

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

CHRISTOPHER WILLIAM SEABROOK,

RECEIVED

FEB 26 2018

PETITIONER

S.C. SUPREME COURT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001901

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in ruling that plea counsel rendered constitutionally effective assistance of counsel where he advised Petitioner to plead guilty to first degree assault and battery even though it was not a lesser-included offense of the indicted offense of first degree criminal sexual conduct and where Petitioner never waived presentment to the grand jury, especially where the facts recited at the plea hearing supported, at most, a conviction for second degree assault and battery?

STATEMENT OF THE CASE

On September 10, 2013, the Charleston County grand jury returned indictments against Petitioner Christopher Seabrook for distribution of marijuana and possession with intent to distribute (“PWID”) marijuana. App. 153. On July 9, 2014, the grand jury returned an additional indictment against Seabrook for possession of cocaine base. App. 157. On September 3, 2014, the grand jury returned final indictments against Seabrook for first degree criminal sexual conduct (“CSC”) and kidnapping. App. 159.

On March 2, 2015, Seabrook appeared before the Honorable R. Markley Dennis and pled guilty to distribution of marijuana (second offense), PWID marijuana (second offense), possession of crack cocaine (third offense), and first degree assault and battery.¹ App. 1 – 4. Seabrook was represented by Jason King, and the State was represented by Andrew Evans of the solicitor’s office. App. 1. The only negotiation related to the plea was that the State would recommend concurrent sentencing. App. 4, l. 19 – 5, l. 3. After accepting the plea, Judge Dennis imposed concurrent sentences of nine years imprisonment on each offense. App. 10, l. 24; App. 21, ll. 13-17.

On March 11, 2015, Seabrook filed a *pro se* notice of appeal in the Court of Appeals. App. 19. On March 19, 2015, the Court sent a letter to plea counsel King advising him of the appeal. App. 24. On March 31, 2015, King filed an explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR, advising the Court that there were no direct appeal issues. App. 26. On March 31, 2015, Seabrook filed a *pro se* response. App. 28. On June 17, 2015, the Court of Appeals filed an Order dismissing the appeal, finding that Seabrook failed to provide a sufficient

¹ Seabrook was also indicted for kidnapping. The charge was dismissed as part of the plea agreement. App. 78, ll. 9-14; App. 85, ll. 22-25; App. 113, ll. 11-15.

explanation that there was an issue reviewable on appeal. App. 39. The remittitur was sent on August 6, 2015. App. 40.

On July 17, 2015, Seabrook filed his application for post-conviction relief (“PCR”), alleging both ineffective assistance of counsel and a lack of subject matter jurisdiction. App. 42. On September 28, 2015, Seabrook filed an amendment to his PCR application. App. 51. The State filed its return on February 23, 2016. App. 54.

On December 8, 2016, an evidentiary hearing was held before the Honorable G. Thomas Cooper. App. 62. Seabrook was represented by Rodney Davis, and the State was represented by assistant attorney general Alicia Olive. App. 62. The witnesses at the hearing included Seabrook and plea counsel Jason King. App. 63. On August 17, 2017, Judge Cooper filed an Order of Dismissal denying Seabrook’s PCR application. App. 139.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in ruling that plea counsel rendered constitutionally effective assistance of counsel where he advised Petitioner to plead guilty to first degree assault and battery even though it was not a lesser-included offense of the indicted offense of first degree criminal sexual conduct and where Petitioner never waived presentment to the grand jury, especially where the facts recited at the plea hearing supported, at most, a conviction for second degree assault and battery.

