State of South Carolina
In the Supreme Court

Certiorari to Richland County
Honorable Tanya A. Gee, Circuit Court Judge

Vincent Rice — Petitioner

VS.

State of South Carolina — Respondant

Appellate case # 2015-002479

Amended Petition / Brief for Writ of Certiorari
Submitted under rare and extraordinary
circumstances in the Intrest of Justice

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ISSUES PRESENTED

Did the PCR court err in it's credibilty findings of fact of all issues raised and ruled on?

Did PCR court err in finding there was no deficiency, and that Counsel Chaplin testimony was more credible and persausive?

STATEMENT

On Aug 3, 2014, Appellate Counsel DuRant filed a petition to be relieved as Rice's Defense attorney. Attorney Durant primarily came to this determination soon after she discovered that Petitioner Rice was scheduled to be released from the Doc on September 1, 2014 she asked Rice, "what is the point, if your getting out? In which Petitioner informed her that he was not guilty of said offenses, was poorly represented, and didn't want these offenses hanging over his head. As a result, she informed him to send her a letter stating that he still wished to pursue his appeal rights upon release, while further informing him better luck upon his release. Petitioner is compelled to inform the court of this because to his and her suprise he was not released due to no fault of his own.

Petitioner assents these factors were indeed crictical to the timing of his brief, being that he is a novice in this procedure, along with his undue incarceration, placed him in an unexpected and burdensome position to contest his immediate freedom. Petitioner always had and still has the intention to exert his appellate rights in this matter. As stated, Petitioner was not informed of the forfeiture of his release until the day before (Aug 31, 2014) due to an 85% issue that is still preserved before this court. He was given a due process hearing by the DOC, on September 14, 2014, in which he lost, and recentley submitted his step 1 and 2 appeals within the DOC on Oct 18, 2014.

In addition, Petitioner had to respond to a U.S District court order as well; to make matters more pressing the DOC transferred him to a new institution and unlawfully seized his legal property. Petitioner just recieved some of his property back and this brief immediately followed. Futhermore, Petitioner deems these events as burdensome and rare and extrordinary, and prays this court will review his issues in the intrest of justice, and thereby granting him relief.

ARGUMENTS/ISSUES 1-6

ISSUE 1: The uncommunicate plea offer

Petitioner asserts, PCR Court erred by stating Rice's issue under Davie v. State 675 SE2d 414 (uncommunicated plea offer) was misplaced. The court mistook his current 5 to 10 cap conviction as the plea. However, Petitioner was referring to the intial plea where all strikes, LWOP and mandatory minimums would have been dismissed. (exhibit 3), App II 24, 27. 28. and App II 93. 11-25. 94. 1-5 Dover vs. State Hyman v. State 723 SE2d 225 "when a defendant rejects a plea bargin, a reviewing court will examine seperately wether trial counsel was ineffective with respect to defendants rejection to the offer and his ultimate decision to plead guilty". Petitioner, testified he did not know the full details of the inital offer, and that he did not want to plead without reviewing the analysis first, a constitutional right.

ISSUE 2: Unintelligent plea, whereas counsel did not inform client of the elements and nature of offense)

Petitioner Rice consistentley testified that he plead to the PWID offense) under Alford due to the misinformation that he had at the time of the plea, and he understood the elements to be his priors and enhancements. App II 13. 10-13, App II 44. 46. 9-25, App II 35. 4-9, App II 36. 20-25, App II 37. 1-25. ct Kolle vs State 690 SE.2d 73, ct US 477 S. Ct 2974 ("whether a [plea] is voluntary depends on information known to defendant)

Petitioner's statements during the plea, ct. U.S vs. Kamer 781 F.2d 380, Dover vs. State 405 SE.2d 391, in the direct examination, cross exam and redirect, consistently reflect that he was not fully informed of the nature and elements of PWID, neither did the court read out the indictments, defined PWID, nor did the state make known what the evidence intended to prove.

