THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Honorable Deadra L. Jefferson, Circuit Court Judge

Case No. 2010-CP-10-3800

Opinion No. 2016-UP-015 (S.C. Ct. App. filed January 13, 2016)
Appellate Case No. 2016-001456

Onrae Williams, ... Petitioner,

v.

State of South Carolina, ... Respondent.

BRIEF OF ONRAE WILLIAMS

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STATEMENT OF ISSUES

I. **Did the Court of Appeals err in affirming the denial of post-conviction relief for ineffective assistance of counsel where the PCR court's orders are inconsistent with the record showing that trial counsel failed to ensure Petitioner understood the consequences of rejecting a plea bargain and proceeding to trial when the State was seeking mandatory life in prison without parole?**

STATEMENT OF THE CASE

A. Procedural History

On January 17, 2007, a jury found Onrae Williams guilty of distribution of crack cocaine and distribution of crack cocaine within proximity of a school. He was sentenced to life in prison without the possibility of parole ("LWOP") under South Carolina's recidivism statute, S.C. Code Ann. § 17-25-45. After exhausting the direct appeal process, Mr. Williams applied for post-conviction relief ("PCR"), and amended his application to state that his trial counsel was ineffective for failing to research the LWOP statute and its applicability to Mr. Williams, inform him about the operation of the statute in his case, and raise appropriate objections with the State and the trial court to the State's notice of its intent to seek LWOP. At the PCR hearing, new evidence was presented that trial counsel failed to adequately inform Mr. Williams that he faced mandatory LWOP if he rejected a plea offer and proceeded to trial.

The PCR court dismissed Mr. Williams' amended application on August 4, 2011, and his motion to alter or amend on September 2, 2011. Mr. Williams timely petitioned this Court for a writ of certiorari on December 23, 2011. This Court transferred the case to the Court of Appeals. The Court of Appeals granted the petition on May 22, 2014, and the appeal was fully briefed.

Although the appeal was scheduled for oral argument, due to the severe flooding in Columbia in October 2015, the Court of Appeals elected to forgo rescheduling oral arguments and decided the case on the record and briefs. On January 13, 2016, the Court of Appeals affirmed the PCR court in an unpublished opinion. Mr. Williams' petition for rehearing and rehearing en banc was denied on June 10, 2016.

Mr. Williams timely petitioned this Court for a writ of certiorari on July 11, 2016. On March 27, 2017, this Court granted the petition as to Question II regarding whether the Court of Appeals erred in affirming the denial of PCR where the record showed that trial counsel failed to ensure that Mr. Williams understood the consequences of rejecting a plea bargain and of proceeding to trial when the State was seeking mandatory LWOP.

B. Facts Giving Rise to Mr. Williams' Life Without Parole Sentence

On January 17, 2007, Mr. Williams was convicted of selling approximately $15 worth of crack cocaine to an informant within one-half mile of a high school. (App. p. 371:19-24; 409:10-12; 453.) He was sentenced to mandatory LWOP pursuant to South Carolina's recidivism statute, S.C. Code Ann. § 17-25-45, based on two prior "Serious" offenses: (1) a guilty plea for possession of cocaine with intent to distribute within close proximity of a school (App. p. 380:17 to 381:2; 468-71); and (2) a guilty plea for distribution of 0.2 grams of crack cocaine (approximately $5-10 worth) within close proximity of a school (App. p. 381:3-9; 408:13-15; 463-67). All three convictions fell under the recidivism statute because of the crimes' proximity to Burke High School, which also was 50 yards from where Mr. Williams lived. (App. p. 407:14-20; 408:3-9; 408:24 to 409:5.)

C. Facts Giving Rise to Ineffective Assistance of Counsel Claim

Before trial, and in the context of an arrest for the sale of 0.3 grams (approximately $15 worth) of drugs, the State offered Mr. Williams several plea deals, including for three years, five years, and ten years, all of which Mr. Williams rejected. (App. p. 443:9-17.) Although the State served a notice of intention to seek LWOP, the notice did not mention the mandatory nature of the sentence:

> PLEASE TAKE NOTICE that at the trial of the above entitled action to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek to have the defendant sentenced to a term of imprisonment for life without the possibility of parole, pursuant to South Carolina Code of Laws § 17-25-45. This notice is based upon the Defendant's prior convictions for the offenses of PWID Cocaine in Proximity of a School (1999-GS-10-7722); and PWID Cocaine in Proximity of a School (2003-GS-10-0171), all in the Circuit Court of Charleston County, and all classified as "Serious" offenses pursuant to § 17-25-45.

