

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BEAUFORT COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-002314

PRESTON C. MORSE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General
S.C. Bar No. 103272

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S ISSUES PRESENTED

- I. Did the PCR court properly deny Petitioner's claim his guilty plea should be vacated where Petitioner knowingly pled guilty without negotiations or recommendation, where no plea offers were extended in this case, where no promises were made to Petitioner, and where Petitioner's guilty plea was not induced by the alleged promises according to Petitioner's own admission?**

- II. Did the PCR court properly find Petitioner failed to satisfy his burden of proving ineffective assistance of counsel where Plea Counsel did discuss the prospect of challenging Petitioner's statement at trial on the basis of promises allegedly made to Petitioner, where Plea Counsel correctly advised Petitioner this argument would be unsuccessful as no promises were actually made to Petitioner, and where, notwithstanding, Petitioner knowingly and voluntarily pled guilty to avoid a potential life sentence?**

STATEMENT OF THE CASE

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Beaufort County Clerk of Court. During its December 2012 term, the Beaufort County Grand Jury indicted Petitioner for first-degree burglary (2012-GS-07-2434), two counts of assaulting a police officer while resisting arrest (“resisting arrest”) (2012-GS-07-2411; -2410), and two counts of forgery, value less than \$10,000 (2012-GS-07-0409; 2431). Fourteenth Circuit Public Defender Trasi Campbell, Esquire (“Plea Counsel”), represented Petitioner. Assistant Solicitor Benjamin T. Shelton prosecuted the case. On March 18, 2013, Petitioner pled guilty as indicted before the Honorable Carmen T. Mullen without negotiations or recommendation. Judge Mullen sentenced Petitioner to imprisonment for the mandatory minimum of fifteen years for first-degree burglary, ten years for each count of resisting arrest, and five years for each count of forgery, all to be served concurrently. Petitioner did not appeal from his guilty plea or sentence.

On December 9, 2013, Petitioner filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on February 13, 2016, before the Honorable R. Scott Sprouse. Petitioner was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ruston W. Neely represented Respondent. Judge Sprouse denied and dismissed the application with prejudice by an order of dismissal signed September 14, 2017, and filed September 22, 2017.

Petitioner filed a timely notice of appeal on November 6, 2017. Petitioner then filed a petition for writ of certiorari on June 25, 2018. This return follows.

STATEMENT OF THE FACTS

Petitioner's series of crimes began on September 17, 2012, when he and his then-girlfriend ("Codefendant") conspired to burglarize Victim's home in Bluffton. Petitioner and Codefendant conspired for her to take Victim on a "date" to get him out of his house after unlocking doors and windows providing Petitioner access to the home. App. p. 14, l. 21 – p. 15, l. 10. While Victim was gone with the codefendant, Petitioner entered Victim's home at nighttime and stole a 7mm rifle. App. p. 16, ll. 14-17. Victim became suspicious and asked his friend to check on the house, who arrived to find the front door open and burglar alarm activated, and sees someone pull back a curtain. App. p. 15, l. 18 – p. 16, l. 10. No one was still at the house by the time law enforcement arrived. App. p. 16, l. 12.

On November 9, 2012, Petitioner presented a forged check at a bank in Bluffton, where the bank personnel knew the actual policyholder and recognized it was not the policyholder's signature on the check. App. p. 17, ll. 4-12. Bank personnel notified law enforcement, and law enforcement found Petitioner agitated and apparently under the influence when they arrived. App. p. 17, ll. 14-17. Petitioner's father also responded and was able to stop Petitioner from running. App. p. 17, ll. 18-21.

Petitioner proceeded to violently resist the two arresting officers. A struggle ensued for fifteen to twenty minutes in which Petitioner repeatedly reached for Officer Marion's gun and broke her finger. App. p. 17, l. 22 – p. 18, l. 4. Officer Marion's finger still required cortisone injections at the time of Petitioner's plea in March 2013. App. p. 20, ll. 16-24. Petitioner was tased five times during the struggle to no effect. App. p. 18, l. 9.

Codefendant's best friend, Caullie Cameere ("Cameere"), informed Investigator Syfrett that Codefendant had confessed to her that she and Petitioner were involved in the burglaries.

App. p. 18, ll. 9-16. Investigator Syfrett subsequently interviewed Petitioner on November 14, 2012, where Petitioner confessed to the forgery and also confessed, “‘F’ it, I did it,” regarding the burglary. App. p. 18, ll. 17-20. Petitioner left the interview at that time without giving a “full confession.” App. p. 18, l. 19.