Counsel Chaplin's testimony during the PCR hearing reflects that he did not inform his client of the elements of PWID. Counsels testimony in App II 65. 8-16, reflects that he was more concerned with "offers" than facts and elements of the actual offenses. He consistently stated he was concerned with the "exposure of time" and the "bigger picture" and getting this "resolved". App II 60. 5-6, App II 76. 8-11, In App II 79. 1-7, he stated, "Mr. Rice and I, the majority of our conversation had much to do with how much time he was actually looking at, and trying to get something resolved. I wasn't trying to minimize actual drug offenses, but I got to tell you it was big picture most of the time." Counsel referred to "big picture" versus guilt of elements several more times throughout the hearing. It was is only strategy implication. From his statements it is reasonable to conclude that he did not find it necessary to inform his client how his conduct satisfied the PWID elements. Thus PCR Court erred, in finding his testimony more credible in this regard.

ISSUE 3'. Counsel failed to review discovery and drug analysis

The PCR court erred in stating that it was fact that counsel went over discovery material with Petitioner Rice; primarily the drug analysis and the chain of custody.

In App II 29.1-3, Petitioner testified Counsel was convincing him to plead, but was unaware the drug analysis and chain of custody was missing from the state's discovery evidence. The fact Counsel Chaplin was willing to negoiate "offer after offer" without the presence of physical evidence, shows deficiency because the the drug offenses were "duplicated" and carried a lot of time. Petitioner stated they did not go over the analysis because it was missing for the majority of the case, and that he kept pressuring counsel to produce it, while stating that Counsel informed him deals would be off the table if he continued to pursue the lab test. App II 45.1-9, 29.8-12. In a Nov 2013 bond hearing, the state said Petitioner was putting up barriers in the case, for demanding to review an analysis App II 55.1-10, App II 56.2-21.

The Contradictve testimony of Counsel Chaplin

Counsel testified he discussed the discovery evidence numerous times or occassions App II 46.11-13, and was prepared to challenge the drug analysis at trial. How was it possible to review the drug analysis on numerous occassions, and counsel only met with his client three times after being appointed for nearly 14 months. Futhermore, the drugs weren't tested until Sept 19, 2013 and USC didn't recieve the analysis back until Oct 9, 2013 (see exhibit 2), counsel produced this analysis to Petitioner upon their last meeting which was Oct 17, 2013. Counsel did not discuss the .5 grams of crack vs. cocaine, nor simple possession. Petitioner stated he said you might as well go to prison and get your life together. At this meeting Petitioner stated he wanted counsel removed from his case due to these statments, and as a result the motion to be relieved as counsel followed on Oct 30, 2013. The next time Petitioner met with counsel was at his unexpected trial/plea date on Dec 3, 2013. Therefore, it was unlikely counsel discussed the drug analysis "on numerous occassions," making his testimony non-credible

As further evidence that counsel did not review the drug analysis with his client, He stated in App II 77. 24-25, "I'm certain I went over all the drugs with him". To the contrary, when the analysis (exhibit 4) was presented to him in the cross-exam, he vaguely recognized it. He stated, "I can't tell you I remember looking at that document, or that I remember it specfically App II 78. 17-19. He stated further, in App II 79. 8-10, "I'm certain we would have talked about the weed, but at the same rate. I can't tell you I remember that exactly." These statements reflect deficient performance, because PWID 3rd and PWID proximity both stemmed from that one weed analysis of 17.1 grams, and he should have been certain of that.

ISSUE 4: Testimony regarding chain of custody

The PCR court stated it was a fact that counsel reviewed the chain of custody with Petitioner Rice in the order. The chain of custody was pertintent because it did not contain "the marijuana that was supposedly in petitioner's lap", the reason for probable cause.

In regards to Exhibit 11 (chain of custody), counsel stated in the direct examination that, "He "talked" with his client about the "document" and "told" him the Judge would not likely rule in his favor, and that he "told" Petitioner that it will certainly be preserved.

