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RECEIVED

MAY 13 2019

S.C. SUPREME COURT

May 7, 2019

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

RE: Ronnie Joe Blackwell vs. The State of South Carolina
Case No: 2018-CP-42-0179

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

Rodney Richey

RWR/
Enclosures
cc: Johnny James, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE THOMAS A. RUSSO

2018-CP-42-0179

RECEIVED

MAY 13 2019

S.C. SUPREME COURT

RONNIE JOE BLACKWELL, SCDC# 319549

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Ronnie Joe Blackwell appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Thomas A. Russo, Circuit Judge on March 4, 2019 an Order issued on April 26, 2019 and filed on May 3, 2019. The Appellant received notice of the judgment on April 30, 2019.

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

HONORABLE THOMAS A. RUSSO

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S.C. SUPREME COURT

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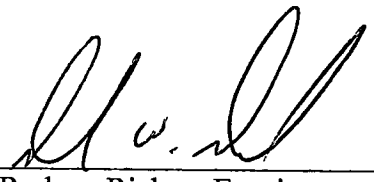
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on May 7, 2019, addressed to their attorney of record, Johnny James, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: May 7, 2019



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Ronnie Joe Blackwell, S.C.D.C. No. 319549,	)	Case No.: 2018-CP-42-0179
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Ronnie Joe Blackwell (Applicant) on January 18, 2018. Respondent served its return to the application on March 26, 2018. This Court convened an evidentiary hearing into the matter on March 4, 2019, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esq. Jacob Isenberg, Esq., and Johnny James, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Beverly Jones, Esquire (Counsel), also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the plea transcript, records of the Spartanburg County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds Applicant has not met his burden of establishing any constitutional deprivations or other grounds entitling him to relief and denies and dismisses this application with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Spartanburg County

Grand Jury indicted Applicant in July 2016 for possession of a stolen vehicle (2016-GS-42-4082), three counts of petit larceny (2016-GS-42-4074; 4075; 4081), three counts of breaking into a motor vehicle (2016-GS-42-4080; 4077; 4076), reckless driving (2016-GS-42-4079), and failure to stop motor vehicle (2016-GS-42-4078). In August 2016, the Spartanburg County Grand Jury subsequently indicted Applicant for petit larceny (2016-GS-42-4478) and Escape (2016-GS-42-4479). In May 2017, the Spartanburg County Grand Jury subsequently indicted Applicant for possession of a stolen vehicle (2017-GS-42-2323), and possession of cocaine base (2017-GS-42-2322).

Assistant Solicitor Spenser H. Smith, of the Seventh Circuit Solicitor's Office, prosecuted the case. On May 23, 2017, Applicant appeared in the Spartanburg County Court of General Sessions before the Honorable J. Mark Hayes, II, and following jury selection and pre-trial matters, he pled guilty to all of the above-mentioned offenses except for escape for which he pled to the lesser-included offense of resisting arrest[1]. The State recommended Applicant be sentenced to a twenty-five year sentence, fifteen years of confinement and ten years suspended followed by five years of probation to run consecutively. However, Judge Hayes sentenced Applicant to confinement for twenty years followed by five years of probation. The concurrent sentences were three years for failure to stop for a blue light, twelve months for the lesser-included offense of resisting arrest, three years for possession of crack or methamphetamine, thirty days for reckless driving, five years each for of the three breaking-into-motor-vehicle charges. In addition, he received ten years consecutive for two charges of petit larceny. The third petit larceny charge was a ten year sentence suspended to five years of probation following confinement. Applicant's probation for prior charges was also revoked as part of this plea proceeding. Applicant did not

[1] Applicant waived presentment to the Spartanburg Grand Jury for the lesser-included offense of resisting arrest.

pursue a direct appeal.

II. PRESENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. "The Solicitor said at trial that I had been offered another sentence, my lawyer never told me"
2. Involuntary Guilty Plea
    a. "I was not told about a lesser offer. I was tricked into this."