Investigator Syfrett then spoke with Petitioner’s parents, who were concerned about Petitioner getting treatment for his drug problems. App. p. 18, l. 20. As the Solicitor recited on the record during the recitation of facts at the plea hearing, Investigator Syfrett never made Petitioner any promises, and it is clear from the jail tapes that no promises were made. App. p. 18, ll. 23-25. Investigator Syfrett explained he could make a recommendation, but it was not going to necessarily affect the Solicitor’s office’s course of action. App. p. 19, ll. 1-3. This is corroborated by Plea Counsel’s later testimony at the PCR hearing that she did not interpret the taped statement to include any promises. App. p. 74, ll. 3-7.

Investigator Syfrett returned to interview Petitioner again on November 16, 2012, where Petitioner gave a full, detailed confession corroborated by the Victim’s statement that only the rifle was stolen, admitting he stole the gun and sold it to a man in Beaufort. App. p. 19, ll. 4-8. Furthermore, Petitioner’s confession corroborated everything Codefendant had told Cameere. App. p. 19, ll. 9-11.

At Petitioner’s guilty plea, the Solicitor called the case and stated on the record Petitioner was pleading guilty without any negotiation or recommendation by the State. App. p. 5, l. 4. The Solicitor reiterated this during sentencing. App. p. 21, l. 14. Plea Counsel informed the plea judge she had explained the charges, potential sentences, and rights Petitioner would be waiving by pleading guilty and Petitioner understood. App. p. 5, l. 11. As to each charge, Petitioner told the plea judge he understood the charge and potential sentence, wanted to plead guilty, and was

pleading guilty because he was guilty. App. pp. 6-10. Petitioner also told the plea judge he understood he was waiving his right to a jury trial and right to present defenses but still wanted to plead guilty. App. p. 12, ll. 1-3. Petitioner affirmed he was completely satisfied with Plea Counsel, she had done everything asked of her, and he understood all of their discussions. App. p. 12, l. 24 – p. 13, l. 7. Petitioner also told the plea judge he was not pressured or threatened in order to induce his guilty plea, nor had anyone from law enforcement mistreated him. App. p. 13, ll. 11-17. Petitioner, under oath, told the plea judge no one had promised him anything or held out any hope of reward to get him to plead guilty. App. p. 13, ll. 8-10.

During sentencing mitigation, Plea Counsel asks the plea judge to order alcohol and addiction treatment “if the Department of Corrections was still offering the alcohol and addiction treatment unit.” App. p. 31, ll. 20-24. The plea judge affirmed she would, and after announcing Petitioner’s sentence, stated she was ordering “if there is bed space available” for Petitioner to attend the alcohol and drug treatment unit while in the Department of Corrections. App. p. 33, ll. 1-8.

RELEVANT PCR HEARING TESTIMONY

At the PCR hearing convened on February 14, 2017, the court heard testimony from Petitioner as well as Plea Counsel and Petitioner’s mother. After observing the witnesses and closely passing upon their credibility, the PCR court found Plea Counsel’s testimony to be credible and persuasive. App. p. 88. By contrast, the PCR court found Petitioner’s testimony lacked credibility. App. p. 88.

Petitioner

Petitioner testified he was guilty of the resisting arrest and forgery charges, and was only challenging his burglary charge. App. p. 64, ll. 12-18. Petitioner testified he “did not think he

saw Plea Counsel one time” during his time in jail awaiting trial. App. p. 54, ll. 17-19. According to Petitioner, Plea Counsel came to him on a Thursday and informed him he had trial on Monday. App. p. 54, ll. 19-22. Petitioner recalled there were no plea offers extended in this case. App. p. 54, l. 21; p. 55, l. 25.

Petitioner testified Plea Counsel never said anything about drug court. App. p. 57, l. 3. As Petitioner recalled, he did not want to give a statement when he was first visited by investigators because he wanted to speak with his parents first. App. p. 57, ll. 5-11. His parents then met with investigators at the police station and contacted Petitioner. App. p. 57, ll. 12-14. According to Petitioner, his parents called him and told him to go ahead and write a statement because the officer was going to get him into a drug treatment program because he was going through withdrawals. App. p. 57, ll. 13-18. Petitioner testified, “They promised me they would get me the drug treatment and everything if I gave my statement.” App. p. 57, ll. 18-20. Petitioner confirmed this statement implicated him in the burglary. App. p. 60, ll. 14-18. Petitioner testified he told Plea Counsel about this, and reiterated he gave the statement because he was told he was going to get drug treatment. App. p. 58, l. 20 – p. 59, l. 22. According to Petitioner, Plea Counsel never told him he could challenge his statement at trial or move to enforce any plea offers. App. p. 61, ll. 5-11. Regarding his sentence, Petitioner testified they did not promise him anything. App. p. 59, l. 23.

