correctly understood effect of plea, defendant would not have pleaded guilty if he had know that he was subjecting himself to an additional eight years in prison. U.S.C.A Const. Amend 6 Turner v State cite as 517 S.E 2d 442 (SC 1999)

(3) Criminal Law Key 641 13 (5)
A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was Ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would have not pled guilty.

(4) Criminal Law Key 641 13 (5)
Defendant claiming IAC by recommending guilty plea on the basic of inaccurate information was not required to show why further action by trial counsel would have benefited defendant or how there was a reasonable probability that the result would have been better; the defendant would have pled guilty had trial counsel accurately informed him of the situation. Turner v State cite as 517 S.E.2d 442 (SC 1999)
(Petitioner contends the P.C.R judge erred in denying him P.C.R. We agree.
[2-4] A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty - Wolfe v State. 326. S.C 158, 485 SE 2d. 367 (1997) Satterwhite v State, 325 S.C. 254, 481 S.E. 2d. 709 (1997)

ISSUE PRESENTED

1) Did the P.C.R court err in failing to find plea counsel ineffective for not insuring that Petitioner Wannamaker's guilty plea was entered freely, voluntarily, and Knowingly because he thought he had to serve only 65% of his sentence with good time and work credits.

2) Did the P.C.R court erred in failing to find plea counsel ineffective for not providing Petitioner Wannamaker with the correct information ineference to his right to appeal, instead only informing petitioner that he was allowed to file a P.C.R application under Ineffective Assistant of Counsel.

3) Did the P.C.R court erred in failing to find plea counsel ineffective for not objecting when solicitor reneged on negotiated plea of zero to ten, instead the solicitor reneged by asking the Judge to "concider that cap", after plea counsel had already informed Petitioner Wannamaker that neither parties are allowed to make any reccomendations, and that the decision is soley up to the Judge.

4) Did the P.C.R court erred in failing to allow Petitioner Wannamaker's second attorney Peggy Hinds to testify to her recollection of Petitioner Wannamaker plea offer, promises and allegations, after counselor Hinds was subpenaed to be present during Petitioner Wannamaker P.C.R hearing.

On August 7, 2012 Petitioner Erick Wannamaker appeared before Honorable Edgar Dickson in Orangeburg South Carolina. Petitioner Wannamaker agree to plea to a lesser included offense of 2 counts of ABHAN (ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE). The orginal charges were 2 counts of Attempted Murder dated January 2011 and April 2011, and an ABWIK (ASSAULT AND BATTERY WITH INTENT TO KILL) date from November 2006.

Petitioner Wannamaker was represented by Attorney Peggy Hinds and Attorney Douglas Mellard. Solicitor Thomas Scott represented the State.

Petitioner Wannamaker was held in the Orangeburg County Detention Center for 14 months without bond. Petitioner Wannamaker insisted on going to trial on all charges against Petitioner due to being in self-defense.

Petitioner Wannamaker was court ordered an evaluation at the South Carolina Department of Mental Health for a competency to stand trial evaluation, (Date of Evaluation 2/29/12). After Petitioner Wannamaker evaluation being competence to stand trial a trial date was set for the August 2012 General Session Court Term.

In the month of July 2012, Petitioner Wannamaker's Attornies Peggy Hinds and Douglas Mellard brought forth a plea offer of 10 year sentence. Petitioner Wannamaker declined the offer but agreed to stay open minded to an offer. In the same month July 2012 Attorney Hinds and Attorney Mellard brought forth another plea of a cap of 10, and explained to Petitioner Wannamaker that the offer is from zero to ten years. The Judge can not give Petitioner more than 10 years, Attorney Hinds explained that the Judge can send you home, he can give you 5 years or 10 years, its up to the Judge. Attorney Hinds and Attorney Mellard informed Petitioner

Wannamaker that no one is allowed to make any reccomendations. The decision will be at the discretion of the Judge and Petitioner may have his family come to court, for support and speak on petitioners behalf to convince the Judge for lesser sentence.

Petitioner Wannamaker, Attorney Hinds and Attorney Mellard discussed the new offer, it stipulations, promises, agreements and caculated time. Petitioner Wannamaker asked Attorney Hinds and Mellard about the law changing and is he to serve 65% of his sentence with good time and work credits. Attorney Mellard told Petitioner Wannamaker that he would look into it and get back with Petitioner.