Relevant Facts

Petitioner Seabrook raised his claim regarding the sufficiency of the criminal sexual conduct (“CSC”) indictment both as ineffective assistance counsel and as a lack of subject matter jurisdiction.² App. 46; App. 51 – 52. Seabrook admitted that he punched his on-again/off-again girlfriend during an argument, fracturing a bone in her face, but denied any sexual assault or kidnapping. App. 10, l. 24 - 11, l. 8; App. 13, ll. 16-23; App. 87, ll. 4-16; App. 91, l. 23 - 93, l. 16; App. 113, l. 8 - 114, l. 2. The prosecutor noted at the plea hearing that the Complainant recanted the allegations of sexual assault and kidnapping at Seabrook’s bond hearing. App. 7, l. 12 - 8, l. 4. The offense to which Seabrook pled guilty – first degree assault and battery – was not a lesser-included offense of the indicted offense of first degree CSC and he did not waive presentment to the grand jury. The sentencing sheet for assault and battery had only the “lesser included offense” box checked and not the box indicating “defendant waives presentment to grand jury.” App. 87, ll. 4-16; App. 106, l. 19 - 107, l. 22; App. 138; App. 164. Seabrook testified at the PCR hearing that plea counsel King never explained the sentencing sheets to him.

² In State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005), this Court held that the concepts of subject matter jurisdiction and sufficiency of an indictment are distinct. A court has subject matter jurisdiction to hear cases even if the indictment fails to allege all the elements of the offense. 363 S.C. at 101, 610 S.E.2d at 499. While a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court, “an indictment is needed to give *notice* to the defendant of the charge(s) against him.” Id. at 102 n.6, 610 S.E.2d at 499 n.6 (emphasis in original).

When Seabrook did attempt to ask him a question about them, King threw up his hands and said “are we going to go through with this or not?” App. 82, l. 13 - 84, l. 7.

Plea counsel King advised Seabrook to accept the plea offer to first degree assault and battery. App. 123, ll. 14-20. He agreed that Seabrook “always maintained [that] he didn’t commit the CSC and kidnapping” but Seabrook did admit to punching the Complainant, resulting in a facial fracture. App. 124, l. 2 - 125, l. 11. King claimed that Seabrook was “fully on board with doing the plea” at the time but theorized that Seabrook was unhappy with the fact that he was sentenced to nine years. App. 125, ll. 12-22.

The PCR court’s denial of Seabrook’s application rested on its erroneous finding that first degree assault and battery was a lesser included offense of the indicted offense of first degree CSC. Judge Cooper made the following findings and conclusions in the Order of Dismissal:

Applicant clearly indicated to the plea court that he wished to plead guilty to first-degree assault and battery as a lesser-included offense of first-degree criminal sexual conduct and conceded multiple times that he struck the victim in the face with such force that she suffered from facial fractures. As discussed further below, South Carolina Courts have not expressly ruled that first-degree assault and battery is not a lesser-included offense of first-degree criminal sexual conduct. Therefore, counsel cannot be deemed deficient for advising his client to accept a favorable plea offer from the State to plead to first-degree assault and battery. Applicant has failed to meet his burden of proof regarding this allegation, which must be denied and dismissed with prejudice.

App. 148 - 149. In a later section of the Order he found:

South Carolina courts have not expressly ruled first-degree assault and battery is not a lesser-included offense of first-degree criminal sexual conduct. Rather, our courts have ruled that assault and battery of a high and aggravated nature is a lesser included offense of first degree criminal sexual conduct. See State v. Primus, 349 S.C. 576, 579- 80, 564 S.E.2d 103, 105 (2002) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature. Code Ann.§ 16-3-600(C)(3).

App. 151. The implication was that first degree assault and battery would, in turn, be a lesser-included offense of first degree CSC. The Primus case, cited by the PCR court, dealt with common law assault and battery and not the statutory assault and battery under which Seabrook pled guilty.

As will be discussed more fully *infra*, first degree assault and battery as defined in S.C. Code Ann. 16-3-600(C)(1) is not a lesser included offense of CSC. Further, had the prosecutor been required to present the matter to a grand jury and obtain an indictment based upon the admitted conduct – a punch that resulted in a fracture – the facts would have supported an indictment for only a second degree assault. See S.C. Code Ann. 16-3-600(D)(1)(a) (“A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and moderate bodily injury to another person results or moderate bodily injury to another person could have resulted.”). Thus, plea counsel rendered ineffective assistance of counsel in advising Seabrook to plead guilty to first degree assault and battery and failing to safeguard Seabrook’s “constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment.” State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353 (2006); U.S. Const. amend. V; S.C. Const. art. I, § 11; S.C. Code Ann. § 17-19-10.

