

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

R. Scott Sprouse, Circuit Court Judge

PRESTON C. MORSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002314

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ORIGINAL

RECEIVED

JUN 25 2018

S.C. SUPREME COURT

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

I. The PCR judge erred in denying petitioner’s PCR claim that his pleas should be vacated because he did not receive the benefit of the plea bargain in the case, which included placement into a rehabilitation program in exchange for his pleas, as this was the state’s promise made to him in exchange for his guilty pleas.3

II. Counsel erred in failing to advise petitioner of the option of challenging his confession at trial as involuntarily given since it was induced by certain promises from the police because this would have allowed petitioner to make an informed decision in light of all information made available to him when determining whether to be tried by jury or plead guilty in the case.6

CONCLUSION.....9

ISSUES PRESENTED

I. The PCR judge erred in denying petitioner's PCR claim that his pleas should be vacated because he did not receive the benefit of the plea bargain in the case, which included placement into a rehabilitation program in exchange for his pleas, as this was the state's promise made to him in exchange for his guilty pleas.

II. Counsel erred in failing to advise petitioner of the option of challenging his confession at trial as involuntarily given since it was induced by certain promises from police because this would have allowed petitioner to make an informed decision in light of all information when determining whether to be tried by jury or plead guilty in the case.

STATEMENT

Petitioner Preston C. Morse pled guilty to first degree burglary, forgery, and two counts of resisting arrest at the March 2013 term of the Beaufort County General Sessions Court before Judge Carmen T. Mullen, who sentenced him to an aggregate fifteen-year prison term. Trasi Campbell represented petitioner at the plea proceeding and Assistant Solicitor Ben Shelton appeared on behalf of the state. App. 1-33. Petitioner did not appeal his convictions and sentences.

On December 9, 2013, petitioner filed a PCR application with the Beaufort County Office of the Clerk of Court. App. 35-41. The respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 42-46.

A PCR hearing was convened on February 13, 2016, at the Beaufort County Courthouse before Judge R. Scott Sprouse. App. 48-84. Petitioner was present at the hearing and represented by Tristan Shaffer, and Assistant Attorney General Rustin W. Neely appeared on behalf of the state. On September 14, 2017, Judge Sprouse signed an Order of Dismissal in the case. App. 86-92.

Petitioner appealed the Order of Dismissal. This petition follows.

QUESTION I

The PCR judge erred in denying petitioner's PCR claim that his pleas should be vacated because he did not receive the benefit of the plea bargain in the case, which included placement into a rehabilitation program in exchange for his pleas, as this was the state's promise made to him in exchange for his guilty pleas.

The solicitor apprised the plea judge of the state's case at the plea proceeding. Apparently, petitioner's ex-girlfriend distracted the homeowner in question by going out on a date with him (homeowner) on September 17, 2013, while petitioner went inside the home and took an assault rifle. Later on, when petitioner attempted to cash a questionable check, bank officials called police and petitioner was arrested. At the time of petitioner's arrest, he allegedly resisted arrest and also confessed that he did it (with the inference to "it" being the commission of the burglary). App. 14, l. 16 – p. 20, l. 24.

During the PCR hearing, petitioner testified in effect that there was a plea offer in existence according to his understanding that was extended to him in the form of his receipt of drug treatment immediately in exchange for his pleas. App. 60, lines 2-9; App. 61, lines 9-11; App. 65, l. 21 – p. 66, l. 16. Petitioner stated that despite the fact that the word "recommendation" was used at the plea proceeding; nonetheless, he explained his position as follows: "it's written in my legal work that [the solicitor] did said (sic) that he was going to get me into a drug treatment program, but I have that in some of the paperwork." App. 65, lines 13-20. However, petitioner never received the immediate drug relief he was promised and testified as follows:

Q. And why are you not in that program?

A: SCDC doesn't even have a drug program.

