

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RONALD L. MCCAULEY - PETITIONER

V.

STATE OF SOUTH CAROLINA - RESPONDANT
APPELLATE CASE NO. 2015-001998

RESPONSE TO PETITION OF WRIT OF CERTIORARI

RECEIVED

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S.C. SUPREME COURT

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ISSUE PRESENTED

DID PCR JUDGE ERR BY FINDING TRIAL COUNSEL PROVIDED EFFECTIVE REPRESENTATION TO AND FOR PETITIONER?

STATEMENT OF FACTS

ON SEPTEMBER 17, 2013, PETITIONER FILED A PCR APPLICATION.
(APP. 683.)

ON JULY 22, 2015, AN EVIDENTIARY HEARING WAS HELD BEFORE
THE HONORABLE ROGER E. HENDERSON (APP. 695).

PETITIONER TESTIFIED DURING THE PCR HEARING (APP. 699).

PETITIONER TESTIFIED THAT HE WAS NEVER AWARE THAT THERE
WAS A PLEA OFFER (APP. 710, LL. 10) UNTIL AFTER HE WAS
INCARCERATED (APP. 711, LL. 1-8).

PETITIONER OFFERED UP A COPY OF THE PLEA AGREEMENT AS
EVIDENCE (APP. 711, LL. 12-25 THROUGH APP. 712, LL. 1-25 THROUGH
APP. 713, LL. 3).

PLEA OFFER ENTERED INTO EVIDENCE WAS OFFERED ON JULY 30,
2010 AND EXPIRED AUGUST 30, 2010 (APP. 714, LL. 8-9)

PETITIONER TESTIFIED THAT IF HE HAD BEEN OFFERED A PLEA THAT,
"YES", HE WOULD HAVE TAKEN IT (APP. 716, LL. 24-5 AND APP. 717,
LL. 1-5).

IN DIRECT EXAMINATION BY MR. THOMAS OF DAVID SCHWACKE (APP. 719),
MR. SCHWACKE TESTIFIED THAT HE HAD 10-11 MEETINGS WITH
PETITIONER PRIOR TO TRIAL (APP. 721, LL. 23-24).

MR. SCHWACKE FURTHER TESTIFIED THAT HE PREPARED A FORM
THAT HE AND MS. KENNEDY WENT OVER WITH PETITIONER (APP.
723, LL. 15-20) WHICH LISTED THE EXTENSION FROM THE
SOLICITOR'S OFFICE OF A PLEA (APP. 724, LL. 7-14). MR. SCHWACKE
FURTHER TESTIFIED THAT WHILE THE INFORMATION WAS PRESENTED
TO PETITIONER, THAT PETITIONER REFUSED TO SIGN OR INITIAL
SAID FORM (APP. 724, LL. 20-23).

MR. SCHWACKE'S FORM WAS LATER ADMITTED INTO EVIDENCE (APP. 725, LL. 16-19) AS STATE'S/RESPONDENT'S NO. 1.

THAT STATE'S/RESPONDENT'S NO. 1 WAS DATED FOR OCTOBER 2010, SOME TWO MONTHS AFTER THE PLEA OFFERS EXPIRATION DATE OF AUGUST 30, 2010 (APP. 727, LL. 12-16).

MR. SCHWACKE WENT ON TO PRESUME WHAT WAS/WAS NOT A MATTER OF CONCERN TO THE SOLICITOR WITH A STATEMENT OF HEARSAY THAT THE DATE [OF EXPIRATION] WAS NOT A CONCERN TO HER [THE SOLICITOR] (APP. 727, LL. 21-23).

IN THE STATE'S CLOSING ARGUMENT, MR. THOMAS OFFERED FURTHER EVIDENCE AS TO MR. SCHWACKE'S INEFFECTIVENESS AS COUNSEL IN REFERENCE TO THE CONFLICT OF INTEREST WITH TRIAL JUDGE HARRINGTON. HE STATES, "THEY MADE A MOTION TO RECUSE HER [JUDGE HARRINGTON]. SHE [JUDGE HARRINGTON] DECLINED IT. THAT COULD HAVE BEEN RAISED ON APPEAL." (APP. 731, LL. 22-23).

