

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
Post-Conviction Relief

G. THOMAS COOPER, JR., Circuit Court Judge

Case No.: 2018-000003

Brian Lee Davidson #351872,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CASES

Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 SE2d 914 (2016)

Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709 (1969)

Dover v. State 304 S.C. 433, 405 SE2d 391 (1991)

QUESTION PRESENTED

Did the Lower Court err in not granting Post-Conviction Relief on the basis that the Petitioner involuntarily entered into his guilty plea with the mistaken belief that his sentence would be 65%, eligible for work credits and parole eligible?

STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In August 2014, the Cherokee County Grand Jury indicted Applicant for trafficking in methamphetamine (2014-GS-11-0705), possession of alprazolam, second or subsequent offense (2014-GS-11-0751), possession of clonazepam, second or subsequent offense (2014-GS-11-0752), and possession of marijuana, second or subsequent offense (2014-GS-11-0753). William Rhoden, Esq. represented Applicant. Assistant Solicitor Kimberly Leskanic prosecuted the case. On March 4, 2016, Applicant plead guilty to the lesser included offense of possession with intent to distribute methamphetamine (PWID), third offense, before the Honorable R. Keith Kelly. Applicant also plead guilty as indicted to the remaining possession charges. Pursuant to a negotiated sentence, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of ten years for PWID methamphetamine and one year for each possession charge. Applicant did not appeal his conviction or sentence.

Applicant filed an application for Post-Conviction Relief on March 3, 2017. In his application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. I was improperly advised when I signed my plea. I was told that I was signing a non-violent sentence eligible for parole, good time, work credit, and work release. All of this was correct until February of 2017. SCDC changed my sentence a year after my plea agreement."

- b. "I did not have an issue with my sentence until SCDC changed my maxout and eligibility due to *Bolin v. South Carolina*"¹

An evidentiary hearing was convened on November 16, 2017, before the Honorable G. Thomas Cooper, Jr. in Spartanburg County, South Carolina. Judge Cooper dismissed the application, with prejudice.

STATEMENT OF FACTS

After entering his plea and sentencing, the Petitioner came into the Department of Corrections. For a ten (10) month period, the South Carolina Department of Corrections was indicating that he was serving a 65% sentence, that he was earning work credits and was parole eligible. After serving ten (10) months on this sentence, the Department of Corrections changed the Petitioner's sentence to 85% with no parole eligibility. (App. p. 37, lines 10-16) The Petitioner testified that he inquired about this change and was notified by Corrections that this was a misinterpretation. (App. p. 37, lines 24-25) Petitioner stated that the South Carolina Department of Corrections Classification misinterpreted the way the law was written regarding Drug 3rd Offense cases. He stated that he was not the only one that Corrections changed. That there were a lot of people who had their sentences changed from parole eligible, to 85%. (App. p. 38, lines 1-7) The Court inquired if this issue was part of the Petitioner's Application. Petitioner indicated to the Court that it was. The Petitioner further stated to the Court that the issue he had was with his sentence (App. p. 38, lines 8-19) In fact, this issue was set forth in an addendum to the Post-Conviction Relief Application. That he was improperly advised when he

¹ *Bolin v. South Carolina Department of Corrections* 415 S.C. 276, 781 SE2d 914 (2016)

signed his plea agreement. That he was told by counsel that he would be non-violent, eligible for parole, good time, work credits and work release.

ARGUMENT

Did the Lower Court err in not granting Post-Conviction Relief on the basis that the Petitioner involuntarily entered into his guilty plea with the mistaken belief that his sentence would be 65%, eligible for work credits and parole eligible?

The Omnibus Crime Bill of 2010 allowed for certain 3rd drug offenses to be eligible for earned work credits, good time and parole eligibility as long as the prior convictions were for possession². Due to an error in the analysis of his case, the Department of Corrections indicated that the Petitioner was 65% and parole eligible. The Petitioner would assert that this reinforce the fact that he had plead to these charges with the understanding that he would not be 85% and that he would be parole eligible.

The Court notes that he learned about this problem the week that Petitioner was before the Court. (App. p. 35, line 4) The Court clearly understood that the Petitioner had entered into this Plea with the understanding that he would be parole eligible and not 85%. That this was the underlying basis in his determination to enter into the plea and clearly, as such, his plea could not have been freely and voluntarily entered into, nor knowingly or intelligently entered into.

To find a guilty plea is voluntarily and knowingly entered into the record must establish that the Petitioner had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709 (1969) and Dover v. State 304 S.C. 433, 405 SE2d 391 (1991). Clearly the Petitioner did not have this full understanding.

² Section 44-53-375 (b)(3) Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense **in which all prior offenses were for possession of a controlled substance pursuant to subsection (A)**, may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

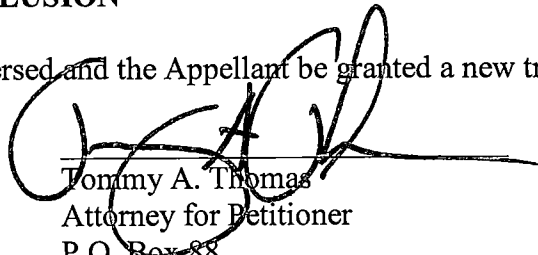
In this case, the Petitioner would assert that this issue and information was before the Court at the Post Conviction Relief hearing. In fact, the Judge even asked questions regarding the basis for Petitioner's claim. When the Petitioner says that when he first came into prison he was 65% with work credits and parole eligibility, the Court actually asks, is this "part of your Application". (App. p. 38, lines 5-8)

The Petitioner would therefore assert that the Court was fully aware the issue that he was raising. That he entered into the Plea involuntarily due to the fact that it was his understanding that he was going to be eligible for parole and also serving 65% rather than 85% of his sentence.

Petitioner made a Motion to Dismiss Appeal and Remand back to the PCR Court so that certain issues could be heard in an evidentiary hearing. This Motion was denied by the Court. Therefore, the Petitioner now submits this Petition for Writ of Certiorari. While the Court denied the remand for the Court to take additional testimony, the underlining principal issue still exists in the original Post Conviction Relief hearing. This issue being, that the Petitioner did not freely, voluntarily, knowingly and intelligently enter into his plea based upon the misunderstanding that he would only have to serve 65% of his sentence to max out. That he was eligible for earned work credits and good time and that he would be parole eligible. The Petitioner would assert that the Lower Court erred in not granting Post Conviction Relief based upon this issue that was presented.

CONCLUSION

That the Lower Court's decision be reversed and the Appellant be granted a new trial.



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December 5, 2018

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Post-Conviction Relief

G. THOMAS COOPER, JR., Circuit Court Judge

Case No.: 2018-000003

Brian Lee Davidson #351872,..... Petitioner,

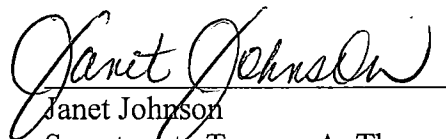
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Janet Johnson, assistant to Tommy A. Thomas, Attorney for the Petitioner, hereby certify that I hand delivered a copy of the Appendix and Petition for Writ of Certiorari, to:

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December 5, 2018

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S.C. SUPREME COURT