

State of South Carolina
In the Supreme Court

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Certiorari to Spartanburg County

S.C. Supreme Court

Roger L. Couch, Circuit Judge

Terrance D. McCall

PETITIONER.

V.

State of South Carolina,

RESPONDENT,

APPELLATE CASE NUMBER 2014-002285

Answer to the JOHNSON Petition for Writ of Certiorari

Terrance D. McCall/SCDC#339911
Perry Correctional Inst.
430 Oaklawn road
Pelzer South Carolina, 29669
Q1A-205

PRO-SE PETITIONER

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Issues Presented

(1) The PCR Judge did err by finding that counsel provided effective representation where counsel **Told** petitioner that he would only have to serve sixteen years of a twenty year armed robbery sentence, when in fact, the petitioner has to be in prison for 17.8 years, and not the sixteen years that counsel told him. (see) PCR Transcript, page-16, line-2-4.

(2) The PCR Judge did err by finding that counsel provided effective representation where counsel **Told** petitioner that he would only have to do 80% of his twenty year armed robbery sentence, when in fact, when a person is convicted for armed robbery he must do 85% of that sentence. (see) S.C. CODE ANN § 16-11 330(A). Also (see) The Plea Transcript, page-15, line-12. & The PCR Transcript, page-13.

(3) The PCR Judge did err by finding that counsel provided effective representation where counsel never objected to any of the erroneous advice that the plea Judge gave to the petitioner during the plea hearing. (The Plea Judge instructed the petitioner that he will be eligible for parole after serving 80% of his sentence, but in truth, petitioner is not eligible for parole. (see) Plea Transcript, page-15. line-1-7 & line 17. & page-16. line-14-18. & page-17. line-10-12. & page-20, & page-21. line-25.

In Hunter V. State, 316, 105, 447, S.E.2d 203 (1994). It states, The court had no obligation to address whether the accused was eligible for parole, but that if such advice was incorrect, the plea may be Not knowing and voluntary.

In Coats V. State, 575, SE 2d 557-SC; Supreme Court (2003). The petitioner was informed by his counsel that he was eligible for parole when in fact, he was not eligible for parole and his case was reversed and remanded because counsel mistaken advice that petitioner would be eligible for parole.

(4) The plea Judge did err by giving petitioner erroneous instruction about the length of his sentence in prison, and about being eligible for parole. (see) Plea Transcript, page-15. line-2-3. & page-16. line-2-6. & page-17. line-10-12 & line 23. & page-18. line-1-11.

(5) The PCR Judge did err by saying that counsel's advice on the matter of 80% in prison is just a collateral matter, when in fact, it's a serious matter. Petitioner would of went to trial on the day of the plea, but it was counsel advice that lead him to take the states plea. (see) Plea Transcript, Page-7.

Statement of the Case

The petitioner hereby agree in part and disagree in part. The petitioner agree with counsel's argument in the JHONSON petition for writ of ceriorari, but disagree with the fact that counsel thinks that the petitioner writ of certiorari has no merit.

ARGUMENT

(1) see page 14-21 Of the plea transcript. counsel was ineffective for not objecting to the erroneous instruction giving to the petitioner several times during the states plea deal. With in these (7) pages the trial Judge instructed petitioner with confuseing advice. At one time the Judge told petitioner that he had no parole, then he told petitioner that he may be eligible for parole, he also told petitioner that after petitioner serve 80% of his sentence he will be able to go up for parole. The trial Judge told petitioner, on record that if he take the states plea deal he will only serve sixteen years in prison at 80% with the possibly of making parole.

(2) Counsel was ineffective because she told petitioner that if he take the states plea deal he will only be in prison for sixteen years.

(3) Counsel was ineffective for allowing petitioner to accept the states plea on erroneous advice giving by the Judge.

The petitioner alleges that these arguments was raised at the PCR hearing, and at the plea hearing, and was ruled upon in the PCR's order of dismissal. Therefore, petitioner alleges that these issues is preserved to be heard in this court, and that counsel has erroneously raised a no merit JHONSON petition.