Q. Have you been informed as to whether or not you'll receive any sort of drug treatment under your current sentence?

A. Oh yeah. They sentenced me to three years to a drug treatment program that does not exist. App. 60, lines 17-21.

Also during the PCR hearing held in the case, petitioner's mother testified that state officials (police) led her and her husband to believe (and petitioner) that he would be placed in Owl's Nest and that there was no mention of jail time. App. 78, l. 12 – p. 80, l. 6. Finally, note that trial counsel, who testified also at the PCR hearing, admitted that “[petitioner] had a belief that there were promises made” to him. App. 74, lines 3-4.

Note the solicitor's comment at the plea proceeding that “the state [was] without recommendation” in petitioner's case. App 21, l. 15-16. The plea judge stated that “[SCDC] services are woefully inadequate as far as drug and alcohol treatment,” but ordered [petitioner] to the alcohol and addiction treatment unit pending availability. App 31, l. 1-24.

The PCR judge ruled that “[petitioner] ha[d] failed to satisfy his burden to prove that counsel was deficient”...[and]...that he] “also failed to prove that he was prejudiced by the alleged deficiency.” App. 90.

In the case at bar, it appears that the police at all stages from beginning to end clearly impressed upon petitioner and his family that his sentence would include drug treatment; and although a specific promise or recommendation or words of that ilk were not reduced to writing, the message strongly relayed to petitioner was that their words were tantamount to and the equivalent of a promise for drug treatment for him in exchange for his pleas, and petitioner relied on this information to his detriment in making his decision to plead guilty to the charges against him. Therefore, although no written papers existed outlining what clearly constituted a recommendation and a promise; nonetheless according to petitioner's recollection and under this

particular set of circumstances, a plea agreement with the state had been reached where petitioner's pleas would result in his placement in a drug rehabilitation treatment program and/or the possibility of minimal or no prison time served in exchange for his pleas.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. See both Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Smith v. State 407 S.C. 270, 754 S.E.2d 900 (2014). Specific performances is the remedy used where one had been denied a constitutionality guaranteed right. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), citing to Turner v. Tennessee, 858 F.2d 120 (6th Cir 1988) and United States v. Morrison, 449 U.S. 361 (1981).

In the case at bar, a plea agreement was reached in effect and a breach occurred. This violated petitioner's right to due process. Counsel's error in the mishandling of what was in effect a plea agreement and promise¹ by failing to ensure that this was a valid plea bargain that could be carried out as such violated petitioner's right to competent legal counsel guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as a result because his right to due process was violated in that he did not receive the benefit of the plea bargain in the case after he pled guilty to the charges.

¹ Brooks v. State, 325 S.C. 269, 272, 481 S.E.2d 712, 713 (1997) ("A court is not required to accept a plea agreement reached by the State and the defendant.") State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982) ("The withdrawal of a guilty plea is generally within the sound discretion of the trial judge."); *id.* ([W]hen the State fulfills its agreement to recommend a specific sentence, the fact that the judge does not accept the recommendation does not affect the validity of the plea.

QUESTION II

Counsel erred in failing to advise petitioner of the option of challenging his confession at trial as involuntarily given since it was induced by certain promises from police because this would have allowed petitioner to make an informed decision in light of all information when determining whether to be tried by jury or plead guilty in the case.

The solicitor apprised the plea judge of the state's case at the plea proceeding. Apparently, petitioner's ex-girlfriend distracted the homeowner in question by going out on a date with him (homeowner) on September 17, 2013, while petitioner went inside the home and took an assault rifle. Later on, when petitioner attempted to cash a questionable check, bank officials called police and petitioner was arrested. At the time of petitioner's arrest, he allegedly resisted arrest, and also confessed that he did it (with the reference to "it" being the commission of the burglary). App. 14, l. 16 – p. 20, l. 24.

During the PCR hearing, petitioner testified in effect that he gave a statement confessing to the crimes only because the police promised that he would receive drug treatment placement in exchange for the pleas along with an accompanying hint of minimal or no jail time to boot. Petitioner explained as follows:

A. Initially when I was arrested at the time, at the beginning, when the detectives came and everything...[the police] were trying to get me to give a statement. But I told them I didn't want to give a statement yet, because I wanted to speak with my parents first...[the police] he called my parents. [My parents]...told me to go ahead and write a statement because the officer was going to get me into a drug treatment program...[the police] promised me that they would get me the drug treatment and everything if I gave my statement.

