RECEIVED
NOV 26 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

J. Derham Cole, Circuit Court Judge

Appellate Case No.: 2019-001641

Donald Hamilton Hill, Jr.,..... Petitioner,

vs.

State of South Carolina, ...Respondent.

PETITION FOR WRIT OF CERTIORARI

Tommy A. Thomas, Esq.
Attorney for Petitioner
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

Johnny Ellis James, Jr., Esq.
Office of the Attorney General
Attorney for Respondent
P.O. Box 11549
Columbia, SC 29211-1549

INDEX

QUESTIONS PRESENTED

I. Did the post-conviction relief court err in denying relief to Petitioner on the ground of involuntary guilty plea when the trial court incorrectly advised Petitioner of his potential for parole?

II. Did the post-conviction relief court err in denying relief to Petitioner on the ground of ineffective assistance of counsel when plea counsel failed to argue relevant case law that may have prevented Petitioner's charges from being enhanced?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner was indicted during the June 2009 term of the Spartanburg County Grand Jury for sixteen counts of first degree burglary (2009-GS-42-3038, -3166, -3167, -3167, -3169, -3170, -3171, -3172, 3173, -3174, -3175, -3186, -3188, -3190, -3191, 3194). Petitioner proceeded to enter a guilty plea to fifteen of the sixteen charges, with one being dismissed pursuant to his plea. Lawrence W. Crane, Esquire, represented Petitioner. On June 14, 2010, the Honorable J. Mark Hayes, II sentenced him to a term of imprisonment of thirty (30) years for each of the fifteen convictions to be served concurrently. Petitioner filed a motion for reconsideration of the sentence on June 17, 2010, which was denied a year and a half later on January 26, 2012. Petitioner also filed an appeal, but it was withdrawn, and a remittitur was issued June 11, 2012.

Petitioner filed an application for post-conviction relief, by and through Tommy A. Thomas, Esquire, on September 5, 2012 alleging ineffective assistance counsel and involuntary guilty plea. A return was filed August 19, 2013 by the State. An evidentiary hearing on Petitioner's Application was convened on October 13, 2013, at the Spartanburg County Courthouse. Petitioner was represented by Tommy A. Thomas, Esquire. Suzanne H. White, Esquire represented the Respondent. An order denying post-conviction relief was signed by the Honorable J. Derham Cole on July 31, 2019 and filed the same day. This was after the record was held open for Petitioner's counsel to acquire information regarding Petitioner's convictions from Wake County, North Carolina, which were provided to Judge Cole. A notice of motion and motion to alter or amend the judgment was filed by Petitioner

on August 7, 2019. The motion was granted in order to amend the order denying relief to more specifically describe the North Carolina convictions. A timely notice of appeal was filed.

STATEMENT OF FACTS

Petitioner, Donald Hill, Jr., was indicted during the June 209 term of the Spartanburg County Grand Jury for sixteen counts of burglary, some first degree and some second (2009-GS-42-3038, -3166, -3167, -3167, -3169, -3170, -3171, -3172, 3173, -3174, -3175, -3186, -3188, -3190, -3191, 3194). Petitioner pled guilty to fifteen counts of first degree burglary on June 14, 2010 before the J. Mark Hayes, II.

An application for post-conviction relief was filed September 5, 2012. The application alleged ineffective assistance of counsel and involuntary guilty plea. A return was filed by the State on August 19, 2013. The hearing on the post-conviction relief application was held October 3, 2013 before the Honorable J. Derham Cole. Petitioner was represented by Tommy A. Thomas, Esquire. The State was represented Suzanne H. White, Esquire.

The facts of the underlying convictions are that Petitioner admitted to committing sixteen burglaries from October 27, 2008 to May 11, 2009. These burglaries were defined as entering dwellings in Spartanburg County without consent, with the last incident leading to a physical altercation with the occupant, whom Petitioner did not know was home. Though Petitioner was the only one injured, he was also charged with assault and battery with intent to kill and larceny these were dropped as part of plea negotiations. Petitioner assisted law enforcement by providing details of the crimes, showing them the houses he entered, and even helping to recover property he removed from the homes.

