STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Beaufort County

Roger L. Couch, Circuit Court Judge

LUCIUS SIMUEL,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO. 2016-001607

BRIEF OF PETITIONER

SUSAN B. HACKETT
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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ISSUE PRESENTED

Did the PCR court err in finding that trial counsel provided effective assistance of counsel where trial counsel erroneously advised Petitioner that he would not be eligible for a mandatory life without parole sentence under S.C. Code Ann. § 17-25-45 if convicted at trial because defense counsel erroneously advised Petitioner that his prior conviction for false imprisonment in Georgia would not qualify as a predicate violent crime in South Carolina?

STATEMENT

On July 28, 2008, Deon Cannick was an eighteen-year old drug dealer and gang member living in Beaufort County. App. 311, ll. 5-12; App. 312, ll. 5-16; App. 323, l. 24 – App. 324, l. 1; App. 331, ll. 1-5; App. 359, ll. 6-8; App. 747, ll. 15-21.[1] Deon, who was high from smoking marijuana, claimed that Petitioner and another man arrived at his apartment on that day. App. 314, ll. 16-19; App. 354, ll. 7-10. According to Deon, Petitioner and the other man wanted to see Deon's brother, Deverol Cannick, who was also a drug dealer and a member for the Gangsta Disciples. App. 314, l. 25 – App. 315, l. 10; App. 342, ll. 14-16; App. 352, ll. 13-15; App. 353, ll. 19-20; App. 564, ll. 3-5; App. 578, ll. 3-13. Deon retrieved Deverol from inside the home. App. 315, ll. 11-23; App. 564, ll. 3-5. Deverol went outside, while Deon stayed inside. App. 316, ll. 1-5; App. 564, ll. 6-14.

According to Deverol, the men asked if he wanted some pills, and when he refused, one of the men pulled out a bag of cocaine. App. 565, ll. 13-24. Deverol refused the cocaine as well. App. 566, ll. 2-4. Next, according to Deverol, the men pushed him back into the house. App. 566, ll. 18-19.

Deon claimed he heard a noise, so he went downstairs to investigate. App. 316, ll. 6-15; App. 567, ll. 9-12. When he got downstairs, he saw two men with guns. App. 317, ll. 14-15. One of the men pointed the gun at him. App. 317, ll. 15-16; App. 567, ll. 17-20. Deon did not know this man. App. 317, ll. 17-19. Nevertheless, the man shot Deon. App. 321, ll. 12-17; App. 568, ll. 23-24; App. 570, ll. 13-20.

---

[1] In the apartment, the police found multiple bags of marijuana, multiple bags of cocaine, "bundles of hydrocodone," a .32 caliber semiautomatic pistol, a .45 caliber gun, a Rossi .38 special, a Ruger revolver, $1416 in cash, and "some marijuana blunts." App. 475, ll. 3-22; App. 514, ll. 3-6; App. 634, ll. 6-8; App. 638, ll. 11-20; App. 639, ll. 3-6; App. 639, ll. 9-17.

According to Deon, the other man was Petitioner and he had a gun pointed at Deverol. App. 324, ll. 14 -17. Deon claimed the unidentified man entered the apartment by going about midway up the stairs, but retreated out of the apartment because Deon's dog was standing on the stairs. App. 325, ll. 8-22. Then, the men ran outside. App. 325, ll. 21-22; App. 569, ll. 4-5. Deverol ran outside after the men. App. 326, ll. 19-20; App. 569, ll. 16-24. Deon "heard a pow, pow, pow." App. 326, ll. 19-21. One of the men shot Deverol. App. 570, l. 25 – App. 571, l. 1; App. 572, ll. 22-24. Deverol could not identify his shooter. App. 580, ll. 8-9. Shortly thereafter, Deverol ran back inside the apartment, bleeding. App. 327, l. 2; App. 573, ll. 3-7.