Constitutional Right to Effective Assistance of Counsel

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514,

517 (2000); Rule 71.1(e), SCRPC. The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970).

“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court has held that “a defendant has the right to effective assistance of counsel during the plea bargaining process.” Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419. Plea bargaining can benefit both parties by providing “[t]he potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing.” Frye, 566 U.S. at 144. “In order that these benefits can be realized, however, criminal defendants require effective counsel during plea negotiations.” Id. “Anything less might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him.” Id. (internal citations and quotations omitted).

Discussion

A. Plea Counsel was Deficient

“A defendant has a constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment.” State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353 (2006). “The primary purposes of an

indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” Id. (quoting Evans v. State, 363 S.C. 495, 508-13, 611 S.E.2d 510, 517-19 (2005)). A sufficient indictment also prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy and prevents a prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime for which he was indicted. Id.

When a defendant timely objects to the sufficiency of the indictment, before the jury is sworn, a ruling that an indictment is not sufficient will result in the quashing of the indictment unless the defendant waives presentment to the grand jury and pleads guilty. Means, 367 S.C. at 385, 626 S.E.2d at 354. The prosecutor ordinarily will be free to later submit a properly drafted indictment to the grand jury for its consideration. Id. Alternatively, amendments to an indictment are permissible if: (1) they do not change the nature of the offense; (2) the charge is a lesser included offense of the crime charged in the indictment; or (3) the defendant waives presentment to the grand jury and pleads guilty. Id. at 385, 626 S.E.2d at 355.

If the State moves to amend an indictment, one of the trial court’s considerations must be whether the proposed amendment changes the nature of the offense set forth in the original indictment. Means, 367 S.C. at 386, 626 S.E.2d at 355. “If it does, the motion to amend must be denied unless the amended indictment states a lesser included offense of the crime charged in the original indictment or the defendant chooses to waive presentment of the amended indictment to the grand jury and plead guilty.” Id. “To rule otherwise would violate the defendant’s statutory and constitutional right to demand that a properly constituted grand jury consider his case and

decide whether to issue a sufficient indictment.” Id.; see Hopkins v. State, 317 S.C. 7, 10, 451 S.E.2d 389, 390 (1994) (granting post-conviction relief and new trial where original indictment for felony DUI causing great bodily injury was amended to indictment for felony DUI causing death; amendment, which increased potential penalty from ten to twenty-five years, changed the nature of the offense charged), *overruled on other grounds*, Gentry, 363 S.C. 93, 610 S.E.2d 494.

Here, the prosecutor made no attempt to amend the indictment. The PCR court found that no such amendment was necessary because first degree assault and battery was a lesser-included offense of assault and battery of a high and aggravated nature (ABHAN), which had been held to be lesser-included offense of first degree CSC. App. 148 – 149; App. 151. However, the PCR court relied upon a case interpreting common law ABHAN and not the statutory version codified in 2010. Compare State v. Primus, 349 S.C. 576, 579- 80, 564 S.E.2d 103, 105 (2002), with S.C. Code Ann. § 16-3-600.

In 2010, the Omnibus Crime Reduction and Sentencing Refonn Act, “which substantially overhauled the state’s criminal law,” became effective. State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014). “Through the passage of the Act, the legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses.” Id. In place of these offenses, the Act codified attempted murder, ABHAN, and three degrees of assault and battery. Id. Under the common law, ABHAN was defined as an unlawful act of violent injury accompanied by circumstances of aggravation; “circumstances of aggravation” included the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in gender, the purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority. Primus, 349 S.C. at 580-81, 564 S.E.2d at 105-106

(citations omitted). Although “serious bodily injury” was one of several circumstances of aggravation, great bodily injury was not a required element of common law ABHAN. In 2010, the Legislature not only codified the offense of ABHAN, but also raised the maximum penalty from ten to twenty years and changed the elements of the offense. The new ABHAN statute provides that “[a] person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: (a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.” S.C. Code § 16-3-600(B)(1). Thus, the new offense of ABHAN revolves around the concept of “great bodily injury,” which is specifically defined in subsection (A) of the statute.