As part of negotiations, Petitioner understood that he would be sentenced on fifteen of the sixteen burglaries, with one charge being dropped, and that these sentences would run concurrently. He further understood that he would receive the minimum sentence of

fifteen years and it would likely be suspended to a shorter term of years with a term of probation.

In the Petitioner's Application for Post-Conviction Relief, he alleges two main grounds:

1. Ineffective assistance of counsel and
2. Involuntary guilty plea.

The first witness at the post-conviction relief hearing was Petitioner, Donald Hamilton Hill, Jr., who began by going over his indictments and understanding of the charges. He testified that most of them were second degree burglary, particularly as the crimes were committed in during the daytime. He further testified he had broken into houses when he was a teenager in Wake County, North Carolina. He included that the dates mentioned during the plea hearing were not entirely accurate, making it sound as if there were three incidents when there were only two. (App. p.71, lines 17-25; p. 72, lines 1-24) Petitioner testified that he was a drug addict for over thirty years, and that this fact led his plea counsel to think he may be a candidate for drug court. (App. p. 73, lines 15-23) His attorney worked toward that and pursued plea negotiations. (App. p. 74, lines 5-25, p. 75, lines 1-25 and p.76, lines 1-2)

Specifically, regarding his plea, he stated he did not understand:

> Well, it was my understanding that what I was actually pleading guilty to – I didn't really understand. I didn't ever knew I was even indicted to begin with to first degree burglary on all counts. I was always under the impression that I had second degree burglary and larceny, and second degree burglary and larceny [sic], and I had these other ones, and I had assault and battery with intent to kill, and which I didn't understand at all but-- ...
> It was my understanding, you know, to the best of my recollection, is that I was going to plead guilty to a greater crime, which was first degree burglary, on all counts, that the prosecution was going to drop the larcenies and the

> ABWIK. And on top of that he was going to run all the sentences concurrently and that I would get no more than 15 years.

(App. p. 74, lines 23-25, p. 75, lines 1-5 and lines 19-25) He further testified that he was willing to go along with this because they were enhancing the burglary second degrees to first degrees, though he did not entirely understand what "enhanced" meant. (App. p. 76, lines 11-18) Also, based on this, he thought he was "giving the state something" to atone for his crimes, appease the victims, and appease the court. (App. p. 77, lines 1-5)

Further testimony was taken regarding Petitioner's crimes in North Carolina and their enhancements on this sentence. He testified that he believed his North Carolina charges should be considered one incident because he "didn't get like a combination like this time when I was sentenced." (App. p. 79, lines 20-25) He further testified that he understood the North Carolina crimes were classified not as housebreakings but as breaking and entering, and that his attorney stated at his plea that he "[didn't] know if their elements are the same as our burglary statutes." (App. p. 81, lines 9-10) Additionally, there was discussion about whether the time limit since these convictions mattered as there were six of them. (App. p. 81, lines 19-25 p. 82, lines 1-13) Ultimately, he testified that he did not believe his plea was freely, voluntarily, knowingly, and intelligently entered as he did not understand the totality of the circumstances he faced, particularly that his charges may not have been enhanceable to burglary first. (App. p. 83, lines 5-23) His goal, from conversations with his attorney and prior experience, was to say "yes, yes, yes" to accomplish the plea. (App. p. 91, line 23)

Iris Hill, Petitioner's mother, testified next, stating that she understood Petitioner was going to receive a sentence of fifteen years and serve five to eight. (App. p. 98, lines 22-24) She said she was familiar with pleas due to Petitioner's other pleas in North

Carolina. (App. p. 98, lines 20-22) Lastly, she testified that all of this was her understanding based on conversations with Petitioner. (App. p. 99, lines 10-13)

The last witness at the post-conviction relief hearing was Petitioner's plea counsel Lawrence Crane, Esquire. He initially stated that he was retained to explore the possibility of a plea, due to the amount he was paid. (App. p. 100, lines 13-25, p. 101, lines 1-6) He testified as to his typical process in representing clients such as Petitioner, which include filing a letter of representation, considering a preliminary hearing (though he came on too late in this case for one), filing a Rule 5 and Brady motion, receiving and reviewing discovery, providing the same to client, and beginning to evaluate the case and develop a defense strategy. (App. p. 101, lines 9-25, p. 102, lines 1-8)

