

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Williamsburg County

S.C. SUPREME COURT

ORIGINAL

Honorable George M. McFaddin, Circuit Court Judge

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ALMONDO D. WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001503

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to move for the enforcement of a prior plea deal where a YOA sentence was offered on a lesser charge (robbery) as evidenced by a sentencing sheet that contained the signatures of all parties required.

## STATEMENT

Petitioner Almondo D. Washington pled guilty to armed robbery during the June 2016 term of the Sumter County General Sessions Court before Judge R. Ferrell Cothran and was sentenced to imprisonment for a ten-year term. App. 1-16. Doward Harvin represented petitioner at the guilty plea proceeding and Assistant Attorney General Kimberly Barr appeared on behalf of the state. Petitioner did not appeal his conviction or sentence.

On August 5, 2016, petitioner filed a PCR application with the Williamsburg County Office of the Clerk of Court. App. 18-26. On February 13, 2017, the Respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 27-34.

A PCR hearing was convened on November 16, 2017, at the Williamsburg County Courthouse before Judge George M. McFaddin. App. 37-80. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General Julie Coleman appeared on behalf of the state. On July 20, 2018, Judge McFaddin issued an Order of Dismissal therein denying petitioner's claims of ineffective assistance of counsel in the case. App. 84-98.

Petitioner appealed Judge McFaddin's Order of Dismissal. This brief follows.

## ARGUMENT

Trial counsel erred in failing to move for the enforcement of a prior plea deal where a YOA sentence was offered on a lesser charge (robbery) as evidenced by the sentencing sheet that contained the signatures of all parties required.

In the case at bar, trial counsel failed to move for the enforcement via specific performance of the plea agreement which petitioner's former counsel secured with the first solicitor assigned to the case. During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, two men armed with a gun approached a car where two females were sitting inside on November 16, 2012, and demanded money and took a pocketbook in the process; however, one of the females identified one of the perpetrators as the petitioner. App. 6, l. 11 – p. 1-, l. 3.

During the PCR hearing held in the case, trial counsel testified that petitioner informed him of a YOA plea deal agreement that had been reached in the case with the first solicitor who was assigned to the case, which had already been signed via the sentencing sheet by the parties including petitioner's former attorney, who was privy to the plea deal in question. Counsel added that later, when the case was reassigned to another solicitor, then "all plea offers were off the table." Counsel admitted that he was unaware of the existence of the sentencing sheet at issue that contained a summary of the plea deal prior to the plea proceeding. App. 64, l. 2-23; App. 70, l.7- p. 71, l. 5. Counsel stated that the second solicitor was prepared to take the case to trial and that he bought to plea deal matter to the trial judge, who in effect stated that his hands were tied with a ten-year minimum on armed robbery, (App. 66, l. 11- p. 67, l. 21), but counsel in effect erred in not apprising the judge of the existence of the sentencing sheet that reflected the plea agreement on the YOA deal and the lesser charge. Counsel admitted he doubted that the

sentencing sheet had been signed. App. 70, l. 20- p. 73, l. 20. The signed sentencing sheet at issue was produced and presented at the PCR hearing. See exhibit at App. 83.

Petitioner testified at the PCR hearing and stated that his trial attorney did not recognize or bring to the plea judge's attention the signed sentencing sheet (which the first solicitor assigned to the case signed) that reflected a plea deal to the lesser offense of robbery and a YOA sentence attached as the sentencing penalty, and that in effect his trial attorney erred in failing to seek enforcement of that plea proceeding. App. 42, l. 24-p. 43, l. 19; App. 44, l. 12-p. 45, l. 23. See sentencing sheet at App. 83; App. 45, l. 24- p. 47, l. 18. Petitioner relied on the plea deal when he signed the sentencing sheet and when he pled guilty. App. 48, l. 22- p. 52, l. 16. Petitioner was seventeen years old when the crime occurred. App. 79, lines 19-20; App. 6, l.19-23.

Petitioner's first trial attorney, who actually sealed the plea deal and signed the sentencing sheet, testified at the PCR hearing and confirmed that the first solicitor in the case extended this plea offer in question, but explained that when the next solicitor who took over the case found out about the facts in the case from the victim, then the plea offer was withdrawn. First counsel admitted he signed the sentencing sheet on the plea offer. App. 53, l. 13- p. 58, l. 10.

The PCR judge ruled as follows:

First, Applicant alleges he is entitled to a vacation of his guilty plea and to be able to plead guilty according to the terms of the original plea offer from the State because he detrimentally relied on the State's offer, and it was a binding contract which the State was obligated to uphold. This Court finds this allegation meritless, as Applicant has failed to prove detrimental reliance, and the plea offer was not a binding contract because it was not entered before the court. App. 90

Reed explicitly holds that a plea agreement, even if the defendant has accepted its terms, is not a binding contract until the actual plea has been accepted by the court: App. 91.

Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 44, 454 (2007). “Even if the agreement has not been finalized by the court, a defendant’s detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding.” Reed, 333 S.C. at 688, 511 S.E.2d at 402-03 (citing United States v. Savage, 978 F.2d 1136 (9<sup>th</sup> Cir. 1992)). “A defendant relies upon a solicitor’s plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer.” *Id.* (citing State v. Vixamar, 687 So.2d 300 (Fla. Dist. Ct. App. 1997)). Reliance may not be shown “by mere passage of time,” and it may not be shown by the prospect of a longer sentence. *Id.* (citing Cope v. Kentucky, 645 S.W.2d 703 (Ky. 1983)).

Here, Applicant has failed to show that he detrimentally relied in any way on the prior plea offer. Importantly, Applicant later entered a valid guilty plea to the charge of armed robbery and received the mandatory minimum sentence of ten years. Plea counsel testified it was Applicant’s decision to plead guilty of armed robbery on June 1, 2016. The record before the Court shows Applicant knowingly and voluntarily pled guilty to armed robbery with no detrimental reliance on the prior plea offer. Because there is no detrimental reliance here, this Court finds no reason to enforce the prior plea offer from the State, and this allegation is denied and dismissed with prejudice. App. 91-92.

However, to the contrary, petitioner did rely to his detriment on the plea agreement as evidenced by the PCR action wherein he alleged ineffective assistance of counsel for failing to move for the enforcement of the plea bargain. Specific performance is the remedy used where one has been denied a constitutionally-guaranteed right. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), citing to Turner v. Tennessee 858 F.2d 1201 (6<sup>th</sup> Cir. 1988) and United States v. Morrison 449 U.S. 361 (1981). Compare Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003), the case was remanded for specific performance on the plea agreement where counsel was ineffective in failing to ensure that the state adhered to the original plea agreement in order to grant the defendant the benefit of the bargain. In Sprouse, *supra*, the plea agreement breach was the solicitor’s classification of the defendant’s second-degree burglary offense as violent because this deviated from the plea agreement. See also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the

case was remanded for specific performance where counsel was ineffective in failing to have a plea agreement enforced because the defendant detrimentally relied on the promised plea bargain. In Custodio, supra, there was a breach of a plea agreement that included a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was reliance on the plea bargain by the defendant when he pled guilty in the case. In Jordan v. State, 247 S.C. 52, 374 S.E.2d 683 (1988), the Court remanded the case for specific performance on the plea agreement where the solicitor did not fulfill his promise not to oppose probation at the plea proceeding according to the plea agreement. See reversals in Smith v. State, 407 S.E.2d 270, 754 S.E.2d 900 (2014); and upheld at 413 S.C. 194, 775 S.E.2d 696 (2015), and Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000), where the Court remanded for specific performance in both cases on both of the plea agreements where both of the solicitors promised not to make sentencing recommendations on the defendants' voluntary manslaughter pleas, but breached the agreements and asked for maximum sentencing in those cases.

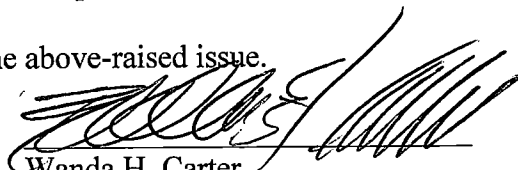
As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make 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. Thompson v. State, supra.

There was a breached plea agreement in existence in petitioner's case, and thus counsel erred in failing to move to enforce the plea agreement and request specific performance of petitioner's original plea agreement. Counsel's error violated petitioner's right to competent legal counsel in a criminal case as guaranteed under the Sixth Amendment to the United States

Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as the error led to a greater charge and a greater sentence.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow for full briefing on the above-raised issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of April, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Williamsburg County

Honorable George M. McFaddin, Circuit Court Judge

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ALMONDO D. WASHINGTON,

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PETITION TO BE RELIEVED AS COUNSEL

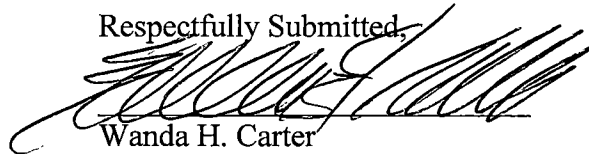
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Counsel for Almondo D. Washington states that :

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on November 16, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Almondo D. Washington.

Respectfully Submitted,

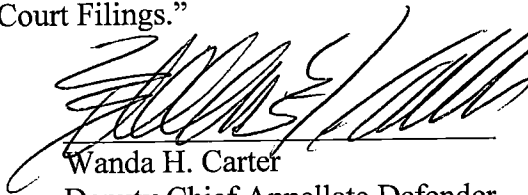


Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 10th day of April, 2019.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Wanda H. Carter  
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ALMONDO D. WASHINGTON,

PETITIONER

V.

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CERTIFICATE OF SERVICE

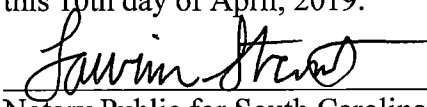
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Almondo D. Washington, #368479, at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 10th day of April, 2019.

  
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Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 10th day of April, 2019.

  
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(L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.