Q. Now, did you tell this to trial counsel?

A. Um-hmm. She knew about it. Yes. App. 57, l. 5 – p. 58, l. 1.

Q. Okay. Why did you give the statement?

A. Because I was told I was going to get – I don't know...when they told me they was going – I was going to get drug treatment and all this stuff, and I was going to go start right away, you know, I'm thinking they was going to help me with my – so I'm going to try to do anything to get un-sick, you know, from –

Q. Did they ever promise you drug treatment in order to get you –

A. Um-hmm.

Q. – to give a statement? App 58, l. 19 – p. 59, l. 9.

Q. Okay. Did they ever get you in a drug treatment program?

A. No, sir. App. 60, l. 5-7.

Also during the PCR hearing, petitioner's mother testified verifying the events as follows:

Q. Okay. And what was your understanding of – well, did they seek to have you speak with your son...about giving a statement

A: Yes they didAnd [the [police]...my husband and I believe that if we would tell our son to give a statement, that he was going to get drug rehab. I even went so far as to get him a placement in the Owl's Nest. App. 79, lines 1-20

Q. What did you tell petitioner to do?

A. We told him that he was going to be able to go to the Owl's Nest for drug rehab, and that he should cooperate with the officer.
App. 80, lines 2-5.

Trial counsel testified regarding the confession issue as follows:

A. Well, [petitioner] really **had a belief** that there were promises made. I did not see that in the viewing that I had of the taped statement. But again, if he wanted to make that an issue, we could have. It would not have been successful.
App. 74, lines 3-7.

The PCR judge ruled that counsel did not render ineffective assistance of counsel with respect to the matter of the confession because counsel believed a challenge to the confession would not have been successful and that no prejudice existed regarding this issue. App. 89.

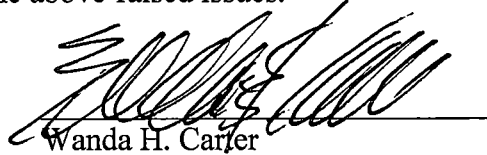
Note, that petitioner gave an audiotape confession and a prior confession when he said “he did it” when he was arrested, but petitioner’s instant PCR attack is with respect to his burglary charge and the last confession concerning that charge. App. 64, l. 4 – p. 65, l. 5.

Clearly, petitioner’s confession was involuntarily given because it was induced by a promise of drug treatment placement and a hint of a possibility of no or little jail time. A statement induced by a promise of leniency is involuntarily given if it so connected with the inducement as to be a consequence of the promise. State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987). In Peake, the defendant’s statement was induced by the police officers’ promise not to seek the death penalty. Whether or not a statement is voluntarily given is based on the totality of the circumstances. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

Petitioner’s statement in question would likely have been suppressed under Peake, supra, and counsel’s ineffectiveness in failing to properly advise petitioner of such a possibility in the event of a trial should meant that petitioner was deprived of making an informed decision about whether to plead or opt for a trial. Counsel’s omission in this regard violated the Sixth Amendment and Hill v. Lockhart, 484 U.S. 52 (1984), and because of the error, petitioner did not plead guilty voluntarily and intelligently. A plea is valid only if it represents a voluntary and intelligent choice among alternative course of action open to a defendant. North Carolina v. Alford, 400 U.S. 25 (1970).

CONCLUSION

Based on the foregoing arguments, counsel for petitioner requests that this Court grant petitioner's petition and allow full briefing on the above-raised issues.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of June, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Scott Sprouse, Circuit Court Judge

PRESTON C. MORSE,

PETITIONER

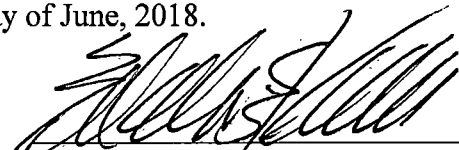
V.

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 Christian Saville, 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 Preston C. Morse, #323236, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 25th day of June, 2018.

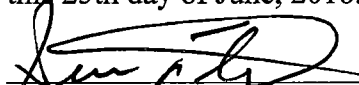


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022