Regarding the elements of burglary, he testified that, initially, the indictment did not meet the criteria of burglary first except possibly the one that involved the physical altercation. Otherwise, only the two or more prior convictions for burglary would enhance them. (App. p. 102, 18-25, p. 103, lines 1-11) He testified that he was aware of the North Carolina charges and had reviewed the information regarding them provided by the solicitor, but not go so far as to attempt to get records from North Carolina, especially since it had been over seventeen years. (App. p. 103, lines 18-25, p. 104, lines 1-11) Plea counsel was next questioned regarding his understanding of the Bryant[1] and Gordon[2] cases and how these opinions changed the case law on enhancements. Because the crimes were committed before the effective date of Bryant, which was September 14, 2009, Gordon would have been the prevailing case. (App. p. 106, lines 6-10) Plea counsel admitted that there may have been a defense to enhancement and he did not read Gordon, though he

[1] Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009).
[2] State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003).

attempted to research the topic. (App. p. 106, lines 17-25, p. 107, lines 1-8) He testified instead that he was pushing the solicitor for drug court, or to let Petitioner plead to burglary second on all charges, but the solicitor refused to accept that. (App. p. 107, lines 4-25, p. 108, lines 1-4) Plea counsel testified that he was pleased Judge Hayes was taking the plea due to his reputation for shorter sentences and was surprised when he ordered thirty years. (App. p. 109, lines 10-12 and p. 110, lines 4-12 and 21-24) He also filed a motion for reconsideration of sentence that was denied. (App. p. 110, lines 13-17)

At the conclusion of testimony, the parties agreed to leave the record open for thirty days in order for post-conviction relief counsel to attempt to recover and submit Petitioner's records from North Carolina. At the underlying guilty plea, Petitioner's North Carolina record was presented to the court as: three counts of breaking and entering and two counts of larceny from Wake County, North Carolina in 1984 and six counts of second degree burglary from Wake County, North Carolina in 1993. In a letter dated October 30, 2013, Mr. Thomas represented to the post-conviction relief court that Petitioner's six second degree burglary charges were disposed of pursuant to a single plea on August 11, 1993. The record from the post-conviction relief is silent as to whether plea counsel analyzed any of these convictions to determine if they met the criteria for enhancement in South Carolina. Post-conviction relief counsel was advised by Wake County that records regarding convictions are purged after ten years, so no detailed description of the nature of the convictions is available at this time.

Post-Conviction Relief Court's Findings

Involuntary Guilty Plea

The post-conviction relief court found that the record supported the idea that Petitioner entered his guilty plea knowingly and voluntarily. Specifically, it pointed to Petitioner's testimony that he knew he was pleading to first degree burglary on all counts and in exchange for the State dropping several of the charges. He also knew that the charges carried fifteen years to life and that he chose to plead guilty. The court further relied on the concept of overwhelming evidence to establish guilt, a concept which has lost much of its strength in recent years. See Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Ineffective Assistance of Counsel

In its order, the post-conviction relief court found that Petitioner's reliance on Gordon was misplaced, as Gordon considered whether "S.C. Code Ann. §§ 17-25-45 and 17-25-50 must be construed together when determining whether crimes committed at points close in time qualify for a recidivist sentence." (App. p. 179) "Because [Petitioner] was not sentenced under S.C. Code Ann. § 17-25-45, Gordon is not applicable in the context of this case." Id. Because the sentence was within the range allowed for burglary, first degree under the burglary statute, there was no need to consider a recidivist statute and plea counsel could not be deficient for failing to argue inapplicable law.

ARGUMENT

I. Did the post-conviction relief court err in denying relief to Petitioner on the ground of involuntary guilty plea when the trial court incorrectly advised Petitioner of his potential for parole?