To the contrary, when the actual document was presented to him in the cross-examination, he did not recognize it, even the state objected to this fact App II 71. 5-7. Futhermore, when asked, "Did you discuss this document with your client? Counsel Chaplin stated, "I can't tell you that" App II 71. 21 and stated, "I would have hoped I did." App II 72. 11. These two different statements regarding the chain of custody suggest, Chaplin deliberately broke the oath to tell the truth at the evidentary hearing, and thereby making his testimony incredible and deficient representation most likely. Note: The city of columbia lab came under structiny after the Brenda Frazier scandal.

ISSUE 5; Testimony regarding the weights of the drugs and lesser included offenses

Petitioner's testimony consistently reflected in App II 17. 18. 19, that Counsel did not go over the weights with him or explain the legal criteria of the weights, mainly because they were not produced for the majority of the case. Therefore, Petitioner did not know that he could have faced a charge for possession at his plea. During the plea, Petitioner informed the plea Judge that he was not a dealer.

In App II 80. 1-4, Counsel was asked the question, "Was the weight amounts apart of the negoiations with the solicitor? Counsel stated, "I can't say yes to that." From this statement it is reasonable to conclude that if counsel did not discuss weigh amounts with the solicitor, neither did he discuss them with his client. Counsel was deficient because he was unconcerned with weight amounts, elements, lesser offenses and affirmative defenses, his strategy was the "big picture and getting things resolved." This prejudiced Petitioner because these charges carried strikes. Therefore PCR court was in err, by finding is was fact that counsel discussed discovery with his client.

ISSUE 6: Other Conflicting testimony of Counsel Chaplin

In App 7. 22-25, Trial Judge asked counsel, "Do you feel the state could produce sufficent evidence to prove your client guilty beyond reasonable doubt? He stated yes. However, in the evidentary hearing counsel repeatedly stated that he felt the evidence was weak (never said why) that his client was not a dealer, the state was being unfair and heavy handed, that he support for Petitioner ~~the~~ to have a new trial, and that the PWID convictions "Probably wouldn't stick". App II 76. 8-10.

In App II 59. 10-13, counsel stated, "he told client in the beginning that he was a trial attorney not a plea attorney and would get him a fair trial." In his next statment he begin speaking about early offers instead, and the fact Petitioner wouldn't take them. In App II 13. 19-24, Petitioner testifed counsel attempted to get him to plead on they're very first meeting. Petitioner asserts that Counsel's statements throughout the hearing reflected that he was indeed a plea attorney.

The PCR court erred in stating that the fact Counsel Chaplin did not object to the cocaine/crack discrepancy was because it was a good strategic decision. To the contrary, in the cross-examination counsel openly admitted that was an error, not a stratgey. App II 75. 14-23

the PCR court also erred in stating that it was not credible that counsel promised his client that he would only serve 85% of his term. The court referred to the plea transcript App 24. 1-4. However, Petitioner assents that counsel was indeed, insinuating and suggesting that his client should serve 85%, because people with "trafficking" offense could serve 85% under the new laws, and his client had much less drugs than trafficking offenders. Counsel proved to be deficient here because he merely "suggested" the new law changes to the trial Judge. He did not become familiar with the 2010 crime Reduction Act and the amendments to code 44-53-370, which repealed "no-parole" 85% term under 24-13-100-150. Petitioner was prejudiced because counsel did not object when the judge stated his charges were considered violent and his client would have to serve a 85% term. in the DOC. The following pages will support this issuse because it recently effected Petitioner.

To:

I was scheduled to be released on Sept 4, 2016 and was informed that I wouldn't be released on Aug 31, 2016. This was devastating, being that it curtailed due process procedures, and I've discovered the Doc interpation of 44-53-370 is in error, and ex-solicitor, Britton Hill should not have been contacted to "clarify the courts intent," because she no longer represents the court.

To support my claim, I have included portions of the Final Report of The Sentencing Commission to the General Assembly in 2009, which prompted the 2010 crime Reduction Act. The report was heavily relied on and strongly reflects the objectives, goals, intentions and policies of this state regarding low risk drug offenders, and saving tax-payers dollars ~~for~~ in the corrections process.