Petitioner testified he never received drug treatment although there was a recommendation. App. p. 60, ll. 5-11. According to Petitioner, the South Carolina Department of Corrections (“SCDC”) does not even have a drug program and cannot even afford officers. App. p. 60, ll. 11-16.

Petitioner claimed he did not recall that he made basically two separate confessions. App.

p. 64, ll. 8-11. When questioned whether he remembered his other, earlier confession, “‘F’ it, I did it,” Petitioner merely replied, “Yes, I – I – I – yeah, I plead guilty to the check, yes.” App. p. 64, ll. 19-24.

Petitioner also acknowledged he recalled the Solicitor making it clear on the record during his guilty plea that there was no promise given and the officer merely said he would recommend it to the Solicitor, but Petitioner claimed, “It’s written in my – in my legal work that he did said that he was going to get me into a drug treatment, but I have that in some of my paperwork.” App. p. 65, ll. 5-20. Petitioner never presented such paperwork or any other written evidence of a promise.

Petitioner testified he pled guilty because he was afraid he would be sentenced to life in prison if convicted at trial. App. p. 66, l. 23; p. 71, l. 2.

Terry Morse (Petitioner’s mother)

Petitioner’s mother testified law enforcement made her and her husband believe Petitioner was going to get drug treatment if they told Petitioner to give a statement. App. p. 79, ll. 7-16. Petitioner’s mother testified she informed Plea Counsel of this, but they did not talk much and Plea Counsel was “nothing but scare, scare.” App. p. 80, ll. 18-21.

Plea Counsel

Plea Counsel disagreed with Petitioner’s testimony that she only met with him once, particularly regarding the weeks leading up to trial, and she actually worked with Petitioner and his family to bring Petitioner to circuit court to get electronic monitoring so Petitioner could spend time with his children before trial. App. p. 76, ll. 1-19. Plea Counsel also noted she had known Petitioner for a long time and had represented Petitioner in the past. App. p. 74, ll. 10-12.

Plea Counsel recalled Petitioner had given two statements to police and his codefendant

had made a statement and was prepared to testify against him on the date of trial. App. p. 72, l. 19. Plea Counsel recalled she was prepared for trial and had a trial notebook ready but it was Petitioner's decision to plead guilty. App. p. 76, l. 18; p. 77, l. 23. Plea Counsel testified there was never a plea offer in this case, and the State could have proven first-degree burglary at trial. App. p. 76, ll. 10-20.

Plea Counsel testified she did discuss with Petitioner the prospect of arguing for the suppression of his statement based on his allegation promises were made to him. App. p. 77, ll. 12-20. Plea Counsel testified she reviewed the statements with Petitioner, and based on her review, she disagreed with Petitioner's stance that promises were made. As Plea Counsel explained, they could have made this an issue at trial, but they would not have been successful. App. p. 73, l. 24 – p. 74, l. 7.

STANDARD OF REVIEW

This Court gives great deference to the PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Smalls v. State, 422 S.C. 174, 179, 810 S.E.2d 836 (2018). Pure questions of law are reviewed de novo and will reverse the PCR court decision only if its decision is controlled by an error of law. Id.; Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433 (2018). The standard of review set forth by the Supreme Court of South Carolina is that "any evidence" of probative value to support the PCR court's findings is sufficient to uphold those findings on appeal. Webb v. State, 281 S.C. 237, 238, 314 S.E.2d 839 (1984).

In a PCR action, the applicant bears the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry, 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). An applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” Id. At 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56. Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . .

depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771. Furthermore, "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

ARGUMENT

- I. **The PCR court properly denied Petitioner's claim his guilty plea should be vacated where Petitioner knowingly pled guilty without negotiations or recommendation, where no plea offers were extended in this case, where no promises were made to Petitioner, and where Petitioner's guilty plea was not induced by the alleged promises according to Petitioner's own admission.**

Petitioner argues the PCR court erred in not vacating his pleas because he did not receive the benefit of his plea bargain. However, this argument fails as the record conclusively reveals there was never a "plea bargain," or even a plea offer extended in this case. Rather, Petitioner pled guilty explicitly without negotiations or recommendation. The record also reveals Petitioner

was not promised anything in exchange for his guilty plea, and regardless, Petitioner himself testified he chose to plead guilty to avoid the possibility of life imprisonment, not based on the unfounded allegation of promises. App. p. 66, l. 23; p. 71, l. 2.