On September 25, 2008, the Beaufort County grand jury indicted Petitioner for assault and battery with intent to kill (ABWIK) (2008-GS-07-2009), possession of a weapon during a violent crime (2008-GS-07-1762), and burglary in the first degree (2008-GS-07-1761). Later, on June 25, 2009, the Beaufort County grand jury indicted Petitioner for unlawful possession of a handgun (2009-GS-07-1366). App. 1090-1097.

At some point prior to trial, the state offered to allow Petitioner to enter a guilty plea in exchange for a twenty-year sentence if Petitioner testified against his co-defendant. App. 1011, ll. 17-23; App. 1049, ll. 15-22. Ultimately, Petitioner rejected the state's offer. App. 1049, ll. 23-25.

The state served its notice of intent to seek a life without parole sentence on September 1, 2009. App. 1048, ll. 9-18. The state sought a mandatory sentence of life without parole for Petitioner, alleging his prior record qualified him as a recidivist. App. 1012, ll. 8-13; App. 1013, ll. 3-5. According to Petitioner, trial counsel, Ian Deysach never advised Petitioner regarding the recidivist statute and whether his prior conviction qualified as a serious or most serious conviction in order to serve as a triggering offense for the statute. App. 1013, ll. 6-13. Trial counsel also never

advised Petitioner that the life without parole sentence was mandatory under the statute. App. 1013, ll. 14-19.

In fact, trial counsel did not believe that "under the law as it existed then," Petitioner's prior Georgia conviction would count as a "strike" under the South Carolina recidivism statute. App. 1046, ll. 10-20. More specifically, he did not believe "a false imprisonment from Georgia would trigger, would count as a most serious offense and therefore trigger the life without parole mandatory sentencing." App. 1046, ll. 18-20. Trial counsel "analyzed the elements of the offense" and he did not "think that it should trigger life without parole." App. 1046, ll. 22-24. Trial counsel claimed that he shared with Petitioner his "belief that the law didn't support the triggering of the life without parole statute." App. 1047, ll. 4-6. Trial counsel relied upon Hinton v. South Carolina Dept. of Probation, Parole, and Pardon Services, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) to arrive at his conclusion. App. 1047, ll. 4-12. Trial counsel explained that in Hinton, the appellate court determined that "an out of state abduction case from Ohio didn't count as a prior violent offense in deciding whether or not someone is parole eligible." App. 1047, ll. 8-12. He reasoned that if "an abduction from Ohio doesn't, you know, doesn't meet up with the kidnapping in South Carolina, then I wouldn't think false imprisonment would, especially when there is a kidnapping in Georgia, you know." App. 1047, ll. 13-16. Trial counsel shared his reasoning with Petitioner that he "didn't think that the law would support that result." App. 1047, ll. 17-18.

Trial counsel admitted this analysis was "[e]xtremely, important" because of the range of sentencing options without the invocation of the mandatory LWOP statute. App. 1047, ll. 19-23. Trial counsel candidly admitted it would have been important for Petitioner "to have an answer to that question before considering any plea offers." App. 1049, ll. 10-14. However, Petitioner made his decision to reject the state's plea offer based upon trial counsel's advice that his Georgia

conviction for false imprisonment would not trigger South Carolina's recidivist statute. App. 1050, ll. 1-5.

On November 16-20, 2009, Petitioner stood trial before the Honorable Thomas W. Cooper, Jr., and a jury. App. 1. Ian Deysach represented Petitioner. App. 1. Christopher J. Geier represented Petitioner's co-defendant, Demetrius Price. App. 1. R. Alexander Robinson and Robert Ferguson represented the state. App. 1. At the start of the trial, the prosecutor indicated that Petitioner was "facing a mandatory life without parole [sentence] under the recidivist statute, 17-25-[4]5." App. 32, ll. 20-22. Trial counsel responded that he intended to challenge – later – whether Petitioner was "truly" "eligible" for a life without parole sentence under the statute. App. 33, l. 22 – App. 34, l. 2.