Assault and battery in the first, second, and third degrees are entirely new offenses created by the same statute that codified ABHAN in 2010. Therefore, these offenses have not been traditionally considered lesser-included offenses of CSC. Further, “when determining the effect of statutory language, the canon of construction *expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that to express or include one thing implies the exclusion of another, or the alternative.” City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (internal quotations omitted). All of the assault offenses created by section 16-3-600 specifically set forth lesser-included offenses. Significantly, the statute does not mention CSC. See S.C. Code § 16-3-600 (B)(3), (C)(3), & (D)(3). Rather, section 16-3-600(C)(3) provides that “[a]ssault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in section 16-3-29.”

The PCR court ruled that there was no case specifically holding that first degree assault and battery was not a lesser included offense of first degree CSC, such that “[plea] counsel

cannot be deemed deficient for advising his client to accept a favorable plea offer from the State to plead to first-degree assault and battery.” App. 149. Neither the traditional rules of statutory construction nor the test for determining lesser-included offenses are novel concepts of law.³ The fact that our appellate courts have not ruled upon every iteration of their application does not absolve an attorney from knowing and understanding the law. As discussed *supra*, the enumeration within the statute of certain offenses for which first degree assault and battery is a lesser included offense implies the exclusion of all non-enumerated offenses. Brown v. State, 343 S.C. 342, 349, 540 S.E.2d 846, 850 (2001), *overruled on other grounds by*, Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Williams v. State, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991) (“Penal statutes are construed strictly against the State and in favor of the defendant.”). Moreover, plea counsel never testified that he understood first degree assault and battery to be a lesser included offense of CSC and premised his advice to Seabrook based upon this understanding. See App. 109 – 131. In sum, first degree assault and battery is not a lesser included offense of first degree CSC and plea counsel could not have reasonably concluded otherwise.

An examination of the plea colloquy, indictment, and sentencing sheet reveal that there was no waiver of presentment in this case either. See App. 2- 3; App. 159 – 160; App. 164. In

³ State v. Brandenburg, 419 S.C. 346, 350–51, 797 S.E.2d 416, 418–19 (Ct. App. 2017) (“A [lesser included] offense is one whose elements are wholly contained within the crime charged. The primary test for determining if a particular offense is a lesser included of the offense charged is the elements test. The elements test inquires whether the greater of the two offenses includes all the elements of the lesser offense. If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater. To that end, under any circumstance, if a person can commit the greater offense without being guilty of the purported lesser offense, then the latter is not a lesser included offense. However, even if the elements of the greater offense do not include all the elements of the lesser offense, we may still construe the lesser offense as a lesser included offense if it has traditionally been considered a lesser included offense of the greater offense” (internal quotations and citations omitted)).

State v. Smalls, 364 S.C. 343, 345, 613 S.E.2d 754, 755 (2005), the defendant was indicted for second degree lynching but pled guilty to assault and battery of a high and aggravated nature (ABHAN), a charge for which he was never indicted. Smalls signed a sentencing sheet, which indicated that he waived presentment to the grand jury and pled guilty to the charge. Id. at 345-46, 613 S.E.2d at 755. The sentencing sheet also referenced the indictment for lynching but acknowledged that Defendant, “in disposition of said indictment,” pled to ABHAN. Id. This Court held that “signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment.” Id. at 347, 613 S.E.2d at 756. “Moreover, a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he has pled guilty.” 364 S.C. at 347, 613 S.E.2d at 756. This Court explained:

In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. First, **a defendant may check a box on the sentencing sheet to indicate a waiver of presentment of the indictment to the grand jury.** Second, a defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case.

Id. (emphasis added).

With respect to Smalls, this Court found that he signed a sentencing sheet indicating that he waived presentment of the indictment to the grand jury. Smalls, 364 S.C. at 347, 613 S.E.2d at 756. Thus, though an indictment was never prepared for the charge to which he pled guilty, this Court found that the “aforementioned factors were present to provide Defendant with proper notice.” Id. at 347-48, 613 S.E.2d at 756. In the present case, only the “lesser included offense” box was checked on the sentencing sheet. The “defendant waives presentment to grand jury”

box was left blank. App. 138; App. 164. There is no evidence that plea counsel ever discussed the concepts of a lesser included offense or waiver of the presentment with Seabrook either. App. 82, l. 13 - 84, l. 7. Thus, this case is distinguishable from Smalls and the constitutional and statutory notice requirements were never validly waived by Seabrook. Had plea counsel protected Seabrook's rights and made a formal objection or motion on the record, the plea court could have then informed the parties of the necessity of reindictment, or obtained a waiver of presentment. Plea counsel's failure constituted deficient performance. See Hopkins v. State, 317 S.C. at 10, 451 S.E.2d at 390.