II. Did the post-conviction relief court err in denying relief to Petitioner on the ground of ineffective assistance of counsel when plea counsel failed to argue relevant case law that may have prevented Petitioner's charges from being enhanced?

Standard of Review and Applicable Law

For post-conviction relief cases

In post-conviction relief actions, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2051 (1984); Butler, 286 S.C. at 442. The proper measure of performance is whether the attorney provide representation within the range of competence required in criminal cases. The court presume the counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Counsel's assistance is considered constitutionally ineffective when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 687-88.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Franklin v. Catoe, 346 S.C. 563, 570, 552, S.E.2d 718,

722 (2001). First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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, 286 S.E.2d at 625.

For post-conviction relief appeals

The standard of review in post-conviction relief cases is entirely dependent on the specific issues raised. Smalls v. State, 422 at 180, 810 S.E.2d at 839. During review of factual findings made by the post-conviction relief court, the appellate court will defer to the findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Alternately, when reviewing a question of law, an appellate court will consider the matter *de novo* and is not required to defer to the post-conviction relief court's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

The post-conviction relief court erred in denying relief to Petitioner on the ground of involuntary guilty plea when the trial court incorrectly advised Petitioner of his potential for parole.

The post-conviction relief court's finding that Petitioner's plea was entered knowingly and voluntarily upon sound advice from counsel made must be reversed. The order denying relief recited the general case law regarding involuntary guilty pleas and reviewed the testimony provided at the post-conviction relief hearing. In doing so, it reviewed the fact that Petitioner had some knowledge of the charges to which he pled, but it does not directly address whether he understood the parole consequences of the same.

For example, Petitioner knew he was pleading guilty to first degree burglary on all counts and that several charges were being dropped as part of the plea deal. (App. p. 75, lines 19-25) Additionally, Petitioner admitted that he committed these crimes and saying what he needed to in order to accomplish the guilty plea. (App. p.92, lines 10-23) However, the post-conviction relief court also found that "his right to a trial and his willingness to forgo the trial ... clearly establishes that his decision to plead guilty was knowingly and voluntarily made with knowledge of the consequences." (App. p. 180) This is not upheld by the record, particularly as the only discussion of parole eligibility provided at the guilty plea is by the trial court and is incorrect.

The first definitive statement this court made about such a situation was in Brown v. State, 306 S.C. 381, 383, 412 S.E.2d 399, 401 (1991):

> We think that when a trial judge misinforms a defendant that he is eligible for parole when in fact he is ineligible for parole, his plea does not represent "a voluntary and intelligent choice among alternative courses of action" available to him. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970). We hold that petitioner's guilty plea was not knowingly and voluntarily made because the trial judge misinformed him that he would be eligible for parole when he is ineligible for parole.

Certainly, this is directly applicable to the case at bar, and appears to be a definitive statement on the law; however, this court has modified its stance on the issue, though not with unanimity.

In 1994, this court issued its opinion in Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994), holding that, though Brown, supra could be read to mandate the reversal of a guilty plea if the defendant were misinformed by the plea court regarding parole eligibility, this is not a correct interpretation. Rather, this court stated, [w]e still believe that erroneous parole advice from the bench could, on certain facts, mislead a defendant to his detriment;

however, it would be wholly impractical to maintain a rule which requires the automatic reversal of a guilty plea without something more." Hunter, 316 S.C. at 109, 447 S.E.2d at 205. Justice Finney dissented by writing, in pertinent part:

> The general rule is that while there is no obligation to inform a guilty plea defendant of the collateral consequences of his plea, once one undertakes to give such advice, and that advice is basis for the defendant's decision to plead guilty, it must be correct. *e.g.*, Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989). Brown represents an unwarranted deviation from this rule in that it holds misadvice from the trial judge at a plea proceeding automatically invalidates the plea, without regard to whether that misadvice or misstatement in any way influenced the defendant's decision to plead. In my opinion, Brown should be overruled, and the denial of petitioner's successive PCR application affirmed.

Id., 316 S.C. at 110, 447 S.E.2d at 206. In other words, trial court judges should be held to a slightly higher standard than attorneys involved in guilty pleas, who are deemed *per se* deficient for providing incorrect advice on collateral consequences, per Hinson.