Applicant stated he was seeking a new trial, lesser sentence, and the filing of a motion for Judge Hayes to re-consider his sentence. At the evidentiary hearing, Applicant proceeded forward on ineffective assistance of counsel for failure to communicate a plea offer, failure to file a motion for re-consideration, and involuntary plea for failure to consider the original offer.

III. SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

1. Applicant

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified he was represented by Counsel for all fourteen charges. Applicant testified he asked Counsel for updates on a potential plea offer, and she responded "no news." Applicant testified the first time he heard about the initial plea offer was at his plea hearing. Applicant testified he would have accepted the initial plea offer because it was more beneficial to him. Applicant testified he did not believe the sentence properly reflected his plea agreement. Applicant testified he asked Counsel whether they should file a motion for re-consideration based upon his sentence. He further testified Counsel did not respond to this question. However, Applicant testified he never alleged the failure to file a

motion for reconsideration in his application. Applicant testified he does not want a trial, but also does not want to withdraw his post-conviction relief application. Applicant testified he just wants the plea judge to re-consider his sentence. However, the Applicant testified that if the Court could not re-consider his sentence, he was willing to go through with his PCR Application to try and get a new trial with the hope that starting over would result in a less lengthy sentence.

2. Beverly Jones

Counsel testified on behalf of Respondent. Counsel testified Applicant continually asked her to get a plea offer, but the assistant solicitor was reluctant to offer one. Counsel testified she received an email from the assistant solicitor on May 17, 2017, which contained Applicant's initial offer for a recommended sentence of "twenty-something years" with some of that time suspended and five years of probation. In that email, the assistant solicitor promised to follow up with details based upon how the offer would be structured.[2] Thereafter, Counsel testified she took the email with her to meet the Applicant at the jail. Counsel further testified she took notes during the meeting where Applicant rejected the initial plea offer. Counsel testified the meeting notes included Applicant stating he would not help the assistant solicitor because the plea offer did not help him. Furthermore, Counsel testified her notes reflected Applicant's primary concern was pleading guilty to an escape charge. Finally, Counsel testified she could not answer all legal questions about escape charges, but that she would research his concerns regarding the charge after their meeting.

Additionally, Counsel testified she received the offer's specific details from the assistant solicitor after meeting with the Applicant. The email confirmed this offer would require Applicant

[2] According to Counsel, the assistant solicitor's plea offer was complicated because it included all fourteen charges against Applicant.

to plead guilty to escape. Counsel testified she received a Kiosk email from Applicant asking for any news about a better offer. Counsel testified she responded "no news" because the assistant solicitor's follow-up email was merely clarification on how the original offer would work and because information relayed via kiosk is not confidential. Also, Counsel testified her supplemented response contained information relating to the charge of escape.

Counsel testified she was ready to proceed with trial on the day Applicant pled guilty. Counsel testified she selected the jury, and she moved forward with pre-trial motions. Thereafter, Counsel testified she notified the assistant solicitor of Applicant's unhappiness with the escape charge being included in his initial offer. Counsel testified the assistant solicitor offered to dismiss one of Applicant's Escape charges[3] and to reduce his other Escape charge to resisting arrest with the same recommendation of twenty-five years confinement suspended to fifteen years confinement followed by five years' probation.

Subsequently, Counsel relayed this offer to Applicant. Furthermore, she notified Applicant she had no knowledge about how this plea would affect work assignments at SCDC. Thereafter, Applicant began doing the numbers based upon personal knowledge about SCDC working assignments and the actual time he would be confined in SCDC. According to Counsel's testimony, Applicant was satisfied with the second plea offer because he would not be pleading guilty to any charges of Escape.

