

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Honorable Robin B. Stilwell, Circuit Court Judge

Case No. 2017-001777

RECEIVED

OCT 28 2019

SC Court of Appeals

Alonzo Columbus Jeter, III,

v

PETITIONER,

STATE OF SOUTH CAROLINA,

RESPONDENT.

CITATION OF
SUPPLEMENTAL AUTHORITIES

Petitioner provides the following supplemental authorities pursuant to Rule 208(b)(7), SCACR as they have come to the attention of Petitioner and are relevant as they provide authoritative support regarding the issues he has advanced in this appeal. Petitioner cites the following:

Regarding Improper Sentencing Enhancement

1. *United States v Davis*, 139 Sct 2319 (2019) - In ordinary speech, the word "offense" in a criminal statute can carry at least two possible meanings; it can refer to a generic crime, say, the crime of fraud or theft in general, or it can refer to the specific acts in which an offender engaged on a specific occasion.
2. *Berry v State*, 381 SC 630, 675 SE2d 425 (2009) - The Sixth Amendment guarantee of effective assistance of counsel requires that plea counsel accurately inform a defendant, to the extent possible, of the qualifying nature of a prior offense for sentencing enhancement purposes.

2. Burnett v State, 352 SC 589, 576 SE2d 144 (2003) - When considering an allegation on post-conviction relief (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 information conveyed by the plea judge cured any possible error made by counsel
3. In determining whether plea counsel was ineffective for permitting the defendant to plead guilty, the ultimate test is not the plea court's explanations or questions or the plea counsel's answers; rather, the test is the extent of the defendant's understanding revealed by the entire record, including evidence admitted at the PCR hearing. See Holden v State, 393 SC 565, 572-74, 713 SE2d 611, 615-16 (2011); Rolen v State, 384 SC 409, 683 SE2d 474
4. Anderson v State, 342 S.C. 54, 535 SE2d 649 (2009) - To vitiate a guilty plea, a court's misstatement must be material in the sense that it is part of the inducement for the defendant's decision to plead guilty
5. Mahdi v Stirling, 2018 WL 4566565, Strickland's two-part test governs the court's analysis, but here, the prejudice prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill v Lockhart, 474 U.S. at 59, 106 S.Ct. 366. "In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that

there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v United States, 137 Sct 1958 (2017).

6. Bailey v MacDougall, 247 S.C. 1, 145 S.E.2d 425 (1965) - Plea of guilty must be freely and understandingly made, and if it is induced by promises which deprive it of the character of a voluntary act, plea of guilty is void and should be set aside.

7. United States v Tate, 845 F.3d 571, 575 (4th Cir. 2017) - Plea agreements are grounded in contract law, and both parties to a plea agreement should receive the benefit of their bargain.

8. State v Thompson, 278 S.C. 1, 5, 292 S.E.2d 581 (1982) - When the accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled.

9. United States v Frazier, 340 F.3d 5, 11 (1st Cir. 2003) - Plea agreements, like all contracts, contain an implied duty of good faith and fair dealing in contract performance. See, e.g., United States v Murray, 897 F.3d 298, 305 (D.C. Cir. 2018).

10. U.S. v Harvey, 791 F.2d 294 (1986) - Both constitutional and supervisory concerns require holding the [State] to a

greater degree of responsibility than the defendant (or possibility than would be either of the parties to commercial contracts) for imprecisions or ambiguities in plea agreements. See, e.g., United States v Bowler, 585 F2d 851, 854 (7th Cir. 1978)

11. U.S. v Ringling, 988 F2d 504 (4th Cir. 1993) - Plea bargains rest on contractual principles, and each party should receive benefit of its bargain, but plea agreement must be analyzed at more stringent level than a commercial contract since rights involved are generally fundamental and constitutionally based

12. U.S. v Jureidini, 846 F2d 964 (4th Cir. 1988) - To ensure voluntariness and validity of guilty plea, court has duty to ensure that bargain represented by plea agreement is not frustrated. Regardless of the reasons for the frustration of the bargain, that frustration calls into question the validity of the plea. "When a plea rests... on a premise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such premise must be fulfilled." Santobello v New York, 404 U.S. 257, 262, 92 Sct 495, 499 (1971).

13. See McElrath v State, 276 S.C. 282, 277 SE2d 890 (1981); State v Rich, 239 SE2d 731 (1977), regarding charges which appear and do not appear on rap sheet.