Given the contradicting testimony from Plea Counsel and Petitioner regarding whether there were any promises made to Petitioner, credibility is significant to this case. First, it should be recognized the PCR court found the testimony of Plea Counsel to be credible and persuasive. By contrast, the PCR court found Petitioner's testimony to lack credibility. The PCR judge was in the best position to determine credibility and, as such, his findings must be given great deference. Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993). An appellate court must give great deference to such factual findings by the PCR court, and must uphold them if there is any evidence of probative value to support them. Buckson v. State, 423 S.C. 313, 319, 815 S.E.2d 440 (2018).

Once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. State v. Miller, 375 S.C. 370, 388, 652 S.E.2d 444, 453 (Ct. App. 2007) (citing Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999)). However, in this case, there was no plea bargain at all. After calling the case at Petitioner's guilty plea hearing, the Solicitor stated on the record Petitioner was pleading guilty of all charges *without any negotiation or recommendation by the State*. App. p. 5, l. 4 (emphasis added). Plea Counsel, whose testimony the PCR court found to be credible, testified there was never a plea offer in this case. App. p. 76, l. 20. Petitioner himself testified there were no plea offers extended in this case. App. p. 54, l. 21; p. 55, l. 25.

Petitioner's allegation of broken plea bargain is refuted by the guilty plea transcript not only when the Solicitor clearly states the plea is without negotiations or recommendation, but

also by Petitioner's own sworn statements. At his guilty plea, Petitioner told the plea judge no one had promised him anything or held out any hope of reward to get him to plead guilty. App. p. 13, ll. 8-10. In fact, the Solicitor explained in his recitation of the facts that Investigator Syfrett never made Petitioner any promises, and it is clear from the jail tapes that no promises were made. App. p. 18, ll. 23-25. Investigator Syfrett explained he could make a recommendation, but it was not going to necessarily affect the Solicitor's office's course of action. App. p. 19, ll. 1-3. Petitioner also told the plea judge no one had pressured him or threatened him to induce his guilty plea. App. p. 13, ll. 11-13. After the recitation of facts, the Solicitor yet again noted Petitioner was pleading without negotiations or recommendation and it would be left in the plea judge's discretion. App. p. 21, ll. 14-20. Plea Counsel then asked the Plea Judge if she could order the alcohol and drug addiction treatment unit for Petitioner *if the Department of Corrections still offered the unit*. App. p. 31, ll. 20-23 (emphasis added). During sentencing, the plea judge noted she was ordering, *if there was bed space available*, for Petitioner to attend the alcohol and drug addiction treatment unit. App. p. 33, l. 5. Therefore, not only did the Solicitor and Petitioner unequivocally note there was no negotiations and no promises made in this case, but the statements by Plea Counsel and the plea judge reveal the potential alcohol and drug addiction treatment was a mere possibility, not a promise or bargained-for benefit for pleading guilty.

Not only was there no plea deal, but there were likewise no promises outside of a plea agreement made to Petitioner by the State. Petitioner has given this Court no reason to allow him to depart from the truth of his statement at the plea hearing that no promises were made to him nor was any hope of a reward held out to him. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (2007) (noting statements made during a guilty plea should be considered

conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements). While Petitioner now alleges he was promised drug addiction treatment in order to induce his guilty plea, Plea Counsel, whose testimony was found to be credible, testified she reviewed the recorded statements with Petitioner and did not agree promises were made to even induce his statement. App. p. 73, l. 24 – p. 74, l. 7. Plea Counsel's credible testimony, in conjunction with the Solicitor's statements on the record at Petitioner's plea hearing and Petitioner's own representations to the plea judge reveal that not only was there no plea deal, but there were no other promises extended to Petitioner in this case outside of a plea deal.

