

State of South Carolina  
In the Supreme Court

Maurice A. McCreary  
Petitioner

v.

State of South Carolina  
Respondent

Pro Se Brief in  
Support of Arguments

Petitioner hereby submits this Pro-Se brief to the  
Court as a written memorandum.

**RECEIVED**  
JAN 17 2020  
S.C. SUPREME COURT

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JAN 17 2020

S.C. SUPREME COURT

Petitioner argues trial  
counsel rendering ineffective assistance  
of counsel by erroneous advice.

Petitioner testified at Evidentiary hearing that he was coerced by plea counsel's erroneous advice that he would not receive more than thirty years imprisonment if he pled guilty because the solicitor would not recommend a sentence over thirty years imprisonment during the guilty plea hearing. (App. 94, L. 17-95, 1.5; App. 113, L. 23-25.) "The voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone; but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." (Holden v. State 713 S.E 2d 611)

Petitioner testified that as we went into plea hearing he thought the maximum sentence he would receive was thirty years imprisonment, had petitioner known his potential sentencing exposure was

155 years imprisonment he would have proceeded to trial. (App. 102, L. 1-103, L. 6.) Therefore, plea counsel provided ineffective assistance and that ineffective assistance prejudiced.

"Absent an actual plea of guilty, a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining, enforcement of an agreement not to prosecute is subject to two conditions:

(1) the agent must be authorized to make the promise and (2) the defendant must rely to his detriment on the promise; even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a prosecutorial promise in plea bargaining may make a plea agreement binding." (Custodio v. State 644 S.E.

2d 36); "Santobello stands for the proposition that when an accused pleads guilty upon a promise of a prosecutor, the agreement must be fulfilled) Sprouse v. State 588 S.E. 2d 278.

Petitioner argues that his plea was involuntary and unintelligent due to counsel erroneous advice to plea guilty.

"The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant" (Hill v. Lockhart 106 S. Ct. 366), "A holding limited to affirmative misadvice would invite two absurd results, first it would give counsel an incentive to remain silent on matters of great importance, even when answers are readily available. Silence under the circumstances would be fundamentally at odds with the critical obligations of counsel to advise the client of "the advantages & disadvantages of a plea agreement". Padilla v. Kentucky 130 S. Ct. 1473 )"

In the instant case, petitioner's guilty plea was induced by plea counsel's erroneous sentencing advice. App. 94, 1.17-95, L.5. Due to assurances from plea counsel, Petitioner believed that the solicitor would stand silent at the guilty plea and his maximum sentencing exposure would be thirty years imprisonment Id: App 113, 11. 23-25.

petitioner submits sentencing sheet showing that the plea agreement was to be without negotiations or Recommendations. (See attached) Accordingly, plea counsels ineffective assistance prejudiced petitioner because he would not have pled guilty but for plea counsels erroneous sentencing assurances. App. 102, 11 1-8.

Petitioner argues that he took trial counsel advice to plea guilty because his plea would be no longer than 30 years and there would be no recommendation by the state. But at plea hearing, made a recommendation which exposed petitioner to 155 years which was against petitioners plea agreement. Petitioner eventually was sentenced to 35 years.

Thus, trial counsel was ineffective for erroneously advising him to plead guilty. Petitioner's case should be reversed and remanded for a new plea hearing according to the agreement.

Jan 14th, 2020  
DATE

S/ M. M. S.

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Maurice Antwon McCreary

AKA:
Race: BLACK Sex: M Age: 24
DOB: 12-25-1989 SS#: 248-89-1656
Address: 1001 Woodale Circle
City, State, Zip: Columbia, SC 29203-3824
DL#: 101149615 SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4005997
A/W#: M985586
Date of Offense: 12/16/2011
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: GOLDBERG, DAN SC Bar# 72620 Defendant
Attorney for Defendant SC Bar# 75392

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, % to County (if paid in installments) \$, TOTAL \$

PTUP days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: CERTIFIED TRUE COPY

OF ORIGINAL FILED

ROCK HILL COUNTY

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Jeanette W. McCreary

Court Reporter: Ambrosia

Presiding Judge: Pe Howard

Judge Code: 2164

Sentence Date: Jan 6, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Maurice Antwon McCreary
AKA:
Race: BLACK Sex: M Age: 24
DOB: 12-25-1989 SS#: 248-89-1656
Address: 1001 Woodale Circle
City, State, Zip: Columbia, SC 29203-3824
DL#: 101149615 SID#:

INDICTMENT/CASE#: 2012GS4005998
A/W#: M985587
Date of Offense: 12/16/2011
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: GOLDBERG, DAN SC Bar# 72620 Defendant
Attorney for Defendant SC Bar# 75392

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees.