I claim with 100% certainty that the Bolin ruling does apply to me. Allow me to use some language from my case to support my claim.

(1)- "It is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense, pursant to code 24-13-150, even if the max sentence for offence places it within a classification encompassed by section 24-13-100 (therefore 0188, class C is not automatically no-parole)

(2)- The Court agreed the 2010 amendments repealed 24-13-150

(3)- The Court stated that "Notwithstanding any other provision of law," was added, and that the enacted amendments to 44-53-370-375, "expressly allows" offenders to participate in community supervision as an alternative to use tax-payer funds to house them in prison. (This implies that the purpose and design of the amendments of these codes, was to allow offenders an earlier release versus a long prison term, which cost more money. The only prohibition is that the sentence may not be suspended nor probation granted; prior to 2010 offenders were not eligble for a early release per 24-13-100-150).

(4.) The courts state that, "Words of the statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statutes operation.

(5). "The language of the legislative intent must be construed in the intended purpose of the statute.

(6)- "A statute as a whole must recieve a practial, reasonable and fair interpation, consonant with the purpose, design, and policy of lawmakers." (As a whole, statute 44-53-370 says "nothing about 85% or parole; in fact the words "no-parole" are nowhere within the provision... In addition, the purpose, design and policy of this amended statute as a "whole" allows offenders to be released to community-supervised programs, after they have served "some" time, as reflected in the Report attached with this letter.

Furthermore, the court made specific statements regarding 1st and 2nd offenses in the Bolin Ruling, simply because 2nd offense was the "Subject Matter," and as a result, they were strict on using the "plain language" of the 2nd offense of 44-53-375, to show the legislative intent and thereby justifying their ruling. They did not "interpet" a 3rd offense because it was not the subject matter. However, it is reasonable to conclude that if a 3rd offense was the subject matter, then the plain languge of that statute would have been used also. The courts and legislation, expect all state Angencies to comply with the codes and statutes of this state and not to force or expand them to their sole distrection.

Therefore, if the DOC and SCPPPS reasonably interpet both of the nearly identical statutes of 44-53-370-375, regarding 3rd offenses, using the "plain languge specified by the court, and in light of the 2010 Crime Act along with the Report, Then it would be evident the legislation and policy makers of this state intended for All offenders of these statutes to be released from prison as soon as possible, to save funds while making bed space for more serious violent offenders.

Here is the exact wording of title 44-53-370(b)(2) regarding 3rd offenses PWID and PWID priors, that are being misinterpeted by DOC, IN ALL OTHER CASES THE SENTENCE MAY NOT BE SUSPENDED NOR PROBATION GRATED."
(This entails a pre-sentencing prohibition - not a post-conviction once!

According to the DOC, SCPPPS and former-solictor Britton All, the above language means that im not entitled to parole, furlough and must serve 85%. This is clearly "Forced" construging to "Expand" the intended purpose of the statute. It seems the DOC and ~~his~~ SCPPPS is willfully opposing the laws of this state.

The Intent is clear: If an offender is convicted of a PWID 3rd and has a prior PWID, then the Judge is not allowed to suspend the prison term; it's not ambigious at all.

What's alarming about it all is that the DOC contacted an former-solicitor to clarify the Courts Intent in a Aug 25, 2016 email. At the very least the court of appeals should have been contacted or Attorney General. Mrs. All does not represent the court and her legal opinion should not have been used to forfeit my release on 9/1/16. She was in error by stating that 24-13-150 should be the "legal basis" for reverting me to 85% and the DOC readily agreed with this error in a Aug 30, 2016 email (2 days until release). The legislatures and the Judges all agree that 24-13-150 is and had to be repealed in 2010, however the DOC allowed a former Solictor to supercede them all. In conclusion, the Agencies are capable of rectifying this error without the need of an already clustered Judical system. I ask that im allowed to pursue my, life, liberty and pursuit of happiness as established in the Constitution.