Notwithstanding the clear understanding there was no plea deal to rely on in this case, Petitioner's own testimony at the PCR hearing and guilty plea hearing refutes his current allegation that any alleged promise by the State induced his guilty plea. Petitioner told the plea judge he was pleading guilty to first-degree burglary because he was, in fact, guilty. App. p. 10, l. 18. At the PCR hearing, Petitioner testified he pled guilty because he was scared of being sentenced to life imprisonment if he was convicted of first-degree burglary at trial. App. p. 66, ll. 23-25. In fact, after being questioned regarding the potential sentence for first-degree burglary, Petitioner testified again that he pled guilty because he was afraid of being sentenced to life in prison. App. p. 71, ll. 2-4. This stands to reason, as Plea Counsel testified the State would have been able to prove first-degree burglary at trial given Petitioner's two admissions to law enforcement and the corroborating statement from his codefendant who was prepared to testify at trial. App. p. 72, l. 19; p. 74, l. 23. Furthermore, Petitioner merely asserted he made his second confession because of alleged promises of drug treatment, not that he pled guilty as a result of these promises. App. 71, l. 10. Petitioner never testified nor is there any evidence in the record to

indicate the alleged promises of drug addiction treatment induced his guilty plea or that the alleged promises were part of a plea deal, the existence of which is conclusively refuted by the record from Petitioner's guilty plea to his collateral proceedings.

Therefore, the record reveals the PCR court had ample basis to deny relief when not only has Petitioner failed to prove the State failed to honor a plea agreement, but the record clearly refutes the existence of a plea agreement altogether. Accordingly, the PCR court's proper denial of relief should be affirmed, and certiorari should be denied.

II. The PCR court properly found Petitioner failed to satisfy his burden of proving ineffective assistance of counsel where Plea Counsel did discuss the prospect of challenging Petitioner's statement at trial on the basis of promises allegedly made to Petitioner, where Plea Counsel correctly advised Petitioner this argument would be unsuccessful as no promises were actually made to Petitioner, and where, notwithstanding, Petitioner knowingly and voluntarily pled guilty to avoid a potential life sentence.

Petitioner also alleges Plea Counsel was ineffective for allegedly failing to advise Petitioner of the option of challenging his confession at trial, arguing his statement was given involuntarily as induced by promises he would be sent to a drug treatment program. However, as the PCR court, correctly found, Plea Counsel *did* advise Petitioner of the option of challenging his confession at trial. App. p. 90. Nevertheless, as Plea Counsel reasonably concluded due to the lack of any promises extended to Petitioner, this challenge would not have been successful. App. p. 74, ll. 1-7; p. 77, ll. 12-20; pp. 91-92. Finally, notwithstanding the fact Petitioner was thoroughly advised of the prospect of challenging the admissibility of his statement, there is no reasonable probability Petitioner would not have pled guilty absent the alleged deficiencies because he pled guilty to avoid a potential life sentence, had already confessed in a prior statement, and his codefendant was prepared to testify against him at trial with the same

information contained in his final confession.

As the PCR court properly held, Petitioner has failed to satisfy his burden of proving Plea Counsel was deficient for failing to advise him he could challenge the admissibility of his statement at trial. App. p. 91. In fact, the record refutes this allegation as Plea Counsel credibly testified at the PCR hearing she reviewed the statements with Petitioner and discussed the prospect of challenging the admission of the statements with him based on the argument his second, “full confession” was induced by promises made that he would receive drug addiction treatment. App. p. 73, l. 24 – p. 74, l. 7; p. 77, ll. 12-20. Plea Counsel explained she had a “different interpretation of what [Plea Counsel] heard in terms of the conversations” on the tape and she did not see that promises were made. App. p. 74, ll. 3-7; p. 77, ll. 16-20. As Plea Counsel summarized, they could have made this an issue at trial but they would not have been successful, and they discussed this. App. p. 73, l. 24 – p. 74, l. 7; p. 77, ll. 12-20.

Plea Counsel correctly advised Petitioner challenging his statement at trial would be unsuccessful. Again, there were no promises made to induce Petitioner’s statement on which to challenge the statement. Petitioner himself told the plea judge no one had promised him anything or held out any hope of reward in exchange for his guilty plea. App. p. 13, l. 8. Plea Counsel testified she reviewed the statements with Petitioner and it was not her interpretation that promises were made. App. p. 74, ll. 3-7; p. 77, ll. 16-20. Furthermore, the Solicitor stated twice on the record the guilty plea was without negotiations or recommendations, and even noted during his recitation of the facts that the investigator “never makes [Petitioner] any promises, and is very clear from the conversations from the jail tapes that no promises were made.” App. p. 18, ll. 22-25. Even further, the Solicitor explained, “[Investigator] could make a recommendation, but it’s not going to affect anything necessarily the Solicitor’s Office is going to do.” App. p. 19,

11. 1-3. The only evidence in the record to support Petitioner's allegation his statement was induced by a promise is Petitioner's PCR testimony which was found not credible by the PCR court. The record of Petitioner's guilty plea, as well as Plea Counsel's testimony, found to be credible by the PCR court, refuted Petitioner's allegation his second statement admitting guilt was induced by any promises made to him on behalf of the State.

