STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO DILLON COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2016-001417

Isaiah Marcus Brown, #447241, ... Petitioner,

v.

State of South Carolina, ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

1. Was the guilty plea to murder rendered involuntary by plea counsel's failure to attempt to interview co-defendant, Mikal Bethea, who confirmed at the PCR hearing that he was the triggerman?

2. Was plea counsel ineffective in failing to call co-defendant, Mikal Bethea, as a witness at the motion to reconsider sentence to confirm that Bethea was the triggerman but was allowed to plead to voluntary manslaughter for a fifteen year sentence when Petitioner, who was not the triggerman, pled guilty to murder and received a forty-five year sentence?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Petitioner was indicted at the June 2010 term of the Dillon County Grand Jury for murder (2010-GS-17-0494), criminal conspiracy (2010-GS-17-0616), possession of a weapon during the commission of a violent crime (2010-GS-17-0617), and armed robbery (2010-GS-17-0618). App. 63-74. He was represented by William E. Grove, Esquire. Assistant Solicitor Daniel Shipp, Esquire prosecuted the case. On August 8, 2011, Petitioner pleaded guilty as indicted on all charges before the Honorable Howard P. King. App. 1-35. Judge King sentenced Petitioner to concurrent terms of imprisonment of forty-five years for murder, five years for criminal conspiracy, five years for possession of a weapon during the commission of a violent crime, and thirty years for armed robbery. App. 31-34.

On August 17, 2011, Petitioner filed a timely motion to withdraw his guilty plea. On March 7, 2012, Petitioner appeared before Judge King for consideration of the motion. App. 36-62. Petitioner was again represented by William E. Grove, Esquire. During the hearing, plea counsel made an additional oral motion for reconsideration of Petitioner's sentence for reasons of fairness and equity. Id. Though the oral motion for reconsideration was untimely, Judge King treated it as timely and considered the motion. Id. Judge King subsequently denied both motions. Id.

A timely notice of appeal was filed on March 8, 2012. Robert M. Dudek, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders[1] brief on October 13, 2013. The South Carolina Court of Appeals dismissed Petitioner's appeal on March 5, 2014.

[1] Anders v. California, 386 U.S. 738 (1967).

State v. Brown, Op. No. 2014-UP-096 (S.C. Ct. App. filed March 5, 2014). The remittitur was returned to the lower court on March 21, 2014.

Petitioner filed his application Post-Conviction Relief ("PCR") on September 10, 2014. App. 75-81. Petitioner subsequently amended his application on January 4, 2016. App. 89-90. The State made its return on November 21, 2014. App. 82-88. An evidentiary hearing into the matter was convened on January 12, 2016, at the Darlington County Courthouse before the Honorable Roger E. Henderson. App. 91-159. Petitioner was present and represented by Lance S. Boozer, Esquire. Assistant Attorney General Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Petitioner testified on his own behalf. Petitioner's co-defendant Mikal Bethea testified, as well as Petitioner's guilty plea counsel, William E. Grove, Esquire.

By Order dated January 25, 2016, and filed January 27, 2016, Judge Henderson granted Petitioner's PCR, ordered the convictions to be vacated, and for Petitioner to receive a new trial. App. 165-173. Respondent subsequently filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. This motion asked the court to alter or amend the judgment on the grounds that the Court erred in finding plea counsel was ineffective for failing to investigate a co-defendant, and as a result, finding Petitioner entered an involuntary guilty plea. App. 175-182. By order dated June 1, 2016, and filed June 13, 2016, Judge Henderson issued an order granting Respondent's motion to alter or amend the judgment of the court on the basis that Petitioner failed to prove that guilty plea counsel was ineffective in his representation. App. 183-189. As a result, Judge Henderson denied Petitioner's PCR and dismissed the application with prejudice. Id.

A timely notice of intent to appeal was served on June 20, 2016. Appellate Defender

Kathrine H. Hudgins, Esquire, of the South Carolina Commission of Indigent Defense - Office of Appellate Defense, filed a petition for writ of certiorari on February 21, 2017. This return follows.

