

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

TRAVIS TEASLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002655

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to notify petitioner of when to appear in court and warn him of the expiration of the state's plea offer because this resulted in petitioner's failure to appear in court as scheduled, the revocation of the plea deal, receipt of a greater sentence at the close of his trial, and a trial held improperly in his absence.

STATEMENT

Petitioner Travis Lamar Teasley was tried by jury in his absence on crack cocaine charges during the June 2010 term of the Pickens County General Sessions Court before Judge Alexander S. MaCaulay. App. 1 – 288. Petitioner was convicted of distribution of crack cocaine (3rd offense) and distribution of crack cocaine within proximity of a school as charged at the close of the trial. Assistant Solicitors Jenny Hamaker, George Campbell, and Baker Cleveland were the prosecutors in the case. Judge MaCaulay issued a sealed sentence in the case, which was published in open court on January 20, 2011, before Judge Edward W. Miller. Petitioner was present at the sentencing hearing and represented by Steven Alexander, who also represented petitioner at the trial in his absence. App. 290 – 296. Assistant Solicitor Baker Cleveland appeared on behalf of the state during the sentencing hearing. Petitioner was sentenced to imprisonment for a period of two fifteen-year sentences to run concurrently.

Petitioner appealed, but his convictions and sentences were affirmed. See State v. Teasley, Opinion No. 2012-UP-493 (Aug. 22, 2012). Katherine H. Hudgins represented petitioner on direct appeal.

On May 30, 2014, petitioner filed a PCR application with the Pickens County Office of the Clerk of Court. App. 298 – 308. The respondent filed a return dated October 8, 2014, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 309 – 312. A PCR hearing was convened on October 19, 2015, at the Pickens County Courthouse before Judge Perry H. Gravely. App. 314 – 360. Petitioner was present at the hearing and represented by R. Mills Arial, and Assistant Attorney General Karen Ratigan appeared on behalf of the state.

On November 23, 2015, Judge Gravely issued an Order of Dismissal denying and dismissing petitioner's allegations of ineffective assistance of trial counsel in the case. App.362 – 368. Petitioner appealed Judge Gravely's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to notify petitioner of when to appear in court and warn him of the expiration of the state's plea offer because this resulted in petitioner's failure to appear in court as scheduled, the revocation of the plea deal, receipt of a greater sentence at the close of his trial, and a trial held improperly in his absence.

At trial, Easley Police Officer Jeremy Mills testified that set up a controlled narcotics buy to occur on May 20, 2009, between an undercover operative that sold crack cocaine to petitioner, who was arrested at the scene of the sale. App. 150, l. 22 – p. 154, l. 4. Prior to trial, counsel stated that neither he nor family members had been able to contact petitioner on the night before the trial. Tr. 6, l. 21 – p. 7, l. 2. Clerk Tracy Littlejohn testified at trial that she sent bond cards to two addresses for petitioner regarding the June 2010 term of court and that the bond card that was mailed to the proper address for petitioner was indeed returned as undeliverable. App. 19, l. 10 – p. 20, l. 16; App. 22, l. 13 – 22. As a result, trial counsel moved for a continuance because the bond card sent for the June 2010 term of court to petitioner's correct address was returned and thus petitioner had no notice of trial. App. 25, l. 16 – p. 27, l. 8. Note that the notice/continuance issue was not raised on direct appeal in the case.

Petitioner was not present for his jury trial, which was held in his absence on June 23, 2010. Petitioner was convicted as charged on the offenses of distribution of crack cocaine

and distribution of crack cocaine within proximity of a school. When petitioner's sealed sentence was published, he learned that he received two concurrent fifteen-year prison terms.

The following colloquy occurring at the sentencing hearing regarding the issue of notice:

The Court: Okay. You understand that you had a trial and you didn't show up.

Petitioner: My trial card was sent to the wrong address.

The Court: Well, ---

Defense Counsel: I talked to him about that issue, Your Honor, and that's something that he could appeal if he chose to appeal it.