2338

Audrey Crum (CrumAud)

From: Christina Bigelow (C057846)
Sent: Tuesday, August 30, 2016 8:44 AM
To: Audrey Crum (CrumAud)
Subject: RE: scdc#316178 Vincent Rice

Agrees with Britton All

(3) I agree he needs to be converted to 85% for his 3rd drug offenses after having a due process hearing.

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29210
Phone: (803) 896-1738
Fax: (803) 896-1766

-----Original Message-----
From: All, Britton [mailto:BALL@RCSD.NET]
(2) Sent: Monday, August 29, 2016 8:48 PM
To: Audrey Crum (CrumAud) <Crum.Audrey@doc.sc.gov>
Cc: msawyer@sinklaw.com; Wanda Blanding (BlandWa) <Blanding.Wanda@doc.sc.gov>; Joette Scarborough (Scarbor) <Scarborough.Joette@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov>
Subject: RE: scdc#316178 Vincent Rice

I reviewed Mr. Rice's RAP sheet. There is a 2008 conviction for PWID/MDP Cocaine 1st [44-53-370(b)(1)]. He got 2 years suspended to 1 year probation. To answer your question, in my legal opinion based on his RAP, his prior record contains at least one conviction more serious than a simple possession, and thus, based on the information you're providing to me, he should be classified as an 85% offender.

I cannot speak to the Court's intent. According to my reading of the law, he should be sentenced under 24-13-150 for 85%, and does not meet the exception under Bolin/Fowler vs. SCDC. That being said, I am not offering an official legal opinion; nor should you rely on this. I would advise you independently run a RAP and have your general counsel review it. I don't know what kind of access y'all have to RAPs, but if you need me to run it for you and send it, just have your general counsel let me know and I'll send it over.

Britton All

-Original Message-----
m: Audrey Crum (CrumAud) [mailto:Crum.Audrey@doc.sc.gov]
: Thursday, August 25, 2016 10:57 AM
ll, Britton
sawyer@sinklaw.com; Wanda Blanding (BlandWa); Joette Scarborough (Scarbor); Christina Bigelow (C057846)
t: FW: scdc#316178 Vincent Rice

Solicitor: All

Vincent Jermaine Rice, SCDC# 316178

e is seeking clarification in referencing to statute 44-53-0370(b)(2), Drug/Manuf., poss. Of other sub. In Sch. I,II,III or flunitrazepam or sub. Offense (0188), Per the Judicial System CDR 0188 is reflecting a Felony C. which requires the inmate to satisfy 85% of his t Per Bolin/Fowler vs SCDC this offense may not require 85%. Per General Counsel the interpretation and statute deems inmate Bolin/Fowler vs SCDC based on a prior Manuf/Dist of any drug offense. What we are looking for is information concerning the

is implying that they already
S C felony under 24-13-150 is
5%

1 24-13-150

9

Exhibit A

offender's prior record. If the inmate prior record contains things more serious than simple possession(i.e., distribution, PWID, manufacturing, conspiracy, etc.) then he must be classified as an 85% offender who is not eligible for parole. If his prior drug record contains ONLY simple possession, he would not be an 85% offender. Please inform this office of the court intent of this charge. This inmate is SCHEDULE to be release on September 01, 2016 to SUPERVISED RE-ENTRY. I will be awaiting your response. Please feel free to contact me if you have any question or concerns.

Audrey Crum
Inmate Records Office
Record Processing Supervisor
Crum.Audrey @doc.sc.gov
(803)896-1994

-----Original Message-----
From: DONOTREPLY
Sent: Thursday, August 25, 2016 10:24 AM
To: Audrey Crum (CrumAud) <Crum.Audrey@doc.sc.gov>
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Inmate Records Upstairs (DC000124) 896-8531

For more information on Xerox products and solutions, please visit http://www.xerox.com

South Carolina Sentencing Reform Commission
Report to the General Assembly
February 1, 2010

Creation of the Sentencing Reform Commission

The Commission was given the responsibility of reviewing and recommending (1) appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year allowed (2) maintaining, amending, or abolishing the current parole system; and (3) guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate

Drivers for Prison Growth

Second, again largely based on sentencing policies, the number of offenders entering prison for non-violent offenses, mostly drug and property crimes has increased significantly. Forty-nine percent of SCDC's population is being held for non-violent offenses. The percentage of offenders incarcerated for drug-related offenses has more than tripled. In 1980, there were 473 inmates convicted of drug related offenses, six-percent of the total population. In 2009 the number had increased to 1,682 inmates or twenty-percent of the population.