STANDARD OF REVIEW

This Court must affirm the post-conviction relief ("PCR") court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). Furthermore, this Court "gives great deference to the [PCR] court's findings of fact and conclusions of law." Id. (quoting Dempsey, 363 S.C. at 368, 610 S.E.2d at 814). In a PCR action, the Petitioner has the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where the application alleges ineffective assistance of counsel as a ground for relief, the Petitioner must show counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 441, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel, and both prongs must be established by an applicant to receive relief. Strickland, at 687. First, an applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, at 688. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The question is whether counsel "provided representation within the range of competence required" in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687).

The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. With respect to guilty plea counsel, Petitioner must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

"[W]here the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error 'prejudiced' the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." Hill, 474 U.S. at 59 (citations omitted).

In regards to an involuntary guilty plea claim, a Petitioner asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). A Petitioner who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, Petitioner would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An Petitioner alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of

attorneys in criminal cases." Hill, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish Petitioner had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). In addition, statements "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)). Cf. Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) (reversing the PCR court's denial of relief and finding fact that Petitioner was informed of the sentencing range was irrelevant in prejudice analysis and that Petitioner presented sufficient evidence to show prejudice where he was under the impression the solicitor would not make a sentencing request).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and

defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges against [the applicant]; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford, 519 F.2d at 350; Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe, 326 S.C. at 165, 485 S.E.2d at 370 (1997)).

ARGUMENT

A. There is probative evidence in the record to support the PCR Court's finding that plea counsel was not ineffective for not interviewing co-defendant, Mikal Bethea, who confirmed at Petitioner's PCR hearing that he was the shooter, thus making his guilty plea knowing and voluntary.

Petitioner asserts that plea counsel was ineffective for not interviewing his co-defendant, Mikal Bethea, thus preventing him from having all knowledge at hand and rendering his plea unknowing and involuntary. In the present case, plea counsel's investigations prior to Petitioner's guilty plea were reasonable regardless of his decision to abstain from interviewing Petitioner's co-defendant, Mikal Bethea. During preparation for Petitioner's case, Bethea had also yet to be sentenced. Moreover, Bethea did not confirm he was the actual shooter until years after the guilty pleas were entered, and made his first admission under oath at Petitioner's PCR hearing. As an initial hurdle, at the time, Bethea was represented and that fact alone suggests that his attorney would more than likely not allow him to testify in Petitioner's case. There was no incentive for Bethea to implicate himself and effectively speak against his own interest. Furthermore, there was no reason for plea counsel to believe that he would do so. Ultimately, however, this was a case that turned on the hand of one, hand of all and whether Petitioner was the triggerman is ultimately irrelevant. The PCR Court properly denied and dismissed this allegation.

In its order denying and dismissing this allegation, the PCR court deemed plea counsel's testimony to be credible. App. 187. The PCR court also found Bethea's testimony regarding his intent to testify at Petitioner's trial as not credible. Id. The PCR Court noted how, before his plea, Bethea had a great deal to lose, as electing to admit he was the shooter at Petitioner's guilty plea hearing would directly implicate himself. Id. This is in stark contrast to the position that Bethea

was in after pleading guilty and at Petitioner's PCR hearing - at that later point in time, Bethea had already received a satisfactory sentence. At that point, he did not carry the same risk of offering such testimony and making his own situation much worse. Nevertheless, the record reflects Bethea had no incentive to testify at Petitioner's guilty plea hearing. Therefore, plea counsel was not ineffective for making the decision not to call a witness who was not credible and would not have ultimately provided aid in Petitioner's case.