The Court: All right. Where was it sent?

Solicitor: I tried the case, Your Honor. We verified all the addresses, everything we had on file. As a matter of fact, it was a co-defendant case. And the co-defendant showed up. Also, it's my understanding that Mr. Alexander has, up until the days before the trial, had actually talked to Mr. Teasley. So the State --- there was a finding on the record that he was notified for trial and the trial should proceed in his absence. App. 292, l. 12 – p. 293, l. 3.

During the PCR hearing testimony, petitioner testified that trial counsel advised that he “could always plead out before trial.” App. 317, l. 20 – p. 318, l. 4; App 319, lines 16-17; Tr. 327, lines 21-22; Tr. 339, l. 15. Petitioner stated that the last plea offer was for “five years....and that if [he] didn't take it...[then he would be]...on the trial docket, and in effect contended that counsel did not explain that this action would have been tantamount to the expiration of the plea offer. App. 319, l. 2-11; App. 320, l. 21 – p. 321, l. 10. Petitioner added thereafter that he never received any “notification” or “bond card” subsequently advising him of the date to appear in court for his case, and that three months later he learned that he had been tried in his absence. App. 320, l. 13-20; App. 321, l. 19 – p. 322, l. 3. Petitioner testified that he learned that the last bond card, which would have contained the roll call/court dates for which he should have

appeared in court, was not sent to his address like the other notifications, but was instead sent to an address he left seventeen years ago. App. 322, l. 7 – p. 323, l. 1; App. 339, l. 6 – p. 340, l. 24. In other words, petitioner testified that he never received a court date notice apprising him of the time in which to appear in court for his case because the notification went to the wrong address. App. 323, l. 2 – 5.

Petitioner explained during the PCR hearing how this issue played out at his sentencing hearing as follows:

A. Trial counsel actually brought that up during court...that they had sent the card to the wrong address, and he asked [for] a continuance to that he could get time to notify me.

Q. Okay and that was the end? Wasn't it? During his motion for continuance?

A. It was

Q. Did you bring [this issue] up at the sentencing, when the verdict was published?

A. Yes....I had no notice...it was my understanding that I was coming back to court to plead to five years.

Q. Okay. So you would have taken the five year [plea] if you [had been] called back to court.

A. Yes. If I'd gotten notice. App. 323, l. 17 – p. 324, l. 19.

Note that this issue was raised by counsel prior to trial as well. Also during the PCR hearing, petitioner stated that he appeared for his first two roll calls because there was a thirteen-year deal being negotiated at his first roll call and an eight-year bargain at his second roll call and that he would have been present at his third roll call to accept the five-year plea deal ultimately reached in the case if he had received notice of when he was supposed to have appeared in court for that final call in his case. App. 325, l. 5 – Tr. 326, l. 8.

Trial counsel testified at the PCR hearing and stated that he received the trial docket notice for June, 2010 in petitioner's case and that he sent a letter to him explaining this information. App. 343, l. 7 – p. 344, l. 15. Counsel explained that the state promised petitioner a sentence of "seventeen" years, then "fifteen" years, and then somehow "eight" years, and finally a five-year plea deal was the last sentence agreed upon in the case. Tr. 346, l. 1 – p. 348, l. 14. Counsel admitted that when he talked to petitioner on June 17, 2010, and/or on June 18, 2010, petitioner told him (counsel) that he didn't know the offer would be withdrawn after his case was placed on the trial docket. Tr. 351, l. 2 – p. 352, l. 25; Tr. 356, l. 15 – 20. Counsel further admitted that he neglected to advise petitioner of the expiration of the plea offer as follows:

Q. So was [petitioner] aware that there was an expiration date to the offer?

A. Yes, he was. We discussed it. I didn't put it in writing in letter form, which I do sometimes, but I didn't in this case. So I didn't convey that sufficiently to him, maybe he didn't understand that. I guess it was a possibility that I didn't convey it sufficiently enough to where he understood that it was going to be withdrawn.
Tr. 354, l. 6 – 19.