The jury found Petitioner guilty as charged. App. 948, ll. 5-17. During the sentencing hearing, the state informed the judge that he was asking for a life sentence based upon section 17-25-45 of the South Carolina Code. App. 958, ll. 15-19. Specifically, the solicitor argued that Petitioner's prior conviction for false imprisonment in Georgia qualified as a predicate offense, or a "strike" under the statute. App. 959, ll. 8-15.[2] According to the solicitor, the Georgia statute for false imprisonment "match[ed]" the elements of South Carolina's kidnapping statute. App. 959, ll. 8-15; App. 967, l. 10 – App. 970, l. 6.

Defense counsel countered that false imprisonment could not act as a predicate violent offense under South Carolina's recidivist offender statute. App. 963, l. 21 – App. 964, l. 5. Relying upon Hinton v. South Carolina Dept. of Probation, Parole, and Pardon Services, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004), defense counsel argued the differences between Georgia's false imprisonment and South Carolina's kidnapping statute required the judge to determine Petitioner's

[2] During trial, the state introduced certified copies of Petitioner's prior out-of-state convictions. App. 455, l. 24 – App. 546, l. 16.

prior conviction for false imprisonment could not serve as a strike against him. App. 964, l. 6 – App. 965, l. 16. Counsel noted that false imprisonment was punishable by a maximum in ten years in Georgia. App. 966, ll. 14-15. Counsel summed up his argument: "[W]hile there are actions that could apply under both the kidnapping and the false imprisonment statute, that there are actions that would constitute a false imprisonment that would not be kidnapping here in South Carolina." App. 966, ll. 21-25.

The trial court disagreed with defense counsel and determined that the Georgia false imprisonment conviction could be used to enhance Petitioner's sentence as the equivalent South Carolina offense, kidnapping, was a "most serious offense." App. 971, l. 22 – App. 972, l. 8; App. 983, ll. 2-20. The court did note that Georgia's false imprisonment statute was more narrowly drawn than South Carolina's kidnapping statute, which covered a wider range of conduct. App. 970, l. 9 – App. 971, l. 22.

Based on this ruling, Petitioner was sentenced to life in prison pursuant to section 17-25-45 of the South Carolina Code for assault and battery with intent to kill and burglary in the first degree. App. 983, l. 22 – App. 984, l. 16. The judge sentenced him to five years imprisonment for each of the weapons charges. App. 983, l. 22 – App. 984, l. 16. He ordered the sentences to be served concurrently. App. 984, ll. 17-19.

On direct appeal Petitioner challenged the trial court's interpretation of S.C. Code Ann. § 17-25-45's application to his prior Georgia conviction for false imprisonment. Supp. App. 1-12. Elizabeth Franklin-Best and Dayne Phillips represented Petitioner on appeal. Supp. App. 1-12; Supp. App. 38. Mark Farthing represented the state. Supp. App. 13-37. The state argued "the trial judge properly enhanced [Petitioner]'s sentence under the recidivist offender statute because [Petitioner]'s prior out-of-state false imprisonment conviction was the legal equivalent of the

statutory offense of kidnapping in South Carolina." App. 22. According to the state, the elements of the Georgia offense of false imprisonment "equate to the 'most serious' offense of kidnapping in South Carolina," and the recidivist statute requires that such an offense count as a prior conviction for sentencing purposes. App. 23-24. Citing State v. Berntsen, 295 S.C. 52, 367 S.E.2d 152 (1988), the state explained that South Carolina's kidnapping statute was "broad enough to include, yet not require, proof of the elements constituting [common law] false imprisonment." App. 24. The state concluded that following the enactment of the kidnapping statute, "the crime of false imprisonment was incorporated as merely one of the ways to commit the statutory offense of kidnapping in South Carolina." App. 24-25. Thereafter, the state detailed the elements of Georgia's false imprisonment statute and kidnapping statute in a way that mirrored the trial judge's reasoning. App. 25. After comparing the Georgia statute and the South Carolina statute, the state arrived at the same conclusion as the trial judge – the Georgia conviction qualified as a prior most serious offense in South Carolina. App. 26.