The record also reflects that Petitioner's sentence of forty-five years for murder, despite co-defendant Bethea receiving fifteen years for the same charge, was not the result of oppression, arbitrary decision-making, or exercised with a corrupt motive as considered in State v. Goodall. 221 S.C. 175, 178, 69 S.E.2d 915, 916 (1952). Rather, the record reflects that Petitioner received this sentence because he was not the first to plead, had rejected overtures by the Solicitor's office to reduce his sentence in exchange for his help in convicting Bethea, and was believed to have obtained and hidden the gun used in the crime. App. p.152;2-9; 49;7 – 52;3. During the PCR hearing, Petitioner admitted he knew he was indicted for murder. App. 116;11-13. Petitioner also admitted that plea counsel advised him of the sentencing range for murder, which carried as long as life in prison. App. 116;10-11. Furthermore, Petitioner admitted that he clearly knew he was under oath when answering the series of questions from the Court regarding the voluntariness of his guilty plea, as well as questions to ensure that he was aware of the consequences of pleading guilty. App. 120;18-24. In addition, plea counsel testified, and the record reflects, Petitioner was aware of the constitutional rights he was giving up in exchange for his guilty plea. App. 150;1-6.

Disparate sentences between co-defendants is not a per se violation or an abuse of discretion. State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974). A trial judge generally has wide discretion in determining what sentence to impose. The judge has discretion in sentencing

within statutory limits. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). A sentence is not excessive if within statutory limitations (which do not violate the prohibition against cruel and unusual punishment) and not the result of partiality, prejudice, or corrupt motive. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971). When the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial. State v. Follin, 352 S.C. 235, 257, 573 S.E.2d 812, 824 (Ct. App. 2002). When it does not appear the court's discretion in sentencing was exercised arbitrarily or was the result of oppression or corrupt motive, the sentencing decision of the trial judge must be upheld. State v. Goodall, 221 S.C. at 178, 69 S.E.2d at 916.

Plea counsel testified at the PCR hearing that, after failing to convince the Solicitor to reduce the charge to a lesser included offense of murder, he advised Petitioner to plead guilty in order to not risk receiving a life sentence. App. 137;13-18; 139;19 - 141;3. Plea counsel testified he advised Petitioner of the sentencing range for murder, but he never guaranteed Petitioner any specific amount of time or specific sentencing range that he would receive for pleading guilty. App. 142;22- 143;3. Plea counsel testified he did everything possible to mitigate any potential sentence that Petitioner would potentially receive, such as urge him to cooperate with the Solicitor's office, negotiate with the Solicitor's office, research any possible leads, and file appropriate post-trial motions. App. 149;5-7. Furthermore, plea counsel testified he firmly believed that, at the time, interviewing co-defendant Mikal Bethea would not have helped Petitioner's case. App. 141;4-8. Plea counsel explained that he did not contact Bethea or either of his attorneys because Bethea was in the best position out of all defendants, as he had not made a statement to authorities, even though it was common belief that he was the shooter. Id.

Furthermore, plea counsel was aware that Bethea's attorneys intended to protect their client and not allow him to speak against his own interest before he proceeded to plead guilty or begin trial. Plea counsel had no reason to believe that Bethea's attorneys would allow or advise him to act against his own interest and waive his right to remain silent before he was ready. The PCR Court agreed with this assertion. App. p. 186; 187.

As a result, great deference should be afforded to plea counsel's decisions prior to and at Petitioner's guilty plea hearing. Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). The record makes clear that plea counsel made every effort to make sound and reasonable decisions that would be most advantageous to Petitioner. This Court has held that reasonable strategy, judgement, and decision-making by trial-level attorneys is based solely on the circumstances known and present to plea counsel at that time. Yarborough v. Gentry, 540 U.S. 1, 6 (2003). The benefit of hindsight cannot be utilized in determining whether plea counsel should have or could have made certain decisions that could have had the potential to affect the outcome of the case. Id. As long as plea counsel exercised due diligence in investigating Petitioner's case and formulating reasonable strategies based on the current facts and situation known, plea counsel cannot be considered ineffective. Id.

In Edwards, it was held that "[a] witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions." Edwards, 392 S.C. at 458, 710 S.E.2d at 65. In Jackson v. State, this Court held that plea counsel was not deficient for failing to call a witness at trial when corroboration of the defendant's statement was more credible through the testimony of another witness and the witness' credibility would have been an issue if he testified. Jackson v. State, 329 S.C. 345, 351-52, 495 S.E.2d 768, 771 (1998).