Furthermore, Counsel testified she has no recollection of an email or a notification from Applicant asking her to file a motion for re-consideration. As a result, did not respond to Applicant, and did not file a motion for re-consideration. According to Counsel, she only files motions for re-consideration when the client gives her a sufficient reason. In this situation, Counsel testified

[3] The State dismissed Applicant's Escape Charge stemming from the removal of a home detention ankle bracelet.

she probably concluded there was no basis to file the motion, and he could be facing a greater prison sentence if she was to file a motion to re-consider.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 686.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is

all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Communicate Plea Offer

Applicant alleges Counsel failed to communicate the first plea offer to him, and he was prejudiced because he would have accepted this offer. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frve, 566 U.S. 134, 145 (2012); See also Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) (adopting "rule that counsel's failure to convey a plea offer constitutes deficient performance"). When alleging plea counsel was deficient in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability that: (1) he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;' (2) "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;" and (3) "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." Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing Missouri v. Frye, 566 U.S. 134, 147 (2012)); see Lafler v. Cooper, 566 U.S. 156, 164 (2012) (stating "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), 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 in fact were imposed"). If an applicant is able to meet the requirements set forth above, the appropriate relief is to require the State to re-extend the previous plea offer to Applicant. Lafler, 566 U.S. at 174. ("The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement.")

Here, Applicant contends the meeting where Counsel communicated the first plea offer never happened. Neither witness disputes Applicant messaged Counsel for news about a plea offer, nor her response indicating no update. However, Applicant provided no explanation why Counsel included legal advice about his Escape charge in her response. On the other hand, Counsel provided an explanation about following up on a question from the meeting where she communicated this plea offer. Counsel further testified to showing Applicant a printed version of the emailed plea offer from the assistant solicitor at the meeting. Counsel also explained Applicant's unhappiness with the Escape charge was what caused him to reject the initial plea offer. Furthermore, Counsel testified she took notes during this meeting. This testimony is consistent with Counsel's recollection at the plea hearing on how the initial offer ended up being rejected. (Tr. 41, L. 4-18). Thereafter, Applicant even agreed with Counsel's recollection of how the first plea offer was rejected. (Tr. 43, L. 7-9). Thus, this Court finds the Applicant has failed to prove he would have accepted the first plea offer with effective assistance of counsel.[4]

Additionally, Applicant contends the allegedly uncommunicated plea offer was better than the one he accepted. Counsel testified the first offer included pleading guilty to escape with a recommendation of twenty-five years suspended to fifteen years confinement followed by five years of probation. The second offer dismissed one charge of Escape and reduced the other charge of Escape to resisting arrest with the same recommendation of twenty-fire years suspended to fifteen years confinement followed by five years of probation. Therefore, the second offer was a better offer because it included the dismissal of one charge and the reduction of one charge to a

[4] As a result, this Court declines to consider whether the State or plea court would have accepted the first offer.

lesser charge. Thus, this Court finds Applicant cannot prove the allegedly uncommunicated plea offer would have had a better result than the plea offer he accepted.

2. Failure to file a Motion to Reconsider

Respondent contends Applicant is procedurally barred from alleging Counsel was ineffective for failing to file a motion to reconsider. For relief, an applicant must raise PCR claims in the "original, supplemental or amended application." S.C. Code Ann. § 17-27-90. The South Carolina Rules of Civil Procedure state that amendments should be allowed as a (1) matter of course within 30 days of filing; or (2) if "justice so requires" as long as the amendments do not "prejudice any other party." Rule 15, SCRCP. The South Carolina Supreme Court clarified prejudice is some result flowing from the amendment that puts the non-moving party at an evidentiary or procedural disadvantage in defending the merits, which it would not have faced if the amendment had been included in the original pleading or timely motion. Patton v. Miller, 420 S.C. 471, 491, 804 S.E.2d 252, 262–63 (2017).

Here, Applicant filed an application on January 18, 2018. However, he did not attempt to amend it until 410 days later at the evidentiary hearing. As a result, Respondent had no opportunity to discuss the allegation with Counsel or the assistant solicitor beforehand. Therefore, Applicant's allegation put Respondent at an evidentiary disadvantage sufficient to constitute prejudice. This Court finds Applicant is procedurally barred from raising this issue. However, as a cautionary measure, this Court will proceed based upon the merits.

As previously mentioned, a court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient

prejudice, that course should be followed. Strickland, 466 U.S. at 696-97. Therefore, this Court will proceed to the prejudicial prong of Applicant's claim.