The South Carolina Supreme Court affirmed Petitioner's conviction and sentence in an unpublished opinion. State v. Simuel, 2012-MO-031 (S.C. Sup. Ct. filed July 25, 2012); Supp. App. 38-39. The Court held "the Georgia crime of false imprisonment would be categorized as the 'most serious' offense of kidnapping under South Carolina law." App. 39. The Court explained that under section 17-25-45(A)(1)(b) of the South Carolina Code, a sentence may be enhanced "where a defendant is convicted of a most serious offense and has either one or more prior convictions for an out-of-state offense that 'would be classified as a most serious offense' under this section 17-23-45(C)(1)." App. 39. Thereafter, the Court quoted the statutory provision in Georgia defining false imprisonment and the statutory provision for kidnapping in South Carolina. App. 39. Based upon its comparison of the two statutes, the Court determined the Georgia offense of false

imprisonment was the equivalent of South Carolina's kidnapping offense. App. 39. In light of this equivalency, the Court concluded that under the statute, the trial judge did not err in sentencing Petitioner to life imprisonment. App. 39.

On February 4, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 986-991. Subsequently, Petitioner supplemented his application. App. 1001, l. 17 – App. 1002, l. 1. On October 20, 2015, an evidentiary hearing was held before the Honorable Roger L. Crouch. App. 997. Scott W. Lee represented Petitioner. App. 997. J. Rutledge Johnson represented the state. App. 997. The PCR court denied Petitioner's application for PCR relief in a written order of dismissal filed on February 8, 2016. App. 1075-1083. The court rejected Petitioner's claim that counsel was ineffective for not properly advising him concerning the applicability of § 17-25-45's mandatory life without parole sentence. App. 1079-1080.

Rather, the court concluded that Petitioner was "fully aware that he was facing life without parole if he was convicted." App. 1079. Contrary to the undisputed testimony of defense counsel, the court determined that "[Petitioner] provided no testimony that he relied on Counsel's advice in rejecting the plea offer from the State. This is simply a case of buyer's remorse. As such, Counsel fulfilled his duty" to render effective representation. App. 1080.

On February 11, 2016, Petitioner filed a Rule 59(e) motion to alter or amend the order of dismissal. App. 1084-1086. Petitioner alleged that the court incorrectly found that counsel had properly advised Petitioner as to the mandatory applicability of the life without parole sentencing enhancement. App. 1084-1085. On June 29, 2016, Judge Couch issued an order denying Petitioner's Rule 59(e) motion. App. 1088-1089.

Petitioner served his notice of appeal on August 1, 2016. Subsequently, Petitioner filed a petition for writ of certiorari. By an order dated October 30, 2017, the Supreme Court

transferred this case to the Court of Appeals. On October 25, 2018, this Court granted the petition and ordered briefing on the issue presented. This brief of petitioner follows.

STANDARD OF REVIEW

Recently, this Court clarified the standard of review an appellate court reviewing a PCR action must use when analyzing claims of ineffective assistance of counsel pursuant to Strickland v. Washington, 466 U.S. 668, 688 (1984). Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839-840 (2018). This Court explained the "standard of review in PCR cases depends on the specific issue" raised on appeal. Id. at 180, 810 S.E.2d at 839. The reviewing court will "defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them." Id. at 180, 810 S.E.2d at 839. However, the appellate court will "will review questions of law de novo, with no deference to trial courts." Id. at 180-181. In another recent case, this Court explained the appellate courts give "great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them." Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). "Questions of law are reviewed de novo," and the reviewing court must "reverse the PCR court's decision when it is controlled by an error of law." Id. See also Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013).