Making South Carolina Safer

- Prison space should be reserved for violent criminals and those with violent tendencies. Research has shown that low risk offenders, those who pose a minimal threat to the public are managed more effectively outside of the prison system. After an in-depth analysis of the states sentencing and correction data, the commission has developed recommendations that will reduce recidivism while also reducing the cost of corrections.

The Commissions proposals would also reduce the cost of corrections by limiting the increase in projected prison population over the next (5) years, by over 2,400 prison beds and saving approx $ 317 million in construction for building new prison space. those savings could then in turn be used to fund other recommendations of the commission and help keep communities safe through means other than incarceration.

It is important to note that these recomendations represent both short-term and long-term goals, as well as policy options that the sentencing reform commission hope can be implemented to reduce recidivism, hold offenders accountable and maximize limited financial resources in the state. The recommendation voted on unanimously by the commission, focuses on (3) objectives given to them; (1) by requiring the criminal justice system to be moved accountable and transparent (2) by strengthening release and supervision decisions, and (3) by offering alternatives as opposed to incarceration

justice system to be more accountable and transparent (2) by strengthing release and supervision decisions, and (3) by offering effective alternatives as opposed to incarceration.

Sentencing Reform Commission Work Groups

- Offense classification: There are several crimes in the violent crime catagory, which are not violent crimes. There are violent crimes, recently added to the code, which are not on the violent crime list. The list of crimes on the "no-parole" list ranges from serious violent offenses, such as murder, to non-violent crimes, such as possession of cocaine.

- Drug offenses and Sentences: A number of low-level drug offenses including first time convictions currently require prison sentences. There are 54 drug crimes classified as violent crimes. There are 88 drug crimes that prohibit parole. Many offenses now defined as trafficking have low thresholds for quantites of drugs and require long prison terms. Possession with intent to distribute crimes are based soley on the quantity of the drug possessed and do not require the intent to sale

- Recommendation 3: Restructure controlled substances offenses
Enact legislation to allow for probation, suspension of sentences, parole, work credits, education credits, and good conduct credits for all non-trafficking controlled substance offenses including Possession, Possession with intent to Manufacture (PWIM) PWID and purchasing proximity offenses. Enact legislation to equalize all penalties related to controlled substances involving crack, cocaine, crack, or meth which previously were not equalized.

- Recommendation 7: Improve transparency and certainty in sentencing decisions and at bond and bail hearings.

Recommend that all interested persons be provided the sentencing information necessary for sentencing in a manner that the offender, victim, lawyers, and public can understand, including but not limited to a description of the minimum and maximum imprisonment of the offender must serve and how suspension, probation, parole, good time credits, etc, will empact the offenders sentence. Encourage DOC to continue it's efforts to create a website where this information may be easily obtained once all sentencing reports and other data pertinent to a conviction have been recieved.

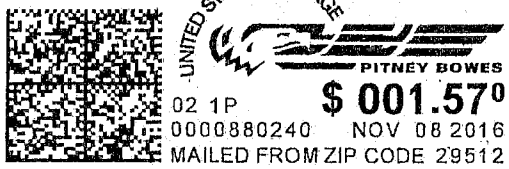
Certificate of Service

I certify that a true copy of Amended Brief/Johnson for Writ of Certiorari in this case has been served on Jessica Kinard, Esquire, at ~~Her~~ 1000 Assembly St. Room 519, Columbia S.C 29201.

Vincent Rice #316127
Petitioner

nt Rice # 314178
T
205
wy 9
nnestville, SC 29512

URGENT



S.C Supreme Court
Assembly St.
Columbia, S.C 29201