Respectfully, Petitioner's reliance on State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987) is misplaced. In Peake, this Court held a defendant's statement was induced by a *promise* by law enforcement the State would not seek the death penalty. Peake, 291 S.C. at 139. In fact, law enforcement in Peake actually admitted they told the defendant they would "guarantee" him they would not seek the death penalty if he gave them a statement. Id. By contrast, this is readily distinguishable from the present case as Petitioner was never guaranteed or promised anything, and all evidence in the record refutes his bare assertion other than his testimony at the PCR hearing found to be not credible. Accordingly, Plea Counsel was correct in her advice that a challenge to Petitioner's statement would not have been successful as there was no basis on which to challenge the voluntariness of the statement.

Notwithstanding the fact Plea Counsel did properly advise Petitioner regarding the potential suppression of his statement, the PCR court properly found there is no reasonable probability Petitioner would have proceeded to trial rather than pleading guilty absent the alleged deficiencies. App. p. 88; p. 91. After swearing to tell the truth, Petitioner told the plea judge he was pleading guilty to each charge because he was, in fact, guilty. App. pp. 6-10. Later, at his PCR hearing, Petitioner twice asserted he pled guilty because he was afraid he would be sentenced to life imprisonment if he was convicted at trial. App. p. 66, l. 23; p. 71, l. 2. Petitioner never testified he would have proceeded to trial if he would have been advised he

could challenge his second admission at trial, and there is no evidence in the record to support this allegation. As Plea Counsel testified, the State could prove Petitioner was guilty of first-degree burglary at trial. App. p. 74, ll. 18-24. Notwithstanding the fact Plea Counsel did advise Petitioner regarding the possible challenge to his statement, and the fact there was no valid argument for suppression, the State still could have proven Petitioner guilty as Petitioner had already admitted to the crime once before. In his first statement to law enforcement, which Petitioner has not challenged, Petitioner admitted, “‘F’ it, I did it,” referring to the burglary. App. p. 18, ll. 17-19; 64, l. 19. Petitioner was caught in the act of attempting to use a fraudulent check at a bank before fighting with law enforcement and breaking an officer’s finger, and his codefendant was prepared to testify against him with the same substantive information implicating him in the burglary that was contained in his statement. App. p. 72, ll. 9-21. Of course, this information from the codefendant and Petitioner’s second confession was also corroborated by Victim’s account. App. p. 19, ll. 4-10. Therefore, the record reveals Petitioner pled guilty to avoid a potential sentence of life imprisonment in light of substantial evidence and testimony which would have been presented against him at trial, regardless of the unfounded allegation regarding his second statement to law enforcement. Furthermore, credible testimony from the PCR hearing as well as the record from Petitioner’s guilty plea reveals Plea Counsel discussed the prospect of challenging the admissibility of his second statement, but there was no viable argument to be made. Accordingly, the PCR court properly found Petitioner has failed to satisfy his burden of proving both deficiency and prejudice from the allegations. The PCR court’s proper finding should be affirmed, and certiorari should be denied.

[Conclusion and signature on following page]

CONCLUSION

For the foregoing reasons, this Court should deny the Petitioner's petition for writ of certiorari. However, if this Court grants certiorari, Respondent respectfully requests the opportunity to more fully brief the issues discussed herein.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

11/21, 2018

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

CERTIORARI TO BEAUFORT COUNTY

NOV 21 2018

Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-002314

PRESTON C. MORSE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

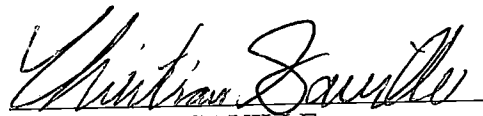
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by hand delivering two (2) copies to:

Wanda H. Carter, Esquire
SC Commission on Indigent Defense
Office of Appellate Defense
1330 Lady Street, #401
Columbia, South Carolina 29201

This 21st day of November, 2018



CHRISTIAN SAVILLE
Attorney for Respondent
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3737



ALAN WILSON
ATTORNEY GENERAL

November 21, 2018

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Preston C. Morse v. State of South Carolina
Appellate Case No. 2017-002314
Lower Court Case No. 2013-CP-07-3087

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Christian Saville
Assistant Attorney General
SC Bar No. 103272

CS/cc
Enclosures

cc: Wanda H. Carter, Esquire (2 copies)