ARGUMENT

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel extends to the plea bargaining process. Lafler v. Cooper, 566 U.S. 156, 162 (2012); Missouri v. Frye, 566 U.S. 134, 138 (2012); Padilla v. Kentucky, 559 U.S. 356, 373-374 (2010); Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). To prove ineffective assistance of counsel, Petitioner must prove plea counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability that the result would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

The South Carolina Supreme Court held "the Sixth Amendment guarantee of effective assistance of counsel requires that counsel accurately inform a defendant to the extent possible, of the qualifying nature of a prior offense for enhancement purposes." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 425 (2009). See also Roscoe v. State, 345 S.C. 16, 20 n.6, 546 S.E.2d 417, 419 n.6 (2001) (explaining the Court has "consistently held a defendant must have a full understanding of the consequences of his plea and of the charges against him"). "[A]n accused is entitled to counsel's considered and reasonable judgment." Berry, 381 S.C. at 635, 675 S.E.2d at 427. "[U]ncertainty concerning a potential legal challenge may well provide a defendant a catalyst in plea negotiations with the state." Id. "[A] defendant may choose to forgo a legal challenge and opt for what he considers a favorable plea arrangement." Id.

In Lafler, the defendant initially expressed a willingness to accept a plea offer in court, but later rejected the offer based upon the advice of counsel. 566 U.S. 161. Thereafter, the defendant was tried, found guilty, and sentenced to substantially more time than the plea offer would have provided. Id. On appeal to the United States Supreme Court, the parties agreed trial counsel's advice with respect to the plea offer constituted deficient performance. Id. at 163. The issue before the Supreme Court was how to apply Strickland's prejudice test where ineffective assistance resulted in rejection of a plea offer, and yet the defendant was convicted after a trial. Id. The Court held that in circumstances such as these, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, 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 were in fact imposed. Id. at 164.

Turning to the question of an appropriate remedy, the Court considered two scenarios. In the first scenario, where the defendant would have pled to the same charges as the defendant was convicted after trial, the court may conduct an evidentiary hearing to determine whether the defendant has shown a reasonable probability that but for counsel's errors, he would have accepted the plea. If such a showing is made, the court may exercise discretion in determining whether the defendant should receive the term of imprisonment per the offer, the sentence he received at trial, or something in between. Id. at 171. In the second scenario in which resentencing alone will not redress the issue, such as when the guilty plea offer was to counts less serious than the ones for which the defendant was convicted after trial, the proper remedy may be to require the prosecution to extend the offer again. The judge can then exercise

discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed. Id. at 171-172.

The Supreme Court analyzed a similar issue in Frye. The issue before the court was whether the constitutional right to effective assistance of counsel extended to negotiations and considerations of plea offers that lapse or are rejected. 566 U.S. at 138. The Court held that defense counsel has a duty to communicate formal offers from the prosecution that may be favorable to the accused. Id. at 145. The Court recognized that "the plea-bargaining process is often in flux, with no clear standards or timelines and with no judicial supervision of the discussions between prosecution and defense." Id. at 143. Further, the Court recognized the prevalence of guilty pleas in the criminal justice system, noting that "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." Id. According to the Court, "[t]he reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." Id. Based upon this reality, the Court declared that "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." Id. at 144.

The Court further held that to show prejudice from counsel's deficient performance where a plea offer has lapsed or been rejected, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer. In addition, defendants must show a reasonable probability the plea offer would have been entered without the prosecution canceling it, or the trial court refusing to accept it if they had the authority to exercise that discretion under state law. In short, the defendant must show a reasonable probability that the end result of the

criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time. Id. at 146-147. A reviewing court must make "an objective assessment as to whether or not a particular fact or intervening circumstance would suffice, in the normal course, to cause prosecutorial withdrawal or judicial nonapproval of a plea bargain." Id. at 147. Thus, a PCR court would concern itself with facts or circumstances occurring after the plea offer that would likely result in its withdrawal, such as a defendant obtaining additional charges while on bond, a defendant being linked to other crimes, or additional aggravating facts of the charged offense coming to light.