(App. p. 473.)

At trial, the Trial Court asked counsel for the State, "Did you offer something other than life without parole?" (App. p. 175:24-25.) After counsel for the State responded "yes," the Trial Court said, "That being the case, you've made your choice. If he's going to be burned, he'll be burned. No question about that." (App. p. 176:1-5.) Nothing in the trial court's statements were directed to Mr. Williams or stated that LWOP was a mandatory sentence.

The Trial Court also had the following exchange with trial counsel for Mr. Williams:

> Mr. King: Judge, I think Numbers 13 and 14, I would prefer the Court's standard charge on those [voir dire] issues.
>
> The Court: We will address those. You can object but I am going to discuss those aspects of it. Once they come into the room, the deal is gone. The only sentence is LWOP. He has made his decision. Do you understand?
>
> Mr. King: Yes, Your Honor.

(App. p. 179:5-14.) None of these comments from counsel or the Trial Court involved or were directed to Mr. Williams, and nothing in the record suggests that Mr. Williams heard or understood this seconds-long exchange between counsel and the Trial Court.

At no time before, during, or after trial did the Trial Court address Mr. Williams directly to insure that Mr. Williams understood that by rejecting the State's plea offer and proceeding through trial, he faced mandatory LWOP rather than up to LWOP. And after Mr. Williams was convicted, the Trial Court suggested that Williams did not understand that he would be sentenced to mandatory LWOP: "[Y]ou're correct, mine is without any discretion, but clearly this case, the facts observed, and the fact of recent convictions, -- there was a gentleman this morning that entered a plea to avoid. I think that he finally perceived the gravity of the situation; unfortunately some don't, and Mr. Williams falls into that." (*Id.* at 382:15-22) (emphasis added).

At the PCR hearing, Mr. Williams' trial counsel did not know whether he informed Mr. Williams that "LWOP" meant "mandatory LWOP." Counsel stated, "I knew then the case was possible life without parole, and I advised him to take the deal because the risk was very high, but -- so I don't remember specifically what we discussed about that parole. I did imply that it was up to life, so if I advised him, it would have been that this -- if they served notice on him that he could get life without parole." (App. p. 425:12-21 (emphasis added).) Trial counsel later testified that although he discussed LWOP with Mr. Williams, "I can't remember that issue coming up with him ever asking, you know, is it up to life or is it mandatory life? I don't remember discussing that specific issue . . . ." (App. p. 427:14-17.)

Moreover, Mr. Williams has a learning disability, which his trial counsel admitted that he did not know (*see* App. p. 421:21-23), and Mr. Williams did not understand the significance of the distinction between LWOP and mandatory LWOP. Mr. Williams

testified that he thought that "[t]he judge could give me anything from zero, no time, to life without parole." (App. p. 409:18-25; 421:21-23.)

Mr. Williams' appellate counsel also explained at the PCR hearing:

> It became extremely apparent to me in the first 20 minutes that I went and saw Onrae up at Leiber that he had no idea that if he was convicted the only choice the Court had was to sentence him to life without parole. . . . It's very apparent he did not understand. It was not explained to him thoroughly that if he is to be found guilty, there is no sentencing, there is no mitigation on what your sentence is going to be. Your sentence is going to be life without parole. It's very clear to me he did not understand that. . . . We had to go over things three or four times, and when I met him, I still do not think he had understood the gravity of what LWOP meant, even after the court expressly told him, See you later. You are not going home.

(App. p. 413:18-23; 414:7-15, 18-22.) Appellate counsel explained that Mr. Williams' rejecting a plea offer for ten years (and, in fact, Mr. Williams also rejected offers of three years and five years (App. p. 443:9-17)) reinforced his impression that Mr. Williams did not know that he would receive LWOP for selling 0.3 grams of drugs. (App. p. 413:24 to 414:6 ("Nobody [turns down a plea offer of 10 years] if you know that if you get convicted, you are going to jail for the rest of your life and you are going to die in jail.").)