On August 7, 2012 Petitioner Wannamaker asked Attorney Mellard did he found out about his sentence being 65% with good time and work credits. Attorney Mellard said "he didn't Know and he would find out". Attorney Mellard never answered Petitioner Wannamaker's question about having to serve 65% of his sentence. Attorney Mellard did informed Petitioner that all the time caculated from the pending 2006 ABWIK pending charges, the Judge would allow credit for all the time but agreed to give Petitioner 180 days of that time, and that it would be added to the county time to the current charges which adds up to a total of 601 days.

Petitioner Wannamaker agreed to go forward with the plea but still haven't gotten a answer from Attorney Mellard about having to serve 65% of his sentence with good time and work credits.

During the guilty plea Solicitor Thomas Scott reported discription of the incidents on January 8, 2011 and April 23, 2011. During this proceeding, solicitor Scott reneged on negotiated plea agreement by asking the sentencing Judge "to concider that cap" (Page 11 Line 25 - Page 12 Line 1-2 ...) after Attorney Hinds and Mellard informed Petitioner Wannamaker that no party will make any reccomendation.

Attorney Hinds neither Attorney Mellard withdrew Petitioner's guilty plea once solicitor Scott in so many words asked for the max to the cap which was a 10 year cap.

After plea was excepted by Judge Dickson and both parties and petitioner's family spoked, Judge Dickson delibrorated and reintered the court room and sentenced Petitioner Wannamaker to nine years in the Department of Corrections.

After sentencing Petitioner Wannamaker spoked to Attorney Hinds about not being satisfied with the decision. Attorney Hinds informed Petitioner Wannamaker that he can file a P.C.R application under Ineffective Assistance of Counsel. Petitioner Wannamaker was not informed that he had the right to appeal the judges decision.

After being processed in the Department of Corrections, Petitioner Wannamaker contacted his case worker to verify his max out date, It was brought than to Petitioner's attention that he was to serve 85% of his sentence and that he do not qualify for work credit and good time, Because Petitioner Wannamaker didn't agreed to plea to a 85% sentence without work credit and good time.

On June 4, 2013 Petitioner Wannamaker filed a P.C.R application. Petitioner was appointed Jonathan Waller. Assistant Attorney General J. Clayton Mitchell repersented the State.

After a few continuances at P.C.R for verious reasons, one of which was to subpena Attorney Peggy Hinds whom also repersented Petitioner Wannamaker along with Attorney Doughds Mellard at sentencing whom Petitioner admits to being a major influence in petitioner excepting the plea offer. (Page 39 line 5-6)

On May 19, 2015 Honorable Maite Murphy heard the P.C.R case in St. George South Carolina. Petitioner Wannamaker testified to his P.C.R allegetions, recollection of his negotiated plea offer and promises. Attorney Mellard testified to his version of the offer and to what he remembered. Attorney

Peggy Hinds was present during Petitioner's P.C.R hearing on May 19 2015 but did not testified to her recollection of Petitioner Wannamaker guilty plea and negotiated plea offer stipulation and promises, after she was subpenaed to attend the hearing.

On June 14, 2015 Judge Murphy denied Petitioner Wannamaker's P.C.R application with prejudice. Judge Murphy ruled that Petitioner's testimony not credible, and found plea counsel's (Attorney Mellard's) testimony to be "credible and persuasive on all matters". Also Judge Murphy said that Petitioner Wannamaker did not meet his burden of proof in his plea being involuntarily and unknowingly.

Judge Murphy made these decision with only the testimony of one of Petitioner Wannamaker's attorney. Petitioner Wannamaker had two attornies and both Attorney Peggy Hinds and Douglas Mellard was present and both attornies should have testified during Petitioner's P.C.R hearing, and if Judge Murphy or Attorney Waller or Assistant Attorney General Mitchell subpenaed Attorney Hinds or requested Attorney Hinds be present during this P.C.R hearing to testify than Attorney should have testified and gave her testimony to her recollection of Petitioner's plea offer and the allegation that petitioner Wannamaker had against her of only informing petitioner that he may file a motion for Ineffective Assistant of Counsel and not informing Petitioner that he had the right to appeal the judges decision.

If Attorney Peggy Hinds had testified and gave her testimony, maybe her testimony would have supported my allegations and the outcome of Judge Murphy's verdit and decision would have been defferent.

