

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Supreme Court County

Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED

JAN - 3 2017

S.C. SUPREME COURT

JASON SANFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-00410

BRIEF OF PETITIONER

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by the fact that neither plea counsel nor the plea judge advised Petitioner that any sentence imposed for murder would have to be served day for day?

STATEMENT

In April of 2012, the Anderson County Grand Jury indicted Petitioner Sanford for murder and possession of a weapon during the commission of a violent crime, indictment #2012-GS-04-968. On December 4, 2012, Petitioner and co-defendant, Lorenzo Sullivan, appeared before the Honorable J. Cordell Maddox and pled guilty to murder. Scott Robinson represented Petitioner at the plea. Pursuant to a recommendation by the State, Judge Maddox sentenced Petitioner and his co-defendant to thirty (30) thirty years. Petitioner did not appeal his sentence and conviction.

On June 12, 2013, Petitioner filed an application for post- conviction relief. The State filed a return on July 2, 2014. On December 1, 2014, an evidentiary hearing was held before the Honorable Carmen T. Mullen. In a written order signed February 6, 2015, Judge Mullen denied relief and dismissed the application. A timely notice of intent to appeal was served on February 26, 2015. A petition for writ of certiorari was filed on September 30, 2015. The State filed a return on January 19, 2016. On December 2, 2016, this Court granted the petition for writ of certiorari. This brief of petitioner follows.

ARGUMENT

The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact that neither plea counsel nor the plea judge advised Petitioner that any sentence imposed for murder would have to be served day for day.

In his *pro se* application for post-conviction relief Petitioner asserted that the guilty plea was not made knowingly because neither plea counsel nor the plea judge advised Petitioner that the mandatory minimum sentence of thirty (30) years for murder would have to be served day for day. (App. p. 37). During the PCR hearing Petitioner testified that plea counsel did not explain that the mandatory minimum sentence of thirty years would have to be served day for day. (App. p. 56, lines 3-15). Petitioner testified, "Well, when I took my plea, I didn't know that a thirty-year sentence was going to be a hundred percent day for day sentence. He [plea counsel] didn't explain to me that it was going to be a mandatory minimum of thirty years day-for-day. My understanding when he was explaining it to me, the only thing was eighty-five percent as a most serious violent crime. I didn't have no type of understanding that it was going to be a day-for-day sentence." (App. p. 56, lines 3-11). Petitioner testified that if he had known he had to serve the sentence day for day, he would have insisted on going to trial. (App. p. 56, lines 12-15; p. 57, line 21 – p. 58, lines 1-4).

During the guilty plea the plea judge asked plea counsel, "And he understands that while there is a recommendation of 30 years, I'm not bound by that. I could sentence him to life in prison. Does he understand that?" (App. p. 10, lines 15-17). Plea counsel responded, "Yes, sir." (App. p. 10, line 18). The plea judge did not discuss parole eligibility or the fact that any sentence imposed for murder must be served day for day.

During the PCR hearing plea counsel testified that he did not advise Petitioner that he would be parole eligible after serving eighty-five percent of his sentence. (App. p. 86, line 22 – p. 87 lines 1-4). Plea counsel, however, never testified that he advised Petitioner that he would have to serve any sentence imposed for murder day for day. Plea counsel testified that he does not give advice on parole eligibility. (App. p. 90, lines 12-13). Plea counsel testified, “This was absolutely his decision. And I can only tell him – and Judge Maddox is the same way. It’s thirty years **day for day**, thirty years to life. I can’t give and I don’t give advice on parole eligibility because if I ever am able to determine what the Department of Corrections does, I’m going to write a book and make a lot of money. But I can’t – I just can’t do that.” (App. p. 90, lines 10-17) (Emphasis added). First, neither Judge Maddox nor plea counsel advised Petitioner that any sentence imposed for murder would have to served **day for day**. Second, plea counsel did not have to make a determination about what the Department of Corrections was going to do in regard to parole eligibility because Petitioner was statutorily ineligible for parole pursuant to S.C. Code §16-3-20.

In the order of dismissal the PCR judge wrote, “Counsel did not advise Applicant on parole eligibility and further noted that he does not advise his clients on the matter as a matter of his general practice.” (App. p. 100). The PCR judge ruled, writing in the order of dismissal:

Last, this Court finds Applicant’s allegation that counsel’s performance was deficient and prejudicial for failing to advise him on parole eligibility to be without merit. In contrast, parole eligibility has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). This Court further finds Applicant’s contention that he would have proceeded to trial if had been advised on parole eligibility to be dubious and unavailing. Counsel’s testimony and general practice approach on the matter was sound. Therefore, this allegation is summarily denied and dismissed.