ARGUMENT

I. The Court of Appeals erred in affirming the denial of post-conviction relief for ineffective assistance of counsel where the Court of Common Pleas' orders are inconsistent with the record showing that trial counsel failed to ensure that the petitioner understood the consequences of rejecting a plea bargain and proceeding to trial where the State was seeking mandatory life in prison without parole.

In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court set forth a two-pronged test for determining whether a defendant's constitutional right to effective assistance of counsel had been violated. This Court adopted the *Strickland* test in *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985), and has

defined the test as requiring a defendant to show (1) that trial counsel's performance was deficient "under prevailing professional norms," and (2) that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (quoting *Strickland v. Washington*, 446 U.S. 668, 688 (1984)).

This Court's decisions, the guiding principle of PCR that trials should produce a just result,[1] and appellate courts from other jurisdictions in nearly identical circumstances each strongly suggests that the failure of trial counsel to ensure that a defendant understands the severity of his or her sentence constitutes ineffective assistance of counsel.

The Court of Appeals, in affirming the PCR court's denial of PCR, erred in overlooking the issue before it on appeal. The entirety of the Court of Appeals' order on this issue is as follows:

> As to whether trial counsel failed to ensure Williams understood the consequences of rejecting his plea bargain and proceeding to trial when the State was seeking mandatory LWOP: *Walker v. State*, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014) (stating to prevail on an ineffective assistance of counsel claim, a PCR applicant must demonstrate (1) "counsel was deficient" and (2) "the deficiency resulted in prejudice" (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984))); *id.* at 405, 756 S.E.2d at 146 (acknowledging an appellate court's great deference to a PCR court's findings on matters of credibility); *Lafler v. Cooper*, 132 S. Ct. 1376, 1385 (2012) (requiring an applicant alleging he rejected a plea offer because of counsel's deficient advice to establish prejudice by showing "there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or

[1] *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) (noting that whether counsel was ineffective should be measured against whether the trial produced a just result).

> sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed" (emphasis omitted)); *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) (establishing the burden of proving entitlement to PCR is upon the PCR applicant).

(App. p. 590.)[2]

The Court of Appeals' citation of cases, however, does not address the issue on appeal regarding whether the PCR court's findings were inconsistent with the record showing that trial counsel failed to ensure that Mr. Williams understood the consequences of rejecting a plea bargain and proceeding to trial. Nor does the Court of Appeals address this Court's precedent and other appellate precedent that Mr. Williams identified in his briefing in support of his argument that failing to ensure that a defendant understands the severity of his or her sentence should constitute ineffective assistance of counsel.

A. South Carolina law supports a finding of ineffective assistance of counsel for failure to ensure that a defendant understands the mandatory nature of LWOP when negotiating a plea.

As this Court has noted in the context of plea negotiations, "[w]e believe the Sixth Amendment guarantee of effective assistance of counsel requires that counsel accurately inform a defendant, to the extent possible, of the qualifying nature of a prior offense for enhancement purposes." *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009); *Roscoe v. State*, 345 S.C. 16, 20 n.6, 546 S.E.2d 417, 419 n.6 (2001) ("[W]e have consistently held a defendant must have a full understanding of the consequences of his

[2] To the extent that the Court of Appeals suggests that the test announced in *Lafler* precludes post-conviction relief for Mr. Williams, the Appellant submits that the Court of Appeals misapprehended the import of *Lafler*. First, *Lafler* was decided ten months after Mr. Williams' PCR hearing, so the rule that the United States Supreme Court announced has no bearing on Mr. Williams' case. Second, even if the test announced in *Lafler* applied to Mr. Williams' PCR application, the record establishes that Mr. Williams met his burden of proof.

plea and of the charges against him . . . .") (citations omitted); *Judge v. State*, 321 S.C. 554, 560, 471 S.E.2d 146, 149 (1996), *overruled on other grounds by Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000) (finding that the right to effective assistance of counsel applies during the plea negotiation process, even where the plea is rejected); *see Libretti v. United States*, 516 U.S. 29, 50 (1995) ("[I]t is the responsibility of defense counsel to inform a defendant of the advantages and disadvantages of a plea agreement . . . .."). Thus, ensuring that the defendant understands the maximum and minimum penalties at stake in considering and rejecting a plea, and proceeding to trial is akin to the defendant understanding the penalties at stake when entering a voluntary guilty plea.