Effectiveness of Counsel

Since Powell V. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) The sixth Amendment of the United States Constitution has been construed to require that a criminal defendant be afforded effective assistance of counsel.

As the supreme court noted in McMann V. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed. 2d (1970). Counsel performance must be "within the range of competence demanded of attorneys in criminal cases". Id. at 771, 90 S.Ct. at 1449; Wiley V. Sowders, 647 F.2d 642, 648 (1981)

A criminal defendant is entitled to effective assistance of counsel under the sixth amendment to the United States Constitution. Strickland V. Washington, 466 U.S. 668 (1984)

In the text of a guilty plea, a court will conduct a two prong test when determining whether defense counsel's assistance was effective. Hill V. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 668

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58, 59. Whether counsel was "deficient" turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson V. State, 314 S.C. 46, 48, 443, S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 56 (1985).

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant; (Quoting North Carolina V. Alford, 400 U.S. 25, 31 (1970)).

Second, the applicant must show that he was prejudiced by counsel's deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show that there is a reasonable probability that "but for counsel's errors, the defendant would not had pled guilty, but would have insisted on going to trial; Jackson V. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Wolfe V. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). When a court is evaluating guilty plea issues, "it is to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber V. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Harres V. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). According to S.C. code Ann, § 16-11-330(A) (1976). Armed Robbery is a "no parole offense; a inmate convicted of armed robbery must serve eighty five percent of his sentence.

Here, counsel provided ineffective representation. Counsel communicated to petitioner that he would only have to serve sixteen years of a twenty year armed robbery sentence, which is eighty percent of the twenty years if petitioner accepted the states twenty year plea offer to armed robbery. However, counsel incorrectly advised petitioner on two accounts. One, counsel told petitioner on the day of the trial that if he took the plea he would only be in prison for sixteen years. Petitioner found out in the SCDC that counsel's had incorrectly advised him about how much time he would have to serve. SCDC advised petitioner that he would be release from prison in 17.8 years, and not the sixteen that counsel had told him he would serve. Second, counsel also told petitioner that he would be eligible for parole, when in fact, armed robbery is a no parole offense.

Further, when plea Judge incorrectly told petitioner that he would have to serve eighty percent of his sentence before being parole eligible "on several accounts during the plea hearing" defense counsel did not object to the plea Judge erroneous instructions, in fact, counsel was in agreement with the plea hearing Judge instructions.

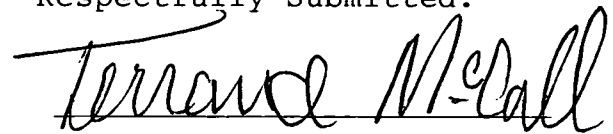
Petitioner only pled guilty because he was instructed by his counsel, and the plea Judge that he would only have to serve eighty percent of his twenty year armed robbery sentence, and would be eligible for parole. "On record" the petitioner told the plea Judge that he understood that he would only have to do sixteen years. (see) APP.15 lines 13-15, APP.17, line 2-3, also see PCR transcript. Hammond V. United States, 528 F.2d(4th Cir.1975). Finding that counsel was ineffective, and defendant guilty plea is involuntary where defendant had been induced to accept plea offer on erroneous advice from his counsel, that he would only have to serve eighty of his prison sentence on armed robbery charge and counsel told defendant that he was eligible for parole on the armed robbery

If defendant's counsel had not incorrectly advise petitioner about the parole eligibility, and about serving only eighty percent of a twenty year sentence for armed robbery, petitioner would have proceeded to trial on that day.

Conclusion

For the reasons argued above, petitioner, Terrance Darnell McCall respectfully request this court to grant his petition for writ of certiorari.

Respectfully Submitted:



Terrance D. McCall

This 20 day of July, 2015

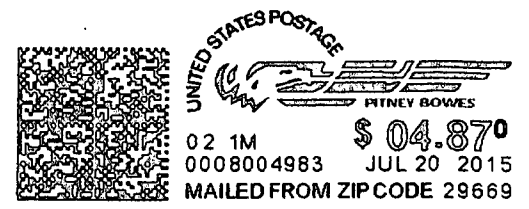
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