On March 1, 2016 I received a letter for a Johnson petition and was informed that I could write a Pro Se Johnson responce because my attorney have not found

an issue to raise other than what was already raised at P.C.R. Please except this as my Pro Se Johnson responce / brief. by Erick Wannamaker.

Second argument that P.C.R. court erred in failing to find plea counsel ineffective for not providing Petitioner Wannamaker with the correct information inreference to his right to appeal instead only informed petitioner that he is allowed to file a P.C.R application under Ineffective Assistent of Counsel.

The above allegation was documented in petitioner's P.C.R. application (App Pg 26 9. a. and App Pg 27 11. a) This allegation had not been brought up during petitioner's P.C.R hearing. Therefore Petitioner Wannamaker's P.C.R Attorney J. Weller was ineffective for not arguing petitioners arguments at P.C.R. hearing for the Judge to rule on.

P.C.R court erred in failing to find plea counsel ineffective for not objecting when solicitor reneged on negotiated plea of zero to ten, instead the solicitor reneged by asking the Judge to "concider that cap" after plea counsel had already informed Petitioner Wannamaker that neither parties are allowed to make any recommendations, and that the decision is soley up to the Judge.

Petitioner Wannamaker testifies that he was informed by both his Counsels (D. Mellard and P Hinds) that petitioner's plea agreement is a zero to ten cap and no one is to make any recommendation to the judge. Any sentence opposed by the judge will be at his discretion.

Solictior Thomas Scott reneged on guilty plea by asking the Judge to give petitioner the max.

App. pg. 11 line 24 - 25 & Pg 12 line 1-3

(24) Solicitor: We agree that's the right number, and we
(25) would just ask that Your Honor -- we're recommending
a cap

continue page 12 line 1-3

(1) of ten years, Your Honor, and we'd ask Your Honor
consider (2) that cap.
(3) The Court: (Judge Dickson): Okay. All right.

Above the solicitor clearly askes for the max by asking the judge to consider that cap. The cap being ten.

The judge agreed by responding Okay, All right, and the solicitor's recommendation influence the Judge to make this decision to sentence petitioner Wannamaker with almost all of the

sentence requesting.

Petitioner Wannamaker attorneys advised him that no one was allowed to make any recommendations and if you read the sentencing transcript you will see that neither one of Petitioner's Wannamaker attorneys made any recommendations to the judge for a lesser sentence probation or nothing because they told petitioner that they neither was allowed to make any recommendations.

In Sentencing transcript Attorney Peggy Hinds is the unknow person speaking Pg. 21 Line 6-23. She did not made a recommendation.

App. Pg 6. Line 8 - 12 (Sentencing transcript)
(8) The court: Okay. I note that Mr. Hinds is standing
(9) up there with Mr. Mellard is that correct?
(it should be Mrs. Hinds, but she's present)
(10) Defendant: Yes Sir
(11) The Court: You have met with both attorneys?
(12) Defendant: Yes Sir

Above proves that Mrs Hinds was present during my sentencing and she too was my attorney and if she had testified at my P.C.R hearing, she would have testified that she did advise petitioner Wannamaker that no one was to make any recommendation towards petitioner's Wannamaker sentencing and that her interpertation of the plea agreement was the sentencing was up to the decrecition of Judge Dickson.

Therefore due to the fact of me having two attorneys

during sentencing both attorneys are ineffective for not objecting when solictor reneged on the negotiated plea. One or both attorneys should have objected when Solicitor asked for the cap.

App Pg 64 Line 17-25 Pg 65 1-24

Question from J. Waller

Answers from D. Mallard

(17) Q. OKay. You testified that your understanding of the plea (18) agreement was that it was a cap of ten years; is that (19) correct?

(20) A. That's correct.

(21) Q OKay. Was -- in your plea negotiations was there ever (22) any understanding that the solicitor would ask for -- would (23) recommend the cap?

(24) A. That I don't recall. Usually what we'll do is we'll run (25) it over with the judge. Sometimes we'll sit down, just kind (Pg 65)(1) of tell the judge what we're looking for. Usually we'll tell (2) the judge we're going to ask low. Solicitor will tell the (3) judge he's going to ask high.

(4) Q Did you notice the shift during the plea hearing wher (5) the solicitor switches from saying cap of ten to asking the (6) judge for ten?

(7) A. I didn't notice it as a change in the negotiations, if (8) that's what you're asking

(9) Q. OKay.