In *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999), this Court found that PCR was appropriate where the defendant entered a guilty plea, did not understand that the plea carried a mandatory minimum sentence, and the defendant's counsel "had little recollection of the exact nature of the matters discussed during the meetings with the Defendant." *See State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (finding that the defendant's plea was involuntary because she was never informed of the mandatory minimum sentence, and the court suggested that the he "could" impose a "maximum" sentence of life imprisonment; "thus the plea [was] entered in ignorance of its direct consequence . . . ."). Considering that "plea agreements allow our overly burdened criminal courts to function," *Berry v. State*, 381 S.C. 630, 675 S.E.2d 425 (2009), the same rationale for effective assistance of counsel should apply for ensuring that in rejecting a plea, the defendant understands that the risk of proceeding to trial carries a mandatory minimum sentence.

Requiring counsel to inform defendants of the mandatory nature of their potential sentence is also consistent with South Carolina's Rule of Professional Conduct 1.4(b), which defines the "prevailing professional norms" for counsel in this state, *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and which provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The Comments to Rule 1.4 further provide that "when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement." As applied to plea negotiations, the Rules of Professional Conduct require counsel to ensure that the defendant understands the potential sentence at stake in deciding to proceed to trial. *See Jackson*, 342 S.C. at 97, 535 S.E.2d at 927 (finding ineffective assistance of counsel where the defendant accepted a plea, and later testified at the PCR hearing that he did not understand the import of the offense to which he pled, and would not have accepted the plea if he had); *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) (finding ineffective assistance of counsel where petitioner testified that he accepted a plea because he misunderstood the amount of time that he could receive upon conviction); *State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating that the defendant must be apprised of the direct consequences, which are the direct and immediate results, of a guilty plea); *see also State v. Reed*, 332 S.C. 35, 39, 40, 503 S.E.2d 747, 749 (1998) (noting that for a criminal defendant to be competent to stand trial, the defendant must have "a rational as well as factual understanding of the proceedings against him," and finding a defendant competent to stand trial when a physician concluded that the defendant "had a factual knowledge of the charges against him, the potential penalty he

faced and his options in pleading.") (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)) (emphasis added).

Requiring counsel, as part of effective assistance, to inform defendants of the mandatory nature of their potential sentence is also consistent with similar decisions in other jurisdictions. In *Johnson v. State*, 712 S.E.2d 811 (Ga. 2011), the Georgia Supreme Court reversed the dismissal of a PCR application on grounds of ineffective assistance of counsel where the trial counsel failed to advise the petitioner that if he rejected the State's plea offer, he would face a mandatory sentence of LWOP. The Court found that without knowledge of a mandatory LWOP sentence, the petitioner "could not make an informed decision about whether to accept or reject a State's plea offer [and thus the petitioner] has fulfilled his burden of showing that his counsel's representation fell below an objective standard of reasonableness." *Id.* at 813 (quotation omitted).

Similarly, in *Villegas v. Yearwood*, 131 Fed. App'x 93 (9th Cir. 2005), the Ninth Circuit Court of Appeals reversed the district court's denial of a claim of ineffective assistance of counsel where the petitioner's trial counsel failed to advise that proceeding to trial would implicate a mandatory sentence of LWOP. The court found that counsel's failure to inform the petitioner about the "crucial distinction" between a possible sentence of LWOP and a mandatory sentence of LWOP amounted to ineffective assistance of counsel because there was a reasonable probability that the petitioner would have accepted the prosecution's offer of 15 years to life if he had been properly informed of the consequences of proceeding to trial. *Id.* at 95.