(App. pp. 105-16). The PCR judge erred. While **parole eligibility** has been held to be a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a

guilty plea, **parole ineligibility** is a direct consequence of sentencing. Counsel had a duty to specifically advise Petitioner that he was ineligible for parole and would have to serve his thirty year sentence for murder day for day. Counsel was deficient in failing to advise Petitioner that he was not eligible for parole. The guilty plea was rendered involuntary by plea counsel's deficient performance.

In Cuthrell v. Dir., Patuxent Inst., 475 F.2d 1364 (4th Cir.1973), the Fourth Circuit Court of Appeals held that the failure to advise the defendant that his plea to assault may result in civil commitment did not render the guilty plea involuntary because any possible civil commitment was a collateral consequence of the guilty plea. In discussing the difference between direct and collateral consequences of a guilty plea, the Fourth Circuit in Cuthrell wrote:

On the other hand, when a defendant pleads guilty to an offense under which he is not eligible for parole, he should be made aware of that fact before the acceptance of his plea. Paige v. United States (4th Cir. 1971) 443 F.2d 781, 782-783. The reason for this conclusion is that the right to parole has become so engrafted on the criminal sentence that such right is "assumed by the average defendant" and is directly related in the defendant's mind with the length of his sentence. Moody v. United States (8th Cir. 1972) 469 F.2d 705, 708.

Cuthrell, 475 F.2d at 1366.

In Hill v. Lockhart, 474 U.S. 52, 60, 106 S. Ct. 366, 371, 88 L. Ed. 2d 203 (1985) the United States Supreme Court wrote:

In the present case the claimed error of counsel is erroneous advice as to eligibility for parole under the sentence agreed to in the plea bargain. App. 31. We find it unnecessary to determine whether there may be circumstances under which erroneous advice by counsel as to parole eligibility may be deemed constitutionally ineffective assistance of counsel, because in the present case we conclude that petitioner's allegations are insufficient to satisfy the Strickland v. Washington requirement of "prejudice." Petitioner did not allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial.

The present case differs from Hill v. Lockhart because Petitioner in the present case testified that if he had known he had to serve the sentence day for day, he would have insisted on going to trial. (App. p. 56, lines 12-15; p. 57, line 21 – p. 58, 59, lines 1-4).

Parole ineligibility is a direct consequence of pleading guilty to murder pursuant to S.C. Code §16-3-20 and is distinguished from the line of cases finding that **parole eligibility** is a collateral consequence of sentencing. In Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609-10 (2004), this Court, discussing parole eligibility, wrote:

This Court has repeatedly acknowledged that normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). See also Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

In contrast, counsel in the present case failed to advise Petitioner that that by pleading guilty to murder, he would automatically, pursuant to statute, be ineligible for parole. Counsel failed to advise Petitioner of a direct consequence of pleading guilty to murder, parole ineligibility.

In Brown v. State, 306 S.C. 381, 382-383, 412 S.E.2d 399, 400-401 (1991), this Court wrote, “The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral consequences. Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a guilty plea. This is because parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services.” In

contrast, the failure to advise of parole **ineligibility** should not be considered a collateral consequence as this is not within the province of Probation Parole and Pardon Services but rather mandated by statute. "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Cuthrell, 475 F.2d 1364, 1366 (4th Cir. 1973). Parole ineligibility is a definite, immediate and automatic effect on the range of punishment for a defendant pleading guilty to murder. Failing to advise Petitioner that he was ineligible for parole is different from failing to advise a parole eligible defendant about when that defendant may become eligible for parole. Parole ineligibility is a direct consequence of pleading guilty to murder.

In Bell v. State of N.C., 576 F.2d 564, 566 (4th Cir. 1978), the Fourth Circuit Court of Appeals wrote, "If the parole ineligibility were for defendant's entire term, then, any guilty plea would have to reflect that understanding. Paige v. United States, 443 F.2d 781 (4 Cir. 1971); Berry v. United States, 412 F.2d 189, 192-193 (3 Cir. 1969)." In Bell the Court denied habeas relief because the North Carolina statute in question did not deny parole. In contrast, S.C. Code §16-3-20 denies parole when a defendant enters a guilty plea to murder.

In Berry v. United States, 412 F.2d 189, 192-93 (3d Cir. 1969), the Third Circuit Court of Appeals wrote:

Under such circumstances, the knowledge of ineligibility for parole is as necessary to an understanding of the plea as is the knowledge of the maximum sentence possible. Failure to impart this information constituted a failure to explain to the appellant the consequences of his plea. We therefore reach the same conclusion as did the Ninth Circuit in Munich v. United States¹, 337 F.2d 356 (1964): 'One who, at the time of entering a plea of guilty, is not aware of the

¹ (9th Cir.).

fact that he would not be eligible for probation or parole, does not plead with understanding of the consequences of such a plea.'