This sentiment was echoed in a dissent by Justice Pleicones in Frasier v. State, 351 S.C. 385, 570 S.E.2d 172 (2002) as the majority again held and emphasized that reversal of a guilty plea due to misadvice from the bench must include "something more:"

> I respectfully dissent. Trial counsel acknowledged that while she generally did not discuss parole eligibility with her clients, she had discussed it with petitioner. Although she could not recall the exact conversation, her testimony supports petitioner's contention that parole was an issue in his decision to plead guilty. In my opinion, this undisputed fact is the "something more" that, coupled with the trial judge's misadvice concerning parole eligibility at the plea, entitles petitioner to post-conviction relief. Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994), subsequent history omitted.

Id., 351 S.C. at 391, 570 S.E.2d at 175-6. As stated in the majority opinion, the defendant failed to provide "something more," in part because he conversed with his trial attorney about parole eligibility. In the case at bar, it is unclear whether Petitioner and plea counsel ever discussed parole eligibility; it is, however, clear that Petitioner was very concerned

about the amount of prison time he may serve. This is reflected repeatedly in the plea transcript, as well as in the post-conviction relief hearing transcript. It is time for this court to review and define exactly what is necessary to prove "something more" when a defendant receives inaccurate information from a plea judge. This court must exercise its discretion in reviewing errors of law *de novo*, grant Petitioner's request for a writ of certiorari, and overturn the post-conviction relief court's ruling.

Though the plea court's misinformation is reason enough to overturn this guilty plea, Petitioner's lack of understanding regarding the details of his plea is another entirely. It is a basic principle of guilty pleas that, to find a plea was entered knowingly and voluntarily, the record must establish the defendant had a full understanding of the consequences of his plea and the charges brought against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969).

As outlined in the statement of facts above, Petitioner clearly did not understand the plea he was entering. Though he was able to verbalize some elements, like that he was pleading to first degree burglary, he was not entirely sure why. (App. p. 74, lines 23-25 p. 75, lines 1-5 and p. 75, lines 19-25) Both he and trial counsel were surprised by the thirty year sentence Petitioner received, especially as it was so drastically different from what was discussed and expected. (App. p. 109, lines 10-12 and p. 110, lines 4-12 and lines 21-24) Petitioner's confusion upon entering the plea and surprise upon receiving the sentence show that this plea could not possibly have been knowingly and voluntarily entered. Therefore, this court must exercise its discretion in reviewing errors of law *de novo*, grant Petitioner's request for a writ of certiorari, and overturn the post-conviction relief court's ruling.

The post-conviction relief court erred in denying relief to Petitioner on the ground of ineffective assistance of counsel when plea counsel failed to argue relevant case law that may have prevented Petitioner's charges from being enhanced.

The post-conviction relief court's finding that Gordon was inapplicable to this matter is an error of law that must be overturned. Though it has since been overruled by Bryant, Gordon was the applicable case law at the time Petitioner's crimes in Spartanburg County occurred.[3] The order denying relief holds that Gordon is not applicable merely because Petitioner was not sentenced to mandatory life without parole pursuant to the recidivist statute (S.C. Code Ann. § 17-25-45). This is not correct, as Gordon contemplates the nature and purpose of the recidivist statute in and of itself, as well as when read with another statute.

Most importantly, Gordon considers the meaning of "continuous course of conduct." Primarily, this court held, "[w]e find the recidivist statute is aimed at career criminals, those who have been previously sentenced and then commit another crime, not at those whose recidivist status is premised solely upon acts which occur at times so closely connected in point of time that they may be considered as one offense." Gordon, 356 S.C. at 154. The North Carolina crimes that were used to enhance Petitioner's charges to first degree burglary were of the same nature, occurred within a time span of ten days, and he received one sentence disposing of all of them. He was in no criminal or legal trouble for the intervening seventeen years between those crimes and the ones *sub judice*.