Having established that the "prevailing professional norms" require that counsel to inform defendants of the mandatory nature of their potential sentence, the evidence

presented at the PCR hearing establishes that trial counsel failed to inform Mr. Williams that by rejecting the State's plea offers and proceeding to trial that he faced a mandatory LWOP sentence, not an "up to" LWOP sentence.

Mr. Williams' actions during plea negotiations, and his testimony during the PCR hearing reflects that he did not understand that LWOP meant mandatory LWOP. Mr. Williams—who suffers from a learning disability, although trial counsel was unaware of that fact even though it was in Petitioner's records—was arrested for selling only 0.3 grams of drugs worth approximately $15 and testified that he thought that "[t]he judge could give me anything from zero, no time, to life without parole." (App. p. 409:18-25; 421:21-23.) His actions during plea negotiations bear out this stated belief because he rejected a three-year deal, five-year deal, and a ten-year deal. (App. p. 443:9-17.)

Moreover, Mr. Williams' stated belief is entirely consistent with trial counsel's testimony at the PCR hearing. Counsel stated, "I knew then the case was possible life without parole, and I advised him to take the deal because the risk was very high, but -- so I don't remember specifically what we discussed about that parole. I did imply that it was up to life, so if I advised him, it would have been that this -- if they served notice on him that he could get life without parole." (App. p. 425:12-21 (emphasis added).) Trial counsel later testified that although he discussed the LWOP with Mr. Williams, "I can't remember that issue coming up with him ever asking, you know, is it up to life or is it mandatory life? I don't remember discussing that specific issue . . . ." (App. p. 427:14-17.) Thus, although trial counsel is not sure if he discussed the "up to" versus "mandatory" nature of LWOP with Mr. Williams, if he did discuss it, he would have implied that it was an "up to" LWOP sentence, not a "mandatory" sentence.

After Mr. Williams was convicted, the trial judge likewise suggested that Williams did not understand that he would be sentenced to mandatory LWOP: "[Y]ou're correct, mine is without any discretion, but clearly this case, the facts observed, and the fact of recent convictions, -- there was a gentleman this morning that entered a plea to avoid. I think that he finally perceived the gravity of the situation; unfortunately some don't, and Mr. Williams falls into that." (*Id.* at 382:15-22) (emphasis added).

Finally, appellate counsel testified at the PCR hearing that it was "extremely apparent" that Mr. Williams "had no idea that if he was convicted the only choice the Court had was to sentence him to life without parole. . . . It's very apparent he did not understand." (App. p. 413:19-23, 414:7.) His appellate counsel was shocked that Mr. Williams rejected a plea offer for ten years, let alone the offers for three years and five years. (App. p. 413:24 to 414:6.)

The PCR court erred in several respects in failing to find ineffective assistance of counsel when presented with the foregoing evidence, and the Court of Appeals erred in affirming the PCR court and in failing to address any of the following points:

- The PCR Court erred in completely discounting Mr. Williams' testimony that he thought that "[t]he judge could give me anything from zero, no time, to life without parole," (*Id.* at 409:18-25; 421:21-23), particularly when considering the actions of Mr. Williams in rejecting a plea deal of three years where mandatory LWOP was at stake. Without any explanation, the PCR Court found, "I do not find the Applicant credible. I think he has a hindsight recollection of what actually happened during the course of these proceedings . . . ." (*Id.* at 443:2-4.)

- The PCR Court erred in completely discounting sworn testimony from a member of the South Carolina Bar who is in good standing. The PCR Court found, "Appellate counsel, Mark Peper, Esquire's, [sic] testimony was based on hindsight which was founded on his relationship with the Applicant." (*Id.* at 4.)
- The PCR Court erred in finding that trial counsel "explained to [Mr. Williams] that LWOP was his only possible sentence if convicted." (*Id.* at 7.) Such a finding is unsupported by trial counsel's testimony, discussed *supra*. Rather, trial counsel testified that he does not remember discussing the "up to" versus "mandatory" nature of LWOP, but that if he did discuss the issue, he would have "impl[ied]" that Mr. Williams "could" receive "up to life," all of which incorrectly suggests that the sentence was discretionary, not mandatory.
- The PCR Court erred in finding that "the trial court explained to Applicant that the plea offer expires when the jury comes in and then LWOP is the only possible sentence if convicted." (*Id.* at 8.) Rather, the trial court's lone mention that "the only sentence is LWOP" was directed to counsel, not to Mr. Williams. Nothing in the records suggests that Mr. Williams heard, much less understood, this seconds-long exchange.
- The PCR Court erred in finding that Mr. Williams knew the mandatory nature of LWOP based on "standard colloquy for the plea judge to advise a defendant if a charge is a strike offense and the potential consequences of future strikes." (*Id.* at 8.) But the PCR Court admitted that this was an