In Durant v. United States, 410 F.2d 689, 693 (1st Cir. 1969), the First Circuit Court of Appeals wrote, "We hold that ineligibility for parole is a consequence of a plea of guilty and under Rule 11 the district court should not have accepted the guilty plea without first informing the defendant that conviction upon the plea would make him ineligible for parole." In Jenkins v. United States, 420 F.2d 433, 437 (10th Cir. 1970) (fn 4,5 and 6 omitted), the Tenth Circuit Court of Appeals wrote:

We conclude that the record as a whole did not permit denial of the motion under § 2255 without an evidentiary hearing. The averments are that Jenkins was not advised by the court or counsel, and did not know, that a conviction for the narcotics sale violations charged would make him ineligible for probation or parole. Such circumstances we deem a practical consequence of the plea which could not be dismissed as irrelevant as a matter of law. The substance of such allegations has been recognized in several cases. See Berry v. United States, 412 F.2d 189 (3d Cir.); Durant v. United States, 410 F.2d 689 (1st Cir.); and Munich v. United States, 337 F.2d 356 (9th Cir.). Elsewhere such circumstances have been viewed as insufficient grounds for post conviction relief. See Trujillo v. United States, 377 F.2d 266 (5th Cir.), cert. denied, 389 U.S. 899, 88 S.Ct. 224, 19 L.Ed.2d 221; Smith v. United States, 116 U.S.App.D.C. 404, 324 F.2d 436, cert. denied, 376 U.S. 957, 84 S.Ct. 978, 11 L.Ed.2d 975; and Simon v. United States, 269 F.Supp. 738 (E.D.La.). The practical effect of the loss of probation and parole is '* * * so powerful that it translates the term imposed by the sentencing judge into a mandate of actual imprisonment for a period of time three times as long as that ordinarily expected.' Berry v. United States, supra, 412 F.2d at 192. We conclude that such an effect is, within the meaning of the rule, a consequence of the plea to be carefully considered.

In Harris v. United States, 426 F.2d 99, 101 (6th Cir. 1970)(fn 1 omitted), the Sixth Circuit Court of Appeals wrote:

Ineligibility for parole consideration, like ineligibility for a concurrent sentence, affects the length of incarceration. Accordingly, we conclude that a defendant indicted for a narcotic offense does not voluntarily plead guilty with knowledge of the consequences of his plea if he is unaware of his ineligibility for parole. We

align ourselves with the First, Third, Ninth and Tenth Circuits believing, as does the Fifth Circuit, Spradley², *supra*, that they state the better view.

In United States v. Smith, 440 F.2d 521, 525-26 (7th Cir. 1971)(fn 12 omitted), the

Seventh Circuit Court of Appeals wrote:

We agree with the positions taken by the Ninth, First, Third, Tenth, Sixth and Second Circuits, as well as the view expressed by the Fifth Circuit in Spradley v. United States, *supra*. Ineligibility for parole automatically trebles the mandatory period of incarceration which an accused would receive under normal circumstances. It necessarily follows that it would have an effect on the expected length of detention and would have primary significance in an accused's determination of whether to plead guilty. The purpose of Rule 11 is to insure that an accused does not plead guilty 'except with a full understanding of the charges against him and the possible consequences of his plea.' Brady v. United States, 397 U.S. 742, 749 n. 6, 90 S.Ct. 1463, 1469 n. 6, 25 L.Ed.2d 747 (1970). The procedures therein are designed to assist the trial judge in making his requisite voluntariness determination and to produce a complete record of the factors relevant to such determination at the time the plea is entered. McCarthy v. United States, 394 U.S. 459, 465. 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969); United States, v. Berlin, 7 Cir., 437 F.2d 901 (1971). Accordingly, we hold that, consistent with the purpose and the procedures of Rule 11, ineligibility for parole is a consequence of a plea of guilty about which a defendant in a narcotics case must be informed pursuant to such rule.

Petitioner in the present case entered the guilty plea without an understanding of the mandatory punishment for the offense. Petitioner reasonably but erroneously believed he would be eligible for parole after serving eighty-five percent of his sentence. Counsel was deficient in not advising Petitioner that his thirty year sentence following a guilty plea to murder would have to be served day for day. In State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 603 (1980), this Court wrote, "It is elementary that in order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Upon the facts in this case, appellant's plea was not

² Spradley v. United States, 421 F.2d 1043 (5th Cir. 1970)

knowing because it was entered without an understanding of the mandatory punishment for the offense to which she was pleading. It was thus a plea entered in ignorance of its direct consequence, and was therefore invalid.” The guilty plea in the present case was not entered knowingly. Neither the judge nor plea counsel advised Petitioner that the thirty years sentence would have to be served day for day.