The PCR judge ruled that counsel's assistance was effective in the case because he properly conveyed the plea offers and expiration dates to petitioner and also notified him of the trial date. App. 364 – 367.

Due Process/Notice

Due Process under the Fifth and Fourteenth Amendments require written notice and an opportunity to be heard in a meaningful way. Morrissey v. Brewer, 408 U.S.471 (1972). Powell v. Alabama, 53 S.Ct. 55 (1932); Matthew v. Eldridge, 424 U.S. 319 (1976). Furthermore, the accused has a right to be present at every state of his trial unless he waives that

right. Illinois v. Allen, 397 U.S. 337 (1970); Ellis v. State, 267 S.C. 257, 227 S.E.2d 304. According to petitioner's PCR testimony, he did not receive written notice in the mail advising him of the date(s) on which he needed to appear in court for his case. Petitioner neither waived his right to accept the plea offer nor his right to appear in court for trial. His failure to appear under either scenario was not intentional. Counsel's omission in failing to properly advise petitioner regarding court scheduling in these matters and the consequences prejudiced petitioner because he was deprived of the benefit of a lesser sentence on a plea deal that he did not have the opportunity to accept, and subsequently received a greater sentence after a trial in his absence was improperly held on his behalf.

Expiration of Plea Offer

Counsel admitted that he did not make it clear to petitioner that the plea offer would expire if it was not accepted prior to the case appearing on the court docket. Petitioner labored under the misunderstanding that he could physically appear sans any regard to scheduling and accept the five-year plea offer and had no idea that the plea offer would expire when the solicitor placed his case on the docket for trial. Hence, petitioner's plea offer was nixed unbeknownst to him.

The Sixth Amendment right to effective assistance of counsel extends to cases involving plea offers, particularly where plea offers lapse and where prejudice is shown, i.e. that the defendant would have accepted the plea before the expiration date but for counsel's error in allowing the expiration date to pass before acceptance of the offer. Missouri v. Frye, 132 S.Ct. 1399 (2012). In Missouri v. Frye, counsel did not convey the plea offer to the defendant and as a result, the plea offer expired. See Davie v. State, 381 S.C. 601,675 S.E. 2d 416 (2009), where the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (due to counsel's error) until after

the plea offer had expired, and that he would have accepted that plea offer had it been communicated to him. In Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010), counsel erred in advising the defendant that the plea offer would have remained open until after the suppression hearing ended, when in reality the offer expired at the close of the suppression hearing held in the case.

A defendant has a right to effective assistance of counsel during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. Here, counsel's error regarding the failure to communicate to petitioner when he needed to accept the plea offer and/or appear for trial and the expiration date of the plea offer constituted ineffective legal assistance in his case in violation of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985) and Strickland v. Washington, 466 U.S. 668 (1984). Petitioner was prejudiced because he would have accepted the five-year plea offer, but instead ended up being tried in his absence and receiving a greater sentence in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that the Court grant the petition on the above-raised issue in the case.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

TRAVIS TEASLEY,

PETITIONER,

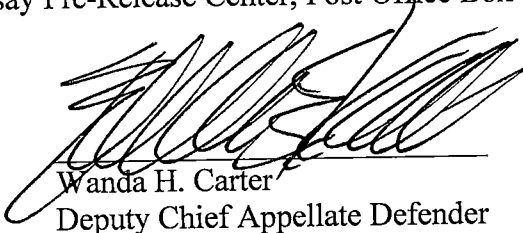
V.

STATE OF SOUTH CAROLINA,

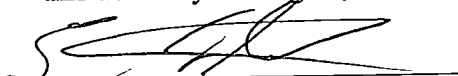
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Travis L. Teasley, #300817, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 17th day of August, 2016.


Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 17th day of August, 2016.

 (L.S)

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