Reasonable trial strategy, judgment, and decisionmaking by trial-level attorneys is based on the specific circumstances present at the time. "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough,540 U.S. at 6.

Furthermore, in PCR matters, great deference and respect must be given towards the judgment and efforts of the plea counsel. The South Carolina Supreme Court held in Edwards that:

> "...There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (citing Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052. Accordingly, we must wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

392 S.C. at 456-57, 710 S.E.2d at 64.

In the case at bar, the record reflects that plea counsel made reasonable, sound decisions based on the circumstances present at that time. He informed Petitioner of these decisions, as well as the advantages and drawbacks of each decision going forward, including the decision to not interview Bethea. Therefore, the PCR Court correctly found Bethea's testimony not credible because, at the time of Petitioner's plea, he had a great deal to lose. Furthermore, Bethea's letter that alleged he forced Petitioner to participate in the robbery was written *after* Petitioner's plea and was not even filed until 2015, *four* years after Petitioner's guilty plea. App. 126;16 – 127;1-

25. Therefore, plea counsel never had notice of the letter until well after Petitioner pleaded guilty and gone through post-trial motions. Thus, because no credibility can be given to Bethea's testimony at Petitioner's PCR hearing, Petitioner has not established any grounds reflecting any deficiency in plea counsel's trial strategy. The record reflects nothing but reasonable judgement, strategies, and decision-making by plea counsel throughout the duration of his representation of Petitioner.

Petitioner failed to satisfy either prong of the Strickland standard for not interviewing Bethea in preparation of for Petitioner's case, thus supporting the PCR Court's finding that Petitioner's guilty plea was voluntary. The record supports plea counsel's decision to not interview a co-defendant with obvious credibility issues who had no incentive to testify against his own interest before he pleaded guilty. Plea counsel's performance was not deficient in his representation of Petitioner; therefore, Petitioner did not suffer any prejudice stemming from plea counsel's performance and his guilty plea was knowing, intelligent, and voluntary. Hill, 474 U.S. at 59; McMann, 397 U.S. 1170-71. For the above reasons, Petitioner did not carry his burden, thus showing that the PCR Court did not err in its ruling and certiorari should be denied.

B. There is probative evidence in the record to support the PCR Court's finding that plea counsel was not ineffective for not calling co-defendant Mikal Bethea to testify at Petitioner's motion to reconsider sentencing hearing to confirm that he was actually the shooter, after he received a lower sentence than Petitioner.

Petitioner asserts plea counsel was ineffective for not calling co-defendant Mikal Beatha to testify at the hearing for Petitioner's motion to reconsider sentence to confirm that he was actually the shooter. Plea counsel was not ineffective for not presenting the testimony of Petitioner's co-defendant Mikal Bethea at Petitioner's post-trial motion hearing. At the motion hearing, plea counsel argued that because Bethea was the triggerman, it was only fair that

Petitioner receive a much lighter sentence. However, based on plea counsel's knowledge of the facts and circumstances as they were at the time, it would not have been reasonable for plea counsel to call Bethea as a witness at the hearing, despite the fact that he had already been sentenced to voluntary manslaughter.

As an initial matter, Bethea wrote his letter implicating himself on July 24, 2012, which was *seventeen days* after Petitioner's motion to reconsider sentencing hearing. Furthermore, even if the letter had been *written* before the hearing, it was not filed until March 13, 2015, which was approximately *three years* after the hearing. Therefore, there was no possibility that plea counsel would have been aware that Bethea was even considering helping Petitioner receive a lighter sentence, as he did not testify under oath to the fact until Petitioner's PCR hearing on January 12, 2016, which was approximately *four years* after the motion to reconsider sentencing hearing.