B. Petitioner was Prejudiced

The conduct for which Seabrook pled guilty constituted only second degree assault and battery. One of the purposes of the requirement of a sufficient indictment is to prevent a prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime for which he was indicted. Means, 367 S.C. at 383, 626 S.E.2d at 353. Unless the unindicted crime was a lesser-included offense of the indicted offense or presentment was waived by the defendant, the prosecutor would have been required to submit a properly drafted indictment to the grand jury for its consideration. See id. at 385, 626 S.E.2d at 354.

Here, plea counsel King testified that the prosecutor "knew he had a problem with this case with the CSC first and kidnapping" because of "the victim recanting on video." App. 120, ll. 12-22; App. 125, ll. 2-11. King further acknowledged that his advice to Seabrook regarding whether to go proceed to trial may have been different if the prosecutor intended to pursue the CSC and kidnapping charges. However, once the prosecutor offered first degree assault and battery, King advised Seabrook to accept the plea and not go to trial. App. 116, l. 12 – 117, l. 24; App. 123, l. 11 – 124, l. 17. King noted that Seabrook wanted to plead guilty to second degree

assault and battery. App. 116, l. 22 – 117, l. 1. King asserted that first degree assault was the best plea offer that he could obtain. App. 120, l. 23 – 121, l. 2.

Here, the only admitted conduct was punching the Complainant in the face, resulting in a bone fracture. App. 10, l. 24 - 11, l. 8; App. 13, ll. 16-23; App. 87, ll. 4-16; App. 91, l. 23 - 93, l. 16; App. 113, l. 8 - 114, l. 2. First degree assault and battery occurs when a person “unlawfully (a) injures another person, and the act: (i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or (b) offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.” S.C. Code Ann. 16-3-600(C)(1). At the guilty plea hearing, the prosecutor advised the court: “[H]e was initially charged with CSC 1st and kidnaping in that incident, but at his bond hearing the victim recanted the kidnaping and CSC aspects of that but said that she was physically assaulted. That is the basis for the reduction of the charge.” App. 7, l. 12 – 8, l. 4; see also App. 79, ll. 5-13; App. 80, l. 22 – 81, l. 6; App. 104, ll. 21-23; App. 114, l. 6 – 116, l. 2. Because the Complainant recanted both the sexual aspect of the incident and the kidnapping, there was no evidence to support a conviction for first degree assault and battery.

Second degree assault and battery occurs when a person “unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and: (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.” S.C. Code Ann. 16-3-600(D)(1). In the present case, the facts would fit under subsection (D)(1)(a) because Seabrook caused moderate bodily injury to

another person. “Moderate bodily injury” is statutorily defined as “. . . injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation” S.C. Code Ann. 16-3-600(A)(2). Second degree assault is a misdemeanor punishable by no more than three years imprisonment, much less than the potential punishment associated with the felony offense of first degree assault of up to ten years imprisonment. S.C. Code Ann. 16-3-600(C)(2); S.C. Code Ann. 16-3-600(D)(2). Thus, Seabrook was prejudiced in that he was exposed to a higher sentencing range for the assault offense than he would have been had he pled or gone to trial on second degree assault and battery.

CONCLUSION

Based on the foregoing, Petitioner Christopher Seabrook respectfully requests that this Court grant certiorari and allow for further briefing of the issue raised herein. In the event this Court does not order further briefing, Petitioner requests that his conviction for first degree assault and battery be vacated.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of February, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

CHRISTOPHER WILLIAM SEABROOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Rasheeda Cleveland, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Christopher William Seabrook, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 26th day of February, 2018.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 26th day of February, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2027