CERTIFIED TRUE COPY OF ORIGINAL FILED
RICHLAND COUNTY SOUTH CAROLINA

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Jeannette W. McBride
Court Reporter: Ambrozic
SCCA/217 (03/2011)

Presiding Judge: Re Hood
Judge Code: 2164
Sentence Date: JAN 6, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2012GS4006000

AKA: Maurice Antwon McCreary

A/W#: M985588

Race: BLACK Sex: M Age: 24

Date of Offense: 12/16/2011

DOB: 12-25-1989 SS#: 248-89-1656

S.C. Code §: 16-03-0029

Address: 1001 Woodale Circle

CDR Code #: 3410

City, State, Zip: Columbia, SC 29203-3824

DL#: 101149615 SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation Negotiated Sentence Recommendation by the State.

ATTEST: GOLDBERG, DAN SC Bar# 72620 Defendant Attorney for Defendant SC Bar# 75392

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Surcharges, and Fees.

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other: IDENTIFIED TRUE COPY ORIGINAL FILED, JAN 6 2014, RICHLAND COUNTY SOUTH CAROLINA

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Jeannette W. McBride Court Reporter: Ambushak

Presiding Judge Judge Code: 2164 Sentence Date: Jan 6, 2014

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland )  
STATE VS. )

INDICTMENT/CASE#: 2012GS4006001 ✓

Maurice Antwon McCreary )

A/W#: M985589

AKA: \_\_\_\_\_ )

Date of Offense: 12/16/2011

Race: BLACK Sex: M Age: 24 )

S.C. Code § : 47-03-0620

DOB: 12-25-1989 SS#: 248-89-1656 )

CDR Code #: 3330

Address: 1001 Woodale Circle )

City, State, Zip: Columbia, SC 29203-3824 )

DL#: 101149615 SID#: \_\_\_\_\_ )

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Unlawful Killing of a Police Dog

in violation of § 47-03-0620 of the S.C. Code of Laws, bearing CDR Code # 3330

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations for Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 72620 [Signature] 75392  
GOLDBERG, DAN SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 2012GS 40 5997, 5998, 6000, 6003, 6004

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_ Fine may be pd. in equal, consecutive, weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund.

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ Other: \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Presiding Judge [Signature]

Judge Code: 2164

Sentence Date: Jan 6, 2014

Clerk of Court/ Deputy Clerk Jeanette W. U. Brider

Court Reporter: [Signature]

VERIFIED TRUE COPY OF ORIGINAL FILED, [Signature] C.C.C.P.E.G.S. RICHLAND COUNTY SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS. Maurice Antwon McCreary
AKA:
Race: BLACK Sex: M Age: 24
DOB: 12-25-1989 SS#: 248-89-1656
Address: 1001 Woodale Circle
City, State, Zip: Columbia, SC 29203-3824
DL#: 101149615 SID#:

INDICTMENT/CASE#: 2012GS4006004
A/W#: M985639
Date of Offense: 12/16/2011
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS/CSC §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: GOLDBERG, DAN SC Bar# 72620 Defendant
Attorney for Defendant SC Bar# 75392

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

CERTIFIED TRUE COPY OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY SOUTH CAROLINA

Table with 3 columns: Description, Amount, Total. Rows include assessments like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL

PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Jeannette W. McBride
Court Reporter: Amberlat
SCCA/217 (03/2011)

Presiding Judge Re Howard
Judge Code: 2164
Sentence Date: Jan 6, 2014

Maurice McCreary #345340  
4460 Broad River Rd.  
Columbia, S.C. 29210

B.R.C.I  
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**RECEIVED**

JAN 13 2020

BRCI  
MAILROOM

SCDC  
Christmas  
Packet

Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, S.C. 29211

