The Supreme Court of South Carolina

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May 25, 2018

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Onrae Williams v. The State
Lower Court Case No. 2010CP1003800
Appellate Case No. 2016-001456

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Elizabeth Scott Moise, Esquire
Matthew Edward Brown, Esquire
Lindsey Ann McCallister, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Onrae Williams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-001456

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

Memorandum Opinion No. 2018-MO-009
Heard January 11, 2018 – Filed February 28, 2018

REVERSED

Elizabeth Scott Moise, of Charleston and Matthew Edward Brown, of Boston, MA, both of Nelson Mullins Riley & Scarborough, LLP, both for Petitioner.

Attorney General Alan McCrory Wilson and Assistant Attorney General Lindsey Ann McCallister, both of Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) case, Petitioner's application for relief was denied by the circuit court. The court of appeals affirmed in an unpublished decision. *Williams v. State*, Op. No. 2016-UP-015 (S.C. Ct. App. filed Jan. 13, 2016). We reverse the court of appeals, grant relief to Petitioner, and remand to the court of general sessions for a new trial pursuant to the following authorities: *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (stating in order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the applicant's case); *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985) ("The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases."); *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) ("[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived."); *Davie v. State*, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) ("[C]ounsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State."); *Bennett v. State*, 371 S.C. 198, 205 n.6, 638 S.E.2d 673, 676 n.6 (2006) (("[A] deficiency can be cured where the trial court properly informs the defendant about the sentencing range."); we conclude the colloquy between trial counsel and the trial court did not cure trial counsel's deficiency); *Davie*, 381 S.C. at 608, 675 S.E.2d at 420 (stating to prove prejudice resulting from counsel's deficient performance, the petitioner must show "there is a reasonable probability that but for counsel's deficient performance, he would have accepted the original plea offer").

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Onrae Williams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-201112

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-015
Submitted October 13, 2015 – Filed January 13, 2016

AFFIRMED

Elizabeth Scott Moise and Matthew Edward Brown, of Nelson Mullins Riley & Scarborough, LLP, of Charleston, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant Attorney General Ashleigh Rayanna Wilson, and Assistant Attorney General Alicia A. Olive, of Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) action, Onrae Williams appeals the PCR court's denial of his application for PCR. Williams claims this

court should reverse the PCR court's decision because (1) trial counsel failed to properly research and subsequently object to an enhanced mandatory life without parole (LWOP) sentence when legal uncertainty existed as to whether Williams' sentence could be enhanced, and (2) trial counsel failed to ensure Williams understood the consequences of rejecting a plea bargain and proceeding to trial when the State was seeking mandatory LWOP. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether trial counsel was ineffective for failing to properly research and subsequently object to an enhanced mandatory LWOP sentence: *State v. Morgan*, 352 S.C. 359, 366–67, 574 S.E.2d 203, 206–07 (Ct. App. 2002) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning."); S.C. Code Ann. § 17-25-45(A)(2)(a) (2014) ("Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . two or more prior convictions for . . . a serious offense . . . ."); S.C. Code Ann. § 17-25-45(C)(2)(b) (Supp. 2015) (stating felony convictions for possession with intent to distribute cocaine within the proximity of a school and distribution of cocaine within the proximity of a school are each classified as a "serious offense"); S.C. Code Ann. § 17-25-45(C)(3) (2014) ("'Conviction' means any conviction, *guilty plea*, or plea of nolo contendere." (emphasis added)); *see also* S.C. Code Ann. § 63-19-20(1) (2010) ("'Child' or 'juvenile' means a person less than seventeen years of age."); *United States v. Crumblin*, 441 F. App'x 180, 183–84 (4th Cir. 2011) (holding defendant's felony conviction at the age of seventeen for purposes of his career offender status was not a juvenile conviction, despite defendant's youthful offender sentence, because he was neither a child as defined by section 63-19-20 nor did the family court have exclusive jurisdiction over defendant as required for sentencing as a juvenile).

2. 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 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).

AFFIRMED.[1]

HUFF, WILLIAMS, and THOMAS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.