Despite whether Petitioner was the actual shooter, there was no error or abuse of discretion for his being convicted and sentenced for the charge of murder, pursuant to the theory of accomplice liability. Condrey, 349 S.C. at 194, 562 S.E.2d at 324-25. "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." Id. (internal citations omitted). Petitioner was indicted for the principal act of murder, along with two other co-defendants, including Mikal Bethea. Regardless of which defendant actually pulled the trigger, Petitioner had an equal

participation in the crime and was not merely present at the scene. Petitioner conspired with his co-defendants to commit a robbery, and afterwards, Petitioner was found to have hidden the gun in his grandmother's attic. App. 15-22. At no time during the guilty plea hearing did Petitioner object to the Solicitor's version of the facts. There was no deficiency or prejudice on the part of plea counsel in terms of this charge proceeding on the theory of accomplice liability, as it was not up to him to dictate how the Solicitor's office viewed the facts and charge the actors. Therefore, Petitioner's conviction for murder was justified, pursuant to the theory of accomplice liability.

Furthermore, the record reflects that plea counsel utilized the information he possessed to the best of his ability before the judge at the reconsideration hearing and exercised reasonable and sound judgment and decision-making in the proceedings after Petitioner pleaded guilty. App. p.146;3 – 20. When it does not appear the court's discretion in sentencing was exercised arbitrarily or was the result of oppression or corrupt motive, the sentencing decision of the trial judge must be upheld. Goodall, 221 S.C. at 178, 69 S.E.2d at 916. At the hearing, Petitioner's plea counsel admitted that there were no legal arguments in support of his motion to reconsideration and that he was merely putting arguing in terms of equity and fairness. App. p.46;5-7. However, the trial court properly put more weight upon the State's argument that Petitioner was twice offered to help himself by agreeing to testify against Bethea to give investigators exactly what happened the night of the robbery. App. 59. In return for credible testimony, the State offered on both occasions to reduce his sentence to thirty years, which is a substantial difference from the forty-five year sentence he is currently serving. App. 59-60. Therefore, because Petitioner twice denied the State's offer of a reduced sentence in exchange for substantial assistance, trial court's refusal to decrease Petitioner's sentence was reasonable

and completely within his power and discretion, as there was no evidence in the record that the Petitioner's sentence was arbitrarily given or was the result of oppression or corrupt motive. Goodall, 221 S.C. at 178, 69 S.E.2d at 916.

Plea counsel's representation of Petitioner does not satisfy either prong of the Strickland standard for not calling Bethea to testify at Petitioner's post-trial motion hearing. The record reflects reasonable, sound strategies, judgment, and decision-making on the part of plea counsel, based on the knowledge and circumstances available to and known at the time. Yarborough, 540 U.S. at 6. Further, the record reflects that plea counsel utilized all the information made available to him and made the best arguments possible during the guilty plea hearing and the motion for reconsideration hearing, despite there being no *legal* arguments to put forth. Plea counsel's performance was not deficient in his representation of Petitioner; therefore, Petitioner did not suffer any prejudice stemming from plea counsel's performance and his guilty plea was knowing, intelligent, and voluntary. Hill, 474 U.S. at 59; McMann, 397 U.S. 1170-71. For the above reasons, Petitioner did not carry his burden, thus showing that the PCR Court did not err in its ruling and certiorari should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the Petitioner's petition for writ of certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

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By: _____
ATTORNEYS FOR RESPONDENT

July 5, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dillon County
Court of Common Pleas
The Honorable Roger E. Henderson, Circuit Court Judge

2014-CP-17-0414
Appellate Case No. 2016-001417

ISAIAH M. BROWN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Kathrine H. Hudgins, Esquire
1330 Lady Street, Ste. 401
Columbia, SC 29201

This 5th day of July, 2017

Mallory Morris

MALLORY MORRIS
Legal Assistant for Respondent

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
JUL 05 2017
S.C. SUPREME COURT

July 5, 2017

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: **Isaiah M. Brown, #347241 v. State of South Carolina**
Appellate Case No. 2016-001417
Lower Court Case No. 2014-CP-17-0414

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Jessica E. Kinard
Assistant Attorney General
S.C. Bar No. 77889

JEK/mm
Enclosures

cc: Kathrine H. Hudgins, Esquire