Additionally, the collateral consequences rule should not bar relief because plea counsel’s failure to advise Petitioner that he was not eligible for parole was the equivalent of providing erroneous parole information. In Griffin v. Martin, 278 S.C. 620, 621, 300 S.E.2d 482, 482–83 (1983), this Court wrote:

Normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Bell v. North Carolina, 576 F.2d 564 (4th Cir.1978). However, appellant contends Strader v. Garrison, 611 F.2d 61 (4th Cir.1979) mandates his plea be vacated because he was actively misinformed about his parole eligibility. In Strader, the 4th Circuit Court of Appeals declined to apply the collateral consequence rule because the defendant relied on erroneous advice concerning parole eligibility in entering his plea. Here, appellant failed to prove he relied on the misinformation.

Unlike Griffin, Petitioner in the present case relied on the misinformation. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) this Court granted relief based on erroneous advice in regard to parole eligibility which rendered the guilty plea involuntary. See also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (relief granted based on erroneous advice in regard to maximum sentence that could be imposed). In the present case plea counsel’s failure to advise Petitioner that he was not eligible for parole was the equivalent of providing erroneous parole advice and rendered the guilty plea involuntary.

In Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), the United States Supreme Court noted that while other courts have made the distinction between

collateral and direct consequences of a guilty plea in the context of post-conviction relief, the Supreme Court has never made that distinction. In Padilla the Court wrote:

Before deciding whether to plead guilty, a defendant is entitled to “the effective assistance of competent counsel.” McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); Strickland, 466 U.S., at 686, 104 S.Ct. 2052. The Supreme Court of Kentucky rejected Padilla's ineffectiveness claim on the ground that the advice he sought about the risk of deportation concerned only collateral matters, *i.e.*, those matters not within the sentencing authority of the state trial court. 253 S.W.3d, at 483–484 (citing Commonwealth v. Fuartado, 170 S.W.3d 384 (2005)). In its view, “collateral consequences are outside the scope of representation required by the Sixth Amendment,” and, therefore, the “failure of defense counsel to advise the defendant of possible deportation consequences is not cognizable as a claim for ineffective assistance of counsel.” 253 S.W.3d, at 483. The Kentucky high court is far from alone in this view.

We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally “reasonable professional assistance” required under Strickland, 466 U.S., at 689, 104 S.Ct. 2052. Whether that distinction is appropriate is a question we need not consider in this case because of the unique nature of deportation.

559 U.S. at 364-65, 130 S. Ct. at 1480-81, 176 L. Ed. 2d at 284. If this Court finds that the failure to advise that any sentence imposed for murder is parole ineligible and would have to be served day for day is a collateral consequence to sentencing, this Court should, pursuant to Padilla, refuse to make the distinction between direct and collateral consequences to define the scope of constitutionally reasonable professional assistance under Strickland. Counsel's failure to advise Petitioner that the thirty year sentence, recommended by the State, would have to be served day for day, was objectively unreasonable and constitutes deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the

applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “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.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). In Burnett v. State, 352 S.C. 589, 591–92, 576 S.E.2d 144, 145 (2003), this Court wrote:

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). This Court has held that, “in addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A plea made in ignorance of its direct consequences is entered in ignorance and is invalid. Hazel, 275 S.C. 392, 271 S.E.2d 602.

“A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “The longstanding test for determining the validity of a guilty plea is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’ ” Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).). “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). “Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted).

“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).


Plea counsel was ineffective in failing to advise Petitioner that any sentence imposed for murder would have to be served day for day. The plea did not represent a voluntary and intelligent choice because neither the judge nor plea counsel advised Petitioner that he would

not be eligible for parole. The plea violated both Due Process and Petitioner's Sixth Amendment right to counsel.

Petitioner was prejudiced by the deficient performance. Although plea counsel did not remember a self-defense claim at the PCR hearing, (App. p. 91, lines 3-4), during the guilty plea Petitioner stated that he felt like he was defending himself and plea counsel told the plea judge, "Your Honor, we had actually considered self-defense." (App. p. 14, lines 17-18). There is a reasonable probability that if plea counsel had advised Petitioner that any sentence imposed for murder would have to be served day for day, that Petitioner would not have pled guilty and instead would have insisted on going to trial. Petitioner testified that if he had known he had to serve the sentence day for day, he would have insisted on going to trial. (App. p. 56, lines 12-15; p. 57, line 21 – p. 58, 59, lines 1-4).

CONCLUSION

Based on the above argument this Court should reverse the PCR court, grant post-conviction relief and remand the case for trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of January, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Carmen T. Mullen, Circuit Court Judge

JASON SANFORD,

PETITIONER,

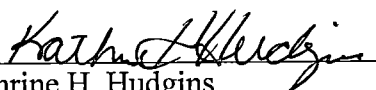
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Jason Sanford, #340276, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this This 3rd day of January, 2017.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
This 3rd day of January, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: March 1, 2026