Here, the plea offer was extended to Petitioner during trial counsel's representation of Petitioner and trial counsel gave erroneous advice causing Petitioner to reject the plea offer. This erroneous advice was clear during the sentencing proceeding and the PCR evidentiary hearing. When the trial judge indicated he was ready to move to the sentencing portion of the trial, defense counsel moved to strike the state's notice of its intent to seek LWOP based upon his opinion that Petitioner's prior conviction in Georgia for false imprisonment did not qualify as a "most serious" offense in South Carolina. Further, counsel's erroneous advice was made clear during the PCR evidentiary hearing when he explained that he believed the Georgia conviction would not trigger the recidivist statute and that he advised Petitioner accordingly during the plea negotiations.

Trial counsel based his erroneous opinion on Hinton v. South Carolina Department of Probation, Parole, and Pardon Services, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004). In Hinton, this Court considered whether Hinton's 1986 conviction for abduction in Ohio was a "violent crime" as defined in section 16-1-60 of the South Carolina Code for purposes of parole eligibility. Hinton, 357 S.C. at 331, 592 S.E.2d at 337-338. More specifically, Hinton challenged the SCDPPPS's conclusion that he was not eligible for parole because of his prior Ohio conviction. Id.

at 331, 592 S.E.2d at 338. Pursuant to the statute, a person who was serving a sentence for a second or subsequent conviction for a violent crime as defined in section 16-1-60 was not eligible for parole. Id. at 332, 592 S.E.2d at 338. Section 16-1-60 listed the crimes the legislature deemed "violent" and included a final clause that only those offenses specifically enumerated were to be considered violent offenses. Id. Thus, the question presented was whether the legislature intended the statute to exclude convictions of other jurisdictions. Id. at 339, 592 S.E.2d at 341.

SCDPPPS argued that offenses from other jurisdictions should apply as long as "the particular actions taken by the defendant which satisfy the elements of the crime in the other state would satisfy the elements of one of the enumerated crimes of section 16-1-60." Id. at 339, 592 S.E.2d at 342. This Court refused to apply the "same elements test" to determine whether the Ohio abduction qualified as a violent crime pursuant to South Carolina's statute, finding no evidence that such a test was the intent of the legislature for this particular statute. Id. at 339, 592 S.E.2d at 342. Specifically, this Court pointed to section 17-25-45, the statute at issue in the present case, to show that when the legislature intended the use of the "same elements test," the legislature used certain language to show its intent. Id. Ultimately, this Court held the statute did not include out-of-state convictions to determine parole eligibility. Id.

Trial counsel's reliance on Hinton was misplaced and fell below reasonable professional norms. As explained, Hinton did not address the recidivist statute. In fact, Hinton drew a distinction between the recidivist statute and the statute at issue in that case. When the Hinton Court analyzed the elements of Ohio's abduction statute and South Carolina's kidnapping statute, this Court concluded "although some abduction convictions may fit within the elements of South Carolina's codification of kidnapping, some abduction convictions invariably will not." Hinton, 357 S.C. at 339, 592 S.E.2d at 342. Relying upon an inapplicable case, trial counsel, not

surprisingly, arrived at the incorrect conclusion that Petitioner's prior conviction for false imprisonment would not qualify as a prior "most serious" offense. Trial counsel advised Petitioner of such during the plea negotiations, and Petitioner relied upon trial counsel's deficient advice in deciding to reject the state's plea offer.

Petitioner received two mandatory life sentences a thirty-year sentence and two five-year sentences. The disparity between the twenty-year sentence pursuant to the terms of the plea agreement and the life sentences Petitioner received alone demonstrates prejudice due to the significant disparity in the sentences. This was not a case where the plea offer was a mere five years less than the sentence the defendant actually received. Petitioner must spend the rest of his life in prison, but had he been aware that his prior conviction in Georgia would qualify as a predicate offense for South Carolina's recidivist statute, he would have accepted the guilty plea offer. Petitioner was prejudiced by trial counsel's deficient performance as illustrated by the sentence he received in comparison to the sentence offered by the state.

CONCLUSION

Petitioner respectfully requests this Court to reverse the order of the PCR court denying Petitioner relief. Petitioner respectfully requests this Court order the state to re-offer the twenty-year sentence in compliance with Lafler, supra.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2019.