Regarding Being Misinformed of LWOP Exposure

1. Alexander v State, 402 SE2d 484 - Petitioner's testimony

that he would not have pled guilty if trial counsel had not misinformed him that he would face a potential life sentence if he proceeded to trial satisfied "prejudice" requirement of ineffective assistance of counsel claim

2. Ray v State, 303 SC 374, 401 SE2d 151 (1991) - State told him that he was facing life if convicted, but he was really not. Guilty plea was not knowing and voluntarily made

3. State v Fletcher, 322 SC 256, 471 SE2d 702 (1996) - It is a due process violation to punish a person for exercising a protected constitutional or statutory right. Presumption that prosecutor has acted vindictively in response to defendant's exercise of a statutory or constitutional right is premised on the need to guard against actual vindictiveness in the resentencing process

4. State v Hortman, 76 Wash. app 454, 886 P2d 234 (1994) - Court's role in situations where police make multiple drug buys from one defendant is to focus on the difference, if any, between the effects of the first controlled buy and the cumulative effects of subsequent controlled buys. Where that difference is non-existent, trivial, or trifling, there is a basis in law for an exceptional sentence downward, even if there are objectively reasonable law enforcement purposes for arranging multiple buys; Sufficient support existed in the record for trial court's exceptional departure sentence downward based on finding that multiple drug buys from defendant had no apparent purpose other than to increase

defendant's offender score and presumptive sentencing range, even though undercover police officers did not engage in police misconduct, and asserted that they made multiple buys to counter an entrapment

5. Commonwealth v Laureus, 34 Mass. L. Rptr. 225 (2017) -

The fact that the acts underlying these two prior convictions were identical and only four days apart strongly suggests the conduct was related and part of a single episode, "single criminal spree" or single course of conduct. In the context of a prosecution for drug distribution, the fact that the sales occurred close in time but on different dates is, without more, insufficient to allow a reasonably prudent person to conclude that they constituted separate episodes.

6) State v Lane, 2019 WL 1510331 - Convicting and sentencing drug offenders to life sentences for drug crimes violates West Virginia's proportionality clause of the WV Constitution. Wv Const. Art. 3 § 5, Excessive Bail Not Required. Cf. South Carolina Constitution, SC Const. Art. 1 § 15 - Right of Bail

Regarding Mental Competency and Duress

1. In re Nightingale's Estate, 182 SC 527, 189 SE 890 (1937) -

At common law, "duress per minas," invalidating contract, existed only when person was threatened with loss of limb or life, serious bodily injury or imprisonment, and danger was so

imminent as to cause courageous man to perform act not dictated by his own free will.

2. See Boston v Reynolds, 2015 WL 9583320 - regarding plea counsel's failure to ensure proper medication was received. See also Matthews v State, 596 SE2d 49 (2004).

3. U.S. v Christian, 37 F3d 1496, 1994 WL 556927; United States v Bailey, 444 U.S. 394, 100 Sct. 624 (1980) - In order to establish a claim of duress, the defendant must show that: (1) he acted under an immediate threat of serious bodily injury; (2) he had a well grounded belief that the threat would be carried out; and (3) he had no reasonable opportunity to avoid violating the law and the threatened harm.

4. Faretta v California, 422 U.S. 806, 819 (1975) - "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." See also California v Trombetta, 467 U.S. 479, 485 (1984) - This has been interpreted by the Supreme Court of the United States to "require that criminal defendants be afforded a meaningful opportunity to present a complete defense."

Regarding the PCR Court's Denial Of Motion For Discovery

1. Palacio v State, 333 SC 506, 513, 511 SE2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel

to obtain these documents prejudiced the defense).
See also, *Boston v Reynolds*, 2015 WL 9583320 (Burden of proving plea counsel did not adequately investigate his medication).

2. *Faretta v California*, 422 U.S. 806, 819 (1975) - "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense."
See also *California v Trombetta*, 467 U.S. 479, 485 (1984) - This has been interpreted by the Supreme Court of the United States to "require that criminal defendants be afforded a meaningful opportunity to present a complete defense."

3. *State v Rice*, 368 S.C. 610, 629 S.E.2d 393 (2006) - An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law

4. *Anderson v Goetze*, 44 F.3d 675, 679 (8th Cir. 1995) - The evidentiary mistake must be "so egregious that they fatally infected the proceedings and rendered his entire trial fundamentally unfair. (quoting *Hamilton v Nix*, 809 F.2d 463, 470 § n. 4 (8th Cir. 1987))

5. *Osborne v Purkett*, 411 F.3d 911, 917 (8th Cir. 2005) - A ruling violates due process only when it is "so conspicuously prejudicial or of such magnitude as to fatally infect the trial."

6. *State v Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) -

("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")

7. Davila v Davis, 137 Sct 2058 (2017) - A criminal trial is the main event at which a defendant's rights are to be determined, and not simply a tryout on the road to appellate review

Regarding PCR Court's Reopening PCR Record

1. Osborne v Purkett, 411 F3d 911, 917 (8th Cir. 2005) - A ruling violates due process only when it is "so conspicuously prejudicial or of such magnitude as to fatally infect the trial."
2. Anderson v Goetze, 44 F3d 675, 679 (8th Cir. 1995) - The evidentiary mistake must be "so egregious that they fatally infected the proceedings and rendered his entire trial fundamentally unfair. (quoting Hamilton v Nix, 809 F2d 463, 470 § n. 4 (8th Cir 1987))

Regarding Conclusion Of Petition For Writ of Certiorari

1. Rodriguez-Penton v United States, 905 F3d 481 (6th Cir. 2018) - Where counsel's assistance falls short during plea negotiations, at issue on the prejudice element of a claim of ineffective assistance is whether the defendant can show a reasonable probability that, with proper advice, the outcome of those negotiations would have been different.