(10) A. I mean, it's like I said, the solicitor always asks for (11) the high end of the cap and we always ask for the low end of (12) the cap.

(13) Q. So it was your understanding that they were going to ask (14) for the high end of the cap or it was

just going to be a cap?
(15) A. They're going to -- what we usually do is they cap it,
(16) and that gives the judge discretion, zero to whatever,
zero (17) to ten in this case. And we usually go and
ask as low as we [redacted] (18) think it's possible,
and then the solicitor will ask for the (19) higher
end of the cap.
(20) Q. In this specific case, do you have any recollection
of (21) the solicitor telling you before they were going
to ask for (22) the high end of the cap?
(23) A. I don't have a recollection. I can't say for
sure, but (24) that's usually what they do.

In cross examination with PCR attorney J. [redacted] Weller and Counsel D. Mellard, Counseler seem to exposed the courts stradgy and how Couseler admits to manipulating petitioner Wannamaker that he was helping him when its plan to see in testimony that the Solicitor and Counsel Mellard worked together with the judge to get petitioner to plead guilty and Counsel would not be honest for nothing in the world pertaining to his recollection of the plea agreement. Counsel would not admit that he told petitioner Wannamaker that he told him that no one will make any recommendation.

It is proof in sentence transcript that Attorney Mellard or Hinds made any recommendations foward petitioner Winnamaker sentencing. Both attorneys spoked on petitioner's behalf but did not asked the judge for a lesser sentence or either the low end of the cap because they knew it wasn't suppose to be any sentence recommendations.

Attorney Mellard and Hinds didn't breached the plea negotiation. Attorney Melbrd and Hinds allowed Solicitor

Scott to reneged on the plea deal by him asking for the cap in the plea when one or both attorneys should have than with drew petitioner's plea, or brought to the attention to the court that the solicitor made a recommendation for the max of the cap and we explained to our client that no one would make any recommendation and we ask that you either strick that or we ask that this plea be with drawn and or we agree to a number sentence right now in the middle or below range.

In this case it didn't happened but it seems that the Judge took in cancideration of the solicitor's request and because in petitioner favor, his attorney wouldn't fight for him because neither one oppose the cap or the ten years that the solicitor requested therefore the judge seems as if the petitioner attorney agree because neither asked for a lower sentence. Not knowing the stipulation to this plea from they understand and to what they told petitioner that no one would make a recommendation it would be up to the discretion of the judge.

Therefore both Attorney D. Mellard and P. Hinds were ineffective for not objecting to solicitor requesting the cap and reneging on the plea negotitions.

If the solicitor had not recommend the cap of ten what would the judge have sentenced me too?

Thompson v State (SC. 2000) 531 S.E 2d 294, Jordan v State 374 SE. 2d 683 (SC 1988), Smith v State 407. SC. 270, 754 S.E. 2d 900 SC. 2014, all support the finding that counsle ineffective for failure to object to solicitor's recommendation at sentencing for maximum sentence, in violation of

plea agreement that it would not make any recommendations regarding sentence, was deficient preformance, and (2) defendant was prejudiced by plea counsels deficient performance.

In this case regarding the plea recollection, because Petitioner had two attorneys during sentencing and while preparing for trial, P.C.R attorney Walker should have allowed second attorney P. Hinds to testify to her recollection of the plea agreement when he couldn't get a straight or honest answer from Counsel Mellard. In this matter P.C.R. Attorney Walker was ineffective for not calling witness to testify after having witness subpenea to be present for P.C.R. Hearing.

In this Pro Se Johnson brief I Petitioner Erick Wannamaker has prove my credibility in my allegation. I Petitioner has prove that before I except the plea offer I insisted on going to trial. I Petitioner has also prove Counsel testimony not to be credibbe. I petitioner also brought to the court attention that Judge Murphy's order to dismissed is erred in her misconscrewing what Counsel Mellard testified to. I Petitioner Wannamaker has prove that I am a victim of ineffective Assitant of Counsel and for all the reasons in this Pro Se Johnson Breif I ask the Appeal Court to overturn Petitioner Wannamaker conviction and remand for resentencing or modification of sentence at 65%...

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E
Kershaw Corr. Inst Mag B 14
4848 Goldmine Hwy
Kershaw South Carolina 29067

Attention: Daniel E. Sitearouse Clerk of Court
@ The supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211