A very strong and credible argument can be made that the North Carolina crimes are one offense for which Petitioner received one punishment. Not only is this common-

[3] Bryant overruled Gordon when it was issued on September 14, 2009 – between when Petitioner was indicted and convicted.

sensical, but it is strongly supported by South Carolina's statute regarding closely connected offenses on which the Gordon court based its ruling. It cited a portion of the dissent in Benjamin[4], including

> The purpose of requiring separate offenses is to ensure that those offenders being sentenced under the harsh provisions of a recidivist sentencing statute have not been classified as habitual offenders because of multiple convictions arising from a single criminal enterprise; it provides the state with some certainty that the offender has participated in multiple criminal trials and, despite these opportunities to understand the gravity of his behavior and abide by the law, has continued to engage in criminal conduct.

Gordon, 356 S.C. at 154. Petitioner cannot be viewed as an offender who has been through multiple proceedings or lived a life of crime and been undeterred. Rather, he is a severe drug addict who turned to crime – property crimes in which only he was injured – to support his habit. Whether considering his crimes in the early 1990s in North Carolina or the 2000s in Spartanburg County, these are clearly isolated incidents when he was as down as he could possibly be. Based on this, he clearly lacks the two prior convictions required by the burglary statute (S.C. Code Ann. § 16-11-311) to enhance the second degree burglaries to first degree. Unfortunately, plea counsel did not or was not able to determine the nature of these crimes based as he failed to consult Wake County, North Carolina regarding the availability of any records of these crimes to determine their nature. At this time, we have no way of knowing how these crimes would have been classified if they had occurred in South Carolina. Though they were burglaries in North Carolina, they may have been more like breaking and entering in South Carolina.

There is consideration in the record that some of the indictments may have rightfully been burglary first degree under the statute. Regardless, this does not work to

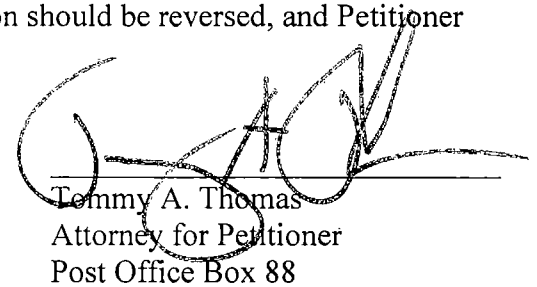
[4] State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003).

enhance the other offenses, as the pursuant to S.C. Code Ann. § 16-11-311 and the above-considered case law, the perpetrator must have "two or more **convictions** for burglary or housebreaking" (emphasis added) to be enhanced. Because he only has the one incident from North Carolina, he is lacking the second conviction for his second degree burglaries to be enhanced. Had plea counsel known this and been familiar with the case law, he would have had better ammunition in plea bargaining. By making a strong argument that the North Carolina charges are one offense, he may have been able to bargain down the first degree indictment to get a more favorable sentence for Petitioner.

Plea counsel's lack of knowledge and preparation can clearly be viewed as deficient performance, with this performance quite obviously prejudicing Petitioner. Certainly, "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, 286 S.E.2d at 625. Petitioner stood to receive far less time – a sentence more in line with the fifteen years he anticipated, or even drug court. This court must exercise its discretion in reviewing errors of law *de novo*, grant Petitioner's request for a writ of certiorari, and overturn the post-conviction relief court's ruling.

CONCLUSION

The post-conviction relief court's decision should be reversed, and Petitioner should be granted a new trial.



Tommy A. Thomas
Attorney for Petitioner
Post Office Box 88
Irmo, South Carolina 29063
(803) 732-5507

November 25, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
NOV 26 2019
S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

Case No.: 2019-001641

Donald Hamilton Hill, Jr.,..... Petitioner,

vs.

The State of South Carolina.....Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Petitioner, hereby certify that I placed in the United States Mail, a copy of a Petition for Writ of Certiorari and Appendix with postage prepaid and the return address clearly shown on said envelope to Johnny Ellis James, Jr., Esq. at:

Office of the Attorney General
Attention: Johnny Ellis James, Jr., Esq.
P.O. Box 11549
Columbia, SC 29211-1549

Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
November 25, 2019