Applicant contends the failure to file a motion for re-consideration prejudiced his sentence. Post-conviction relief is only proper where Applicant seeks to have their "sentence vacated, set aside or corrected." Tutt v. State, 277 S.C. 525, 526, 290 S.E.2d 414, 415 (1982). Furthermore, the remedy for applicants who present "evidence of material facts, not previously presented and heard" is vacation of their sentence." S.C. Code Ann. § 17-27-20(a) (4). Also, a judge does not have authority over the plea after sentencing unless either interested party files a timely post-trial motion. State v. Campbell, 376 S.C. 212, 217, 656 S.E.2d 371, 373 (2008) (finding plea judge lacked authority to re-sentence defendant, who did not testify against co-defendant after sentencing because interested party filed untimely post-trial motion where there was no after-acquired evidence). See Rule 29, SCRCrimP. (all post-trial motions shall be filed within ten days of sentencing unless their basis is after-discovered evidence).

Here, Applicant seeks for Counsel to file a motion for sentence reconsideration with the original plea judge. This is compelling evidence he does not want the sentence to be vacated and placed back at square one. Moreover, this is also not an argument that his sentence needs to be constitutionally or statutorily corrected. Instead, Applicant just wants the plea judge to re-consider his sentence. In practice, a motion for re-consideration at this point would be untimely without alleging after-discovered-evidence. However, Applicant has not offered, or even alleged, the surfacing of new evidence. Therefore, the original plea judge would not have authority to re-consider his sentence. Assuming *arguendo* after-discovered-evidence existed, this Court would only have the statutory authority to vacate Applicant's sentence. Accordingly, a request to order

this case re-start at the motion for sentencing re-consideration stage with the original plea judge is improper. Thus, Applicant's request is outside the scope of this Court's authority.

Additionally, Applicant contends the judge's failure to re-consider his sentence constitutes guilty plea prejudice. An applicant must show "but for counsel's errors, [he] would not have pled guilty and would have insisted on going to trial" to establish guilty plea prejudice. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000). Here, Applicant's allegations are premised upon deficiencies that occurred after his plea hearing. Moreover, he fails to show how this effected his decision to plead guilty in the first place. Therefore, Applicant has not presented any evidence that Counsel's failure to file a motion to re-consider his sentence prejudiced his guilty plea.

3. Involuntary Guilty Plea

Applicant alleges his guilty plea was involuntary based upon not having a chance to review the first offer. To find a guilty plea voluntarily and knowingly, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Moreover, an applicant's statements during the plea hearing are considered "conclusive unless [he] presents valid reasons why he should be allowed to depart from the truth" of them. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Finally, the plea colloquy can cure any alleged deficiency if counsel had not properly advised an applicant about the consequences of accepting such offer. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (stating that plea counsel's deficient performance can be cured by the plea court's colloquy).

Here, Applicant contends his acceptance of the plea offer was involuntary because he did not know about the first offer. At the plea hearing, Counsel explained the contents of the first offer. (Tr. 41, L. 4-7). Counsel also told the plea judge she "explained" those contents to

Applicant. (Tr. 41, L. 8). Counsel further told the plea judge they discussed the offer and then ultimately rejected it. (Tr. 41, L. 14). Thereafter, Applicant confirmed to the plea judge his agreement with Counsel's story. (Tr. 43, L. 7-9). Applicant has not presented a reason to depart from his agreement with Counsel at the plea hearing. Therefore, this Court finds Applicant has failed to prove his guilty plea was involuntary based upon not knowing about the first offer. However, this Court notes that the Applicant did receive a greater active sentence than the sentence the assistant solicitor recommended to Judge Hayes. At the plea hearing, Judge Hayes did advise Applicant he was not bound by the assistant solicitor's recommendation. (Tr. 33). Therefore, this Court finds Applicant's plea to be knowing and voluntary.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 26th **day of** April, **2019.**

THOMAS A. RUSSO
Presiding Judge
Seventh Judicial Circuit

Florence, South Carolina

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The Honorable Daniel E. Shearouse
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