

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

JUL 23 2018

S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

RADU RENCIU,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000090

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to take steps to obtain from petitioner a definite acceptance of the state's fifteen-year plea offer on the burglary charge and formally submitting the acceptance before the offer expired.

STATEMENT

Petitioner Radu Renciu pled guilty to first degree burglary, second degree burglary, (nonviolent), second degree burglary (violent), and possession of methamphetamine during the June 2015 term of the Berkeley County General Sessions Court before Judge R. Markley Dennis, Junior. Petitioner was sentenced to imprisonment for a term of thirty years, suspended upon the service of eighteen years for his first-degree burglary conviction, and ten years and fifteen years, respectively, for his two second-degree burglary convictions (nonviolent and violent), and one year on his drug conviction. App. 1-23. Chad D. Shelton represented petitioner at the plea proceeding, and Assistant Solicitor Wilton H. McNeely appeared on behalf of the state.

On June 24, 2016, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. 25-41. The respondent filed a return dated June 27, 2017, requesting that a hearing be held in response to petitioner's PCR action. App. 42-48.

A PCR hearing was convened on December 4, 2017, at the Berkeley County Courthouse before Michael G. Nettles. App. 49-92. On December 13, 2017, Judge Nettles signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 99-107.

Petitioner appealed Judge Nettles' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to take steps to obtain from petitioner a definite acceptance of the state's fifteen-year plea offer on the burglary charge and formally submitting the acceptance before the offer expired.

During the plea proceeding, the solicitor apprised the plea judge of the burglary charges lodged against petitioner in his case. Petitioner was charged with entering a home on August 29, 2013, located in Goose Creek, South Carolina, and taking certain household items. App. 10, l. 18-24. After petitioner's arrest, he was subsequently released on bond on March 21, 2014. App. 116 – 121. Then, in October 2014, petitioner was subsequently arrested again and charged with the burglary of another residence in Goose Creek, South Carolina, that occurred on September 13, 2014, and the burglary of a gas station (Murphy's Oil) in Goose Creek, South Carolina, that occurred on September 19, 2014. App. 10, l. 25 – p. 11, l. 18,

During the PCR hearing, petitioner testified that he was informed by trial counsel of the state's fifteen-year plea offer on the first burglary charge, but that he was released on bond shortly thereafter and had no further communication with counsel until he was arrested in October 2014 on additional burglary charges. Petitioner stated that he would have accepted of the plea offer and that counsel promised to discuss the details with him during the week that followed, but that counsel never explained it to the "full extent." App. 55, l. 13 – p. 59, l. 22; App. 63, l. 24 – p. 64, l. 8.

Trial counsel testified at the PCR hearing and explained that the plea offer for fifteen-years was submitted and re-offered on March 11, 2014, with an April 25, 2014 deadline, but that petitioner made bond on March 21, 2014, and that after petitioner's release, no contact was made with him until he was re-arrested in October 2014 on another set of burglary charges that

occurred in September 2014. Counsel admitted that he lost contact with petitioner after the offer was made and was unable to reach him before the expiration date, and that even though he (trial counsel) accepted the plea offer on petitioner's behalf, there was never a formalized acceptance of the same by petitioner submitted by counsel. App. 69, l. 19 – p. 73, l. 20; App. 74, l. 19 – p. 78, l. 25. See plea offer at App. 94-98.

The PCR judge found that petitioner failed to meet his burden of proving that plea counsel was in effective with respect to the plea offer issue because petitioner lost contact with counsel, which in effect precluded action on the plea offer. App. 104-105.

Clearly, trial counsel erred in failing to advise petitioner of the expiration date of the fifteen-year plea offer and obtain a formal acceptance by petitioner prior to the expiration of the plea offer. Therefore, the offer lapsed. Counsel advised petitioner of the offer, but did not follow-up on petitioner's acceptance formally to finalize the same prior to its expiration date.

A defendant has a right to effective assistance of counsel during the plea bargaining process. See Lafler v. Cooper, 132 S.Ct. 1376 (2012). See also Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1196), where the Court held that the Sixth Amendment protects defendants against ineffective assistance of counsel during the plea bargaining process. State v. Judge, supra, was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a petitioner's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Judge, the issue was whether counsel was ineffective in advising the defendant to reject a plea offer and opt for a trial by jury. In Jackson, supra, the Court held that counsel was ineffective in failing to advise the defendant that the crime he was pleading to was a felony and that but for that omission, the defendant would not have plead guilty in his case.

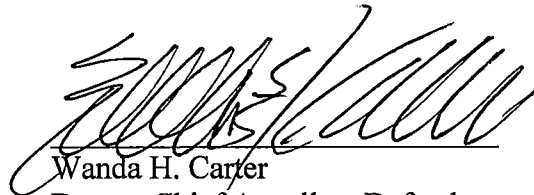
Specifically, with respect to plea offers, the Sixth Amendment right to effective assistance of counsel extends to this area also, particularly where plea offers lapse and where prejudice is shown to the extent that the defendant would have accepted the plea offer and received a more favorable conviction and/or sentence. See Missouri v. Frye, 132 S.Ct. 1399 (2012). In Missouri v. Frye, counsel did not communicate the plea offer to the defendant and as a result, the plea offer expired. Compare Davie v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009), where the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (mail snafu after counsel moved to another office) until after the plea offer had expired, and because he would have accepted that plea offer had it been communicated to him. See also Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (2014), where the Court held that counsel was ineffective in failing to extend the state's plea offer of ten years to the defendant prior to sentencing (which was when he first time he heard of the offer) and that the defendant was prejudiced by counsel's deficient performance as he received a twenty-year sentence instead. In Bell, the case had been transferred to counsel and there was note in the previous attorney's file indicating that a plea offer of ten years had been made, but a review of the file revealed no notes or any indication showing that the plea offer was conveyed to the client by either counsel who represented the client.

Here, it was obvious that counsel failed to ensure that the fifteen-year plea offer extended to petitioner, which would have been accepted by petitioner, was made definite and formally submitted and finalized prior to the date of the expiration of the offer, and that petitioner was prejudiced by counsel's error because he ultimately ended up with an excessive sentence in the case. Counsel's deficient performance in petitioner's case violated the Sixth Amendment. See

Hill v. Lockhart 474 U.S.52 (1985). Moreover, but for counsel's error, a reasonable likelihood existed that petitioner would have accepted the offer and received a lower sentence than the sentence handed down in his case.

CONCLUSION

Based on the foregoing arguments, counsel for petitioner would request that the petition be granted and full briefing allowed on the above-raised issue.

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 23rd day of July, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

RADU RENCIU,

PETITIONER

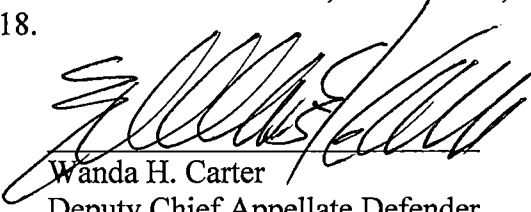
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STATE OF SOUTH CAROLINA,

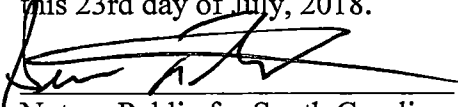
RESPONDENT

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 Megan Harrigan Jameson, 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 Radu Renciu, #348233, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of July, 2018.


Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 23rd day of July, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022