2. The right to effective assistance of counsel extends to the plea-bargaining process notwithstanding the fact that defendants have no constitutional right to a plea offer. Id.
3. If the government exercises its discretion not to bargain for a guilty plea, no constitutional question is presented, but when the government chooses to enter into plea negotiations, the Constitution requires that defendants receive effective assistance of counsel in navigating that crucial process. Id.
4. Prejudice may lie, as element of a claim of ineffective assistance, where a defendant demonstrates that counsel's deficient performance infected his decision making process, and thus undermines confidence in the outcome of the plea process. Id.
5. Individuals who allege ineffective assistance of counsel during the plea process may satisfy the prejudice prong of Strickland even without a showing that they would have gone to trial were it not for counsel's deficient performance. Id.
6. A defendant may be prejudiced, as element of a claim of ineffective assistance, when his counsel's errors deprived him of the opportunity to make a fully informed choice during the plea process. Id.

7. Davila v Davis, 137 Sct 2058 (2017) - A criminal trial is the main event at which a defendant's rights are to be determined, and not simply a tryout en route to appellate review.


8. Miller v State, 665 SE2d 596 (2008) (PCR Granted as there was no probative evidence to support the PCR Court's findings of fact and conclusions of law regarding counsel's effectiveness.

9. State v Rice, 368 S.C. 610, 629 SE2d 393 (2006) - An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.

10. State v Price, 368 S.C. 494, 498, 629 SE2d 363, 365 (2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support.")

11. Ellis v Davidson, 358 S.C. 509, 595 SE2d 817 (2004) - For purposes of abuse of discretion standard of appellate review, an abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support

Respectfully submitted,


Alonzo C. Jeter, III
PETITIONER/Prose

This 23 day of October, 2019
at Enoree, South Carolina Page 11 of 11

Tyger River Correctional Inst.
200 Prison Road
Enoree, South Carolina 29335

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
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Alonzo Columbus Jeter, III,

PETITIONER,

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served a copy of the MOTION TO FILE LESS THAN REQUIRED AMOUNT, SUPPLEMENTAL APPENDIX II, NOTICE OF RESERVATION OF OBJECTION TO MOTION TO REOPEN THE PCR RECORD, REQUEST FOR ADMISSION, CITATION OF SUPPLEMENTAL AUTHORITIES, MOTION TO ARGUE AGAINST PRECEDENT, upon the Respondent by placing the same inside of a postage prepaid envelope and placing said envelope in the hands of Tiger River Correctional Institution's mail room personnel on this 24 day of October, 2019, for mailing via the United States Mail, addressed as follows: Vann Henry Gunter, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

SWORN and Subscribed before me
this 24 day of October, 2019

Notary Public for South Carolina
My Commission Expires: March 24, 2021

s/ 

Alonzo C. Jeter, III, #282902
PETITIONER/Prose

Tiger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

October 21, 2019

Alonzo C. Jeter, III
Tyger River Correctional Institution
U-7-101/#282902
200 Prison Road
Enoree, SC 29335

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Alonzo C. Jeter, III v State of South Carolina
Appellate Case No. 2017-001777


Dear Mrs Kitchings:

For filing in the above referenced PCR appeal, please find enclosed Motion To File Less Than Required Amount, Supplemental Appendix II, Notice of Reservation of Objection To Motion To Reopen The PCR Record, Request For Admission, Citation of Supplemental Authorities, Motion To Argue Against Precedent, and Certificate of Service for the same.

Please also find, enclosed, one (1) copy additional of the same along with a self-addressed stamped envelope. Please return to me by way of this ~~same~~ file-stamped copies of these said documents.

Thank you for your assistance in this matter.

Sincerely,


Alonzo C. Jeter, III
PETITIONER/Prose

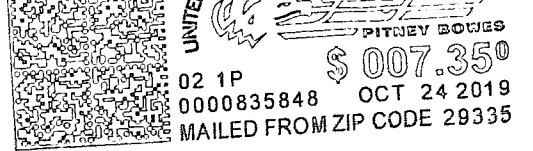
CC: Van Henry Gunter, Jr., Esquire
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SC Court of Appeals

Alonzo C. Jeter, III
Tyger River Correctional Institution
U-7-101 / #282902
200 Prison Road
Enoree, SC 29335



The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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OCT 24 2019

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OCT 28 2019

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