"extrapolati[on]" because the court "[didn't] know who he pled before" and did not have the transcripts at issue. (*Id.* at 447:12-14.)

Accordingly, the evidence demonstrates that trial counsel did not inform or ensure that Mr. Williams understood the mandatory nature of LWOP, and therefore counsel provided ineffective assistance. *Suber v. State*, 371 S.C. 554, 560, 640 S.E.2d 884, 887 (2007) (reversing the PCR court's decision because there was no evidence of probative value to support it).

B. Mr. Williams was prejudiced by counsel's ineffective assistance because he would have accepted a three-year, five-year, or ten-year plea offer instead of proceeding to trial where he was sentenced to LWOP.

The fact that Mr. Williams did not understand that LWOP meant mandatory LWOP prevented him from making an informed plea decision and prevented him from understanding the risks of rejecting plea offers and proceeding to trial. Accordingly, had counsel properly informed Mr. Williams of the risk of mandatory LWOP, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" because Mr. Williams would have accepted a three-year, five-year, or ten-year plea offer instead of proceeding to trial where he was sentenced to LWOP. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*, 446 U.S. at 688)). The prejudice to Mr. Williams is heightened given the fact that, as the United States Supreme Court has acknowledged, the only sentence worse than LWOP is death. *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991).

Mr. Williams' case is akin to *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) and *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980), in that Mr. Williams did not understand that the charges against him carried a mandatory minimum sentence, and Mr. Williams' trial counsel testified that he has no specific recollection of discussing the

issue with Mr. Williams, just that he did "imply" that Mr. Williams "could" receive "up to" LWOP. Thus—as in *Johnson v. State*, 712 S.E.2d 811 (Ga. 2011) and *Villegas v. Yearwood*, 131 Fed. Appx. 93 (9th Cir. 2005)—trial counsel was ineffective for failing to stress the "crucial distinction" between possible LWOP and mandatory LWOP and thereby prejudicing and preventing Mr. Williams from making an informed decision about whether to accept any of the State's plea offers of three years, five years, or ten years.

Neither the Notice of Intention to Seek LWOP nor the Trial Court's statements at trial cure trial counsel's deficiencies. The Notice said nothing about the mandatory nature of LWOP, just that the State would seek LWOP. (App. p. 473.) And the Trial Court never asked Mr. Williams whether he understood that proceeding to trial would result in a mandatory sentence of LWOP if convicted; rather, all discussion of LWOP was in passing between the court and counsel. (App. p. 175:24-25; 176:1-5; 179:5-14); *see Pittman*, 337 S.C. at 599, 524 S.E.2d at 625 (finding that the discussion of the mandatory minimum sentence that was mentioned in passing could not cure the inadequacy of failing to inform the defendant of the mandatory minimum sentence); *see also United States v. Philip Swaby*, -- F.3d --, No. 15-7616, 2017 WL 1437210, at *5 (4th Cir. Apr. 24, 2017) (remanding denial of habeas corpus because the deficient performance of counsel was not cured by the judge when he warned the defendant during the plea hearing about the risk of deportation generally when the plea rendered the defendant categorically deportable). As such, Mr. Williams was prejudiced by his trial counsel's ineffective assistance.

CONCLUSION

Mr. Williams has met his burden that trial counsel was ineffective and that he was prejudiced as a result. Accordingly, the PCR Court and the Court of Appeals erred in denying PCR, and this Court should reverse the denial of PCR and remand Mr. Williams' case.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Petitioner complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioner Onrae Williams, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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Brief of Onrae Williams

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April 26, 2017