MR. SCHWACKE FILED PETITIONER'S ORIGINAL TRIAL APPEAL.

ARGUMENT

THE PCR JUDGE ERRED BY FINDING TRIAL COUNSEL PROVIDED EFFECTIVE REPRESENTATION WHERE COUNSEL FAILED TO COMMUNICATE STATE'S PLEA OFFER AND THAT PETITIONER WAS CONSEQUENTLY SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE.

PETITIONER WILL CITE SOME OF THE FOLLOWING AS A PARTIAL LIST OF CASES (PARTIAL AS THE PETITIONER, FILING THIS RESPONSE, IS NOT WELL VERSED IN LAW):

"[A]S A GENERAL RULE, DEFENSE COUNSEL HAS THE DUTY TO COMMUNICATE FORMAL OFFERS FROM THE PROSECUTION TO ACCEPT A PLEA ON TERMS AND CONDITIONS THAT MAY BE FAVORABLE TO THE ACCUSED." MISSOURI V. FRYE, 132 S.C.T. 1399, 1408 (2012); BELL V. STATE, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (2014)

UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, A CRIMINAL DEFENDANT IS ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL. STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). DEFENSE COUNSEL'S FAILURE TO CONVEY A PLEA OFFER FROM THE STATE CONSTITUTES DEFICIENT PERFORMANCE AND DEFENSE COUNSEL'S INEFFECTIVENESS. DAVIE V. STATE, 381 S.C. 601, 675 S.E.2d 416 (2009) ¶ AT 607, 675 S.E.2d AT 419.

PETITIONER CHALLENGES HIS CONVICTION AND SENTENCE ON THE GROUNDS THAT DEFENSE COUNSEL WAS INEFFECTIVE BEFORE, DURING AND AFTER TRIAL AND STEADFASTLY MAINTAINS 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," BUTLER V. STATE, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (QUOTING STRICKLAND, 466 U.S. AT 686; SEE ARD V. CATOE,

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


MR. SCHWACKE PROVED FURTHER INEFFECTIVE THROUGH STATEMENT OF FACT INTRODUCED DURING PETITIONER'S PCR HEARING BY THE STATE (APP. 731, LL. 22-23). [HERE PETITIONER HAS NO CASES TO CITE DUE TO HIS IGNORANCE IN AND OF MATTERS OF LAW]

PETITIONER'S SIGNATURE WAS NOT ON THE ORIGINAL WRITTEN PLEA OFFER INDICATING HIS ACCEPTANCE OR REJECTION OF THE OFFER. PETITIONER'S SIGNATURE WAS NOT ON THE FORM (STATE'S/RESPONDANT'S NO.1), NOR HIS INITIALS, OFFERED UP AS EVIDENCE, BY THE STATE, DATED TWO MONTHS PAST THE ORIGINAL WRITTEN PLEA OFFER'S EXPIRATION DATE. IF COUNSEL HAD CONVEYED THE STATE'S OFFER TO THE PETITIONER, PETITIONER WOULD HAVE SAID "YES" TO THE PLEA OFFER (APP 716, LL. 24-25 AND APP. 717, LL. 1-5). INSTEAD, PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS AND OF THE OPPERTUNITY OF RELIEF FROM A SENTENCE OF LIFE WITHOUT PAROLE.

CONCLUSION

FOR THE ARGUED REASONS ABOVE, PETITIONER RONALD L. McCAULEY
RESPECTFULLY REQUESTS THIS COURT TO GRANT HIS PETITION FOR
WRIT OF CERTIORARI WITH THE ULTIMATE RELIEF OF A NEW TRIAL.

RESPECTFULLY SUBMITTED,


RONALD LEE McCAULEY
PETITIONER - PRO SE

THIS 2ND DAY OF MAY, 2016

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THE SUPREME COURT OF SOUTH CAROLINA
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