

The State of South Carolina
In the Supreme Court

Appeal From Charleston County
Court of Common Plea

Doyet R. Early III, Circuit Judge

Case no: 2014-CP-10-5043

Frank Middleton 284197 - - - - Petitioner

V.

State of South Carolina - - - Respondent

Pro Se, Brief

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MAR 17 2017

S.C. SUPREME COURT

Statement

After being indicted for armed robbery by a Charleston County grand jury during its October 2012 term, Petitioner pled guilty to strong armed robbery before the Honorable Thomas L. Hughston, Jr. on April 9, 2014. Beattie Bulter represented Petitioner, but due to health concerns Rhett Dunaway handled the plea. Assistance Solicitor Greg Voigt appeared on behalf of the State. The facts presented by the prosecution were as follows:

On April 29, 2012 a man with a bandana over his face entered the Five Guys restaurant on Savannah Highway in West Ashley. This individual was armed with a firearm and requested that the cashier put money in a bag. As this man was leaving local children from the neighborhood were entering the restaurant and recognized the gunman as Petitioner. Petitioner was subsequently apprehended.

Prior to his guilty plea but after being apprehended Petitioner cooperated in a high-profile murder case; he testified on behalf of the State with nothing to gain and nothing promised. According to the Assistance Solicitor Petitioner was a "big help to [the state] in the Marley Lyons trial".

The plea judge was not advised in great detail regarding Petitioner's assistance in that trial.

However, during Petitioner's guilty Plea the Assistance Solicitor did not mention the recommendation of time served. All that was said regarding the Sentencing offer was:

Plea Transcript of Record 2012-GS-10-5895-

is the reason for the offer from a-- and after you hear this record you'll wonder why I'm offering what I'm offering, but the reason for the offer was partially due to Mr. Middleton's Cooperation in a recent high-end-profile murder case.

Page 5 lines 12-16

Following that state, the Assistance Solicitor never actually advised the court what his offer was, Counsel

Dunaway sought time

served and probation as a

sentence,

So, Judge, it's a tall order to ask but if I'm wrong the Solicitor can correct me, I don't believe the Solicitor is asking for active time. I think the time he's done is sufficient, according to the Solicitor, but if a period of probation might be granted I don't think we'll be seeing Mr. Middleton back. Page 11 lines 5-10

The Plea Judge sentenced Petitioner to a term of 14 years imprisonment due in large part to Petitioner's prior record. Petitioner did not appeal his sentence.

Argument order of Dismissal

This the PCR Court erred in denying Petitioner relief. Where Plea Counsel provided ineffective assistance.

The PCR Court rule that Plea Counsel testimony is Credible. Plea Counsel testified at the PCR hearing, that he met with Applicant a day before or the day of the plea for the first time. Counsel stated he had spoken to the Solicitor on the case and the Solicitor had admitted that Applicant was a huge help in the Marley Lyons case. Counsel stated he attempted to get an offer from the State for a Strong arm robbery charge instead of armed robbery.

The PCR Court rule that Counsel provided effective assistance of Counsel in this case.

Appellate case no 2016-001524

Appendix

Page 47 lines 1-7

Plea Counsel, said Mr. Pennington who approached him and said can you handle this plea. And I saw what the charge was. I said well, I will do what you want, but he said well, this is kind of wired up and there is a great

offer. Beattie is out sick.

From the Order of Dismissal. Page 6 lines 3-6

This Court also finds Counsel provided effective assistance of Counsel in this case. Counsel advised Applicant of the Charges and the Sentences the Charges. Counsel negotiated with the State in Applicant's best interest, namely that Counsel negotiated a sentence in which he could argue for a time served - sentence.

Appellate Case 70 2016-001524

Appendix. Page 47 lines 16-24

So when I spoke to Mr. Voigt, he said, you know Mr. Middleton was a big help to us in the Marley Lyons trial. I want to do what I can for him. It's an armed robbery, there's two weapons charges, one was possession of a weapon during the commission of a violent crime, the other was possession of a weapon by convicted felon, I will even ~~know~~ knock it down to a strong arm.

Appellate Case 70 2016-001524

Appendix. Page 48 lines 4-7

So I am willing to do that. He said Rhett, frankly, I don't really care if he get time. I really appreciate what he did. I said that sounds great,

So, if Assistance Solicitor Greg Voigt, is telling him the offer the State. How can Plea testify at Petitioner PCR hearing

This the PCR Court erred in denying Petitioner relief where Plea Counsel provided ineffective assistance by informing Petitioner that the Solicitor offer to let him Plea to Strong arm robbery for time served with the recommendation of no new sentence, with the time served was what I understands stand from the Plea from Plea Counsel. Also we inform Petitioner that he might receive 4 or five years Probation. And Petitioner in fact received fourteen years' imprisonment. Plea Counsel never inform the court of the Plea agreement. Plea Counsel is ineffective for mis leading Petitioner that he was Pleasing to time served, when in fact he receive 14 years.

Plea Counsel never file any motion for relief or to have sentence amend.

Mr. -- My question to you before was when you were down in the cell talking to him before you walk up, do you think you conveyed to him that the Solicitor was not looking for an active sentence?

A. I'm sure I did.

Q. you are sure you did?

A. I'm sure I did do that.

And this is what he told Petitioner, when you hear what someone is telling you, it hard not to remember. Plea Counsel told Petitioner that Assistance Solicitor Greg Vogt, was really appreciated of his help in the Marley Lyons case. And was willing to let Petitioner plea to strong arm robbery, for time served. And this is why Petitioner pled guilty to strong armed robbery. At no time this Plea Counsel, said anything about Petitioner getting anytime. Had Petitioner known that he was going to get 14 years. Petitioner would had gone to trial.

State of South Carolina

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Doyet A. Early, Circuit Court Judge

FRANK MIDDLETON

Petitioner

v.

State of South Carolina,

Respondent

Certificate of Service

The undersigned hereby certifies that a true copy of Pro Se, Petitioner for writ of certiorari in the above referenced case has been served to the Clerk of Court, for The Supreme Court of South Carolina, 1231 Gervais Street, 29201

Subscribed and sworn to before me this day of ^{14th} March
Catherine A. Conway 2017

Notary Public for South Carolina

My Commission Expires: My Commission Expires December 22, 2018

FRANK Middleton #284177 Mag. B-15 T

Kershaw Correctional Institution

4848 Gold Mine Highway,

Kershaw S.C. 29067

Mr. Daniel E. Shearouse

Clerk of Court

The Supreme Court of South Carolina

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STATE OF ALABAMA
DEPARTMENT OF REVENUE