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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

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The Honorable Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2014-001631

Letron S. Davis,Respondent,

v.

State of South Carolina,Petitioner.

REPLY TO BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHANNA C. VALENZUELA
Sr. Assistant Deputy Attorney General
S.C. Bar No. 79834

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

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ARGUMENT IN REPLY

Reversal is necessary in this case because the post-conviction relief judge's finding that plea counsel misadvised Respondent about his parole eligibility ignores the constitutional mandate to evaluate counsel's advice in light of the circumstances at the time the advice is given. Strickland v. Washington, 466 U.S. 668, 689 (1984) ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.").

Respondent argues this Court should uphold a finding of deficient performance by plea counsel for **correctly** interpreting a statute and, essentially, argues plea counsel should have given Respondent incorrect advice as to the statute and encouraged Respondent to act on incorrect legal advice to reject the plea deal. Plea counsel provided advice based on a reasonable interpretation of a change in law. The record indicates plea counsel gave this advice after careful consideration and consultation with other members of the bar. Such performance goes above and beyond the requirements of adequate representation.

I. Plea counsel reasonably interpreted a change in the law and the temporary misapplication of the law by an administrative agency is not attributable to counsel.

Petitioner relies on the arguments and authorities presented in its Brief of Petitioner.

II. Respondent was not deprived of due process after being advised correctly by the Plea Court of the constitutional rights he was waiving, the nature and elements of the offense, and the maximum and any mandatory minimum penalties of the crime to which he pleaded guilty.

"The Due Process Clause requires guilty pleas be entered into voluntarily, knowingly, and intelligently." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (citing Boykin

v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.E.2d 274 (1969)). “Before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving.” Id. “In addition . . . , 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.” Id. (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (emphasis supplied); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held the court must be certain the defendant understands the charge and consequences of the plea, as well as ensuring the record indicates a factual basis for the plea, before a guilty plea may be accepted.

Here, the Court advised Respondent that the Burglary Second charge he was pleading guilty to carried up to ten years in jail and the distribution of cocaine base, second offense, carried a minimum of five years and a maximum of thirty years. (App. p. 4, ll. 6-18.) The Court confirmed Respondent understood that, by pleading guilty, he would be sentenced to the negotiated seven years. (App. p. 5, ll. 1-3.) The Court also advised Respondent of his right to a jury trial and that he would be waiving that right if he pleaded guilty. (App. p. 5, ll. 7-18.) There was no discussion on the record by the Court or counsel about Respondent’s parole or about whether these charges carried an eighty-five percent service requirement. Importantly, when asked by the Court if anybody had promised him any type of reward or gift to get him to plead guilty, Respondent answered “No, sir.” (App. p. 5, ll. 21-23.)

While plea counsel did testify he advised Respondent his sentence was parole eligible based on changes in the law, (App. p. 43, ll. 6-10; p. 58, ll. 16-22), plea counsel further testified he never actually promised Respondent a specific amount of time he would have to serve, merely that it would be less than 85%. (App. p. 42, l. 23-p. 43, l. 6). Respondent pleaded guilty

believing he would be parole eligible, and Respondent actually is parole eligible; there has been no due process violation.

To the extent Respondent argues that this Court should grant relief based on action taken by the Department of Corrections, this is not the appropriate avenue to challenge the DOC's actions. See Bolin v. S.C. Dep't of Corrections, 415 S.C. 276, 781 S.E.2d 914 (2015) (addressing this issue after it was raised by an inmate challenging the DOC's interpretation and application of the statute). Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). As stated in Cooper, by challenging the duration of the sentence, Petitioner is in fact trying to enforce the sentence and not making a collateral attack on the conviction.

This case continues to be about **correct advice** from plea counsel about parole eligibility based on a reasonable interpretation of a change in law where that law was **temporarily** misapplied by an administrative agency. Accordingly, the post-conviction relief judge's order must be reversed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court reverse the post-conviction relief judge's decision to grant relief to Respondent and vacate the order granting relief.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHANNA C. VALENZUELA
Sr. Assistant Deputy Attorney General
S.C. Bar No. 79834

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By:


ATTORNEYS FOR PETITIONER

5 January, 2017

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vs.

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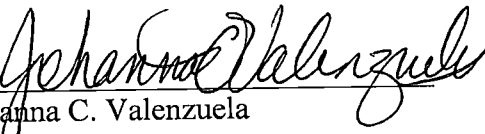
Petitioner.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Reply to Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: 
Johanna C. Valenzuela
SC Bar: # 79834
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

January 5, 2017

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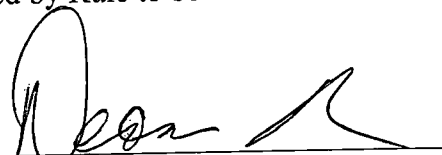
PROOF OF SERVICE

I, Deonna Rogers, certify that I have served the within Reply to Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Laura Ruth Baer, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211-1589**

I further certify that all parties required by Rule to be served have been served.

This 5th day of January, 2017.


DEONNA ROGERS
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727