

STATE OF SOUTH CAROLINA  
In The Supreme Court

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JUN 29 2016

CERTIORARI TO BERKELEY COUNTY  
Court of Common Pleas

SC SUPREME COURT

The Honorable Roger E. Henderson, Circuit Court Judge

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Appellate Case No.: 2015-~~001197~~ 001997

DERRICK J. MILES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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### **QUESTION PRESENTED**

Did the PCR court err in finding that Petitioner failed to meet his burden of proof that his trial counsel promised him credit for time served while on house arrest or misguided him regarding possible credit earned prior to his guilty plea?

## STATEMENT OF THE CASE

Petitioner (Derrick J. Miles) was indicted at the February 2012 term of the Berkeley County Grand Jury for Burglary, First Degree (2012-GS-08-0255). William Runyon, Esquire represented Petitioner. On July 24, 2013, Petitioner pled guilty to Burglary Second Degree, as a lesser included offense, to a negotiated fifteen (15) year sentence. The Honorable Stephanie P. McDonald sentenced Petitioner to confinement for a period of fifteen (15) years. Petitioner did not appeal his conviction or sentence.

Petitioner subsequently filed an application for post-conviction relief on December 23, 2013. Respondent filed a Return on March 31, 2015. On August 28, 2015, the Honorable Roger E. Henderson issued an Order of Dismissal. On April 6, 2016, Petitioner filed a Petition for Writ of Certiorari to this Court. This Return follows.

## STANDARD OF REVIEW

The proper standard for reviewing 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, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

## ARGUMENT

- I. The PCR court correctly found that Petitioner failed to meet his burden of proof that his trial counsel promised him credit for time served while on house arrest or that he was misguided as to possible credit he could receive.

Petitioner asserts the PCR court erred in finding that trial counsel did not err in failing to request credit for time served while on house arrest prior to his guilty plea. Petitioner claims that he was prejudiced as a result because, but for counsel's error, his prison sentence has been extended beyond what he believes he should be required to serve. This allegation is without merit, and therefore, certiorari should be denied.

S.C. Code Ann. § 24-13-40, as amended shortly before Petitioner pled guilty, states: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and **may** be given for any time spend under monitored house arrest." (emphasis added). Therefore, the court's decision to grant credit for time served under monitored house arrest is **discretionary**. It is not mandatory. Therefore, trial counsel cannot be deemed ineffective for failing to address the issue at Petitioner's guilty plea hearing. See Smith v. State, 329 S.C. 280, 494 S.E. 2d 626 (1997) (holding Counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing).

Furthermore, aside from the two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other

conditions of confinement are administrative matters and, thus, cannot be raised in a post conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). For that reason, this Petitioner's allegation is without merit, and therefore, certiorari must be denied.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON  
Attorney General

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By:

  
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June 29, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
Court of Common Pleas  
The Honorable Roger E. Henderson, Circuit Court Judge

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Appellate Case No.: 2015-001197

DERRICK J. MILES,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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**CERTIFICATE OF SERVICE**

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

**Wanda H. Carter, Esquire**  
**SC Commission of Indigent Defense**  
**Post Office Box 11589**  
**Columbia, SC 29201**

This 29<sup>th</sup> day of June, 2016

  
BRIANNA ARNONE  
LEGAL ASSISTANT



RECEIVED  
JUN 29 2016  
SC SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

June 29, 2016

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

**Re: Derrick J. Miles v. State of South Carolina**  
**Appellate Case No. ~~2015-001197~~**  
**Lower Court Case No. 2014-CP-08-2847**

2015-001997

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

for J. Rutledge Johnson  
Assistant Deputy Attorney General  
SC Bar No. 78871

JRJ/bea  
Enclosures

cc: Wanda H. Carter, Esquire (2 copies)