STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHARLESTON COUNTY
J.C. Nicholson, Jr., Plea Judge
G. Thomas Cooper, Jr., Post-Conviction Relief Judge

Appellate Case No. 2019-000396

HAROLD JONES. JR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

Did the PCR court err in denying Petitioner's application for relief where his plea counsel failed to convey a twenty-three-year plea offer to the charge of voluntary manslaughter which was made by the state and Petitioner testified that had he known of the offer he would have accepted it?

Respondent's Counterstatement of Issue on Certiorari

Did the post-conviction relief court properly determine Petitioner failed to establish any constitutional depravations entitling him to relief based on a uncommunicated conditional plea offer where probative evidence established the plea offer was conditioned on a finding of competency prior to the entry of the plea and acceptance within a defined period, neither of which would have been met before the plea offer was rescinded by the prosecution due to Petitioner's actions?

STATEMENT OF THE CASE

Procedural History

Petitioner Harold Lee Jones Jr. is presently confined in the South Carolina Department of Corrections following his guilty pleas in Charleston County Clerk of Court. During its August 2013 term of court, the Charleston County Grand Jury indicted Petitioner for murder (2013-GS-10-04470) and possession of a weapon during the commission of a violent crime (2013-GS-10-04469) following the fatal shooting and stabbing of Petitioner's great-uncle. Assistant Public Defender John K. Kozelski, III, of the Charleston County Public Defender's Office, represented Petitioner. The case was prosecuted by Deputy Solicitor Bruce DuRant of the Ninth Circuit Solicitor's Office.

On May 12, 2015, Petitioner appeared before the Honorable J.C. Nicholson, Jr., circuit court judge, for trial. Deputy Solicitor DuRant represented the State and Petitioner was represented by Kozelski and Ninth Circuit Public Defender Ashley Pennington. After jury selection, the trial court heard pre-trial motions, including Petitioner's motion to enforce a withdrawn plea offer for twenty-two-and-a-half-years that had previously been extended based on Kozelski's ineffectiveness. As part of this motion, Petitioner asserted counsel Kozelski had been ineffective in advising him not to enter a plea for a negotiated twenty-two-and-a-half-year sentence to allow time to have him evaluated. Petitioner presented Dr. Susan Knight, admitted as an expert in forensic psychology, who testified she was originally contacted by Petitioner's previous attorney to conduct an evaluation for mitigation purposes. She opined Petitioner was competent to stand trial and stated Petitioner was malingering during evaluations and had been uncooperative during her attempts to evaluate him. Kozelski then addressed the trial court and stated he never had concerns at Petitioner's competency and only requested an evaluation to

appease Petitioner's family the morning of the scheduled plea. Kozelski acknowledged Petitioner was hesitant to accept the twenty-two-and-a-half-year plea offer from the State but ultimately signed the sentencing sheet with an understanding he would plead guilty in exchange for the twenty-two-and-a-half-year sentence. Counsel informed the court his client had been found competent and malingering, as well as had delayed evaluations previously. Deputy Solicitor DuRant also addressed the trial court, stating he made it very clear to Kozelski that any offer would be revoked if not accepted that day and that Kozelski told him he did not think competency was an issue. DuRant also informed the Court he received an email from Kozelski indicated he doubted the plea would go forward as scheduled because Petitioner did not want to accept an offer for more than twenty-years imprisonment. Kozelski acknowledged DuRant informed him that additional evidence was forthcoming and the plea offers would not be as favorable in the future. Kozelski informed the court that the State then extended an offer for twenty-three-years on February 17, 2015, which he did not present to his client because competency had not been established. Kozelski reaffirmed that his client was competent to stand trial and had been deemed malingering after delaying attempts to be evaluated. The Court took the motion under advisement and adjourned for the day.

The following day, May 13, 2015, Petitioner again appeared before Judge Nicholson, who denied the motion to enforce the twenty-two-and-a-half-year offer, finding:

> All right. As far as the Lafler issue, before we get to the plea, I'm going to put on the record that I'm going to deny that motion, and the reason I'm going to deny that motion is it's this Court's opinion this case is distinguishable from Lafler in that Lafler the attorney's ineffective assistance of counsel that was so egregious that the Supreme Court felt like the only remedy in that situation was to order the State to put the original agreement for plea and time back on the table to be accepted by the defendant.
>
> In this particular case, I find no evidence whatsoever of any ineffective assistance of counsel on behalf of the public defender's office by any attorneys; therefore,

the Court is of the opinion that Lafler does not apply, and I deny that motion.

(May 13, 2015 Tr. p. 4). Following the denial of the motion, Petitioner entered into a plea agreement with the State to plead guilty to the lesser-included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime for a term of thirty-years' imprisonment for voluntary manslaughter and a consecutive five years' imprisonment for possession of a firearm during the commission of a violent crime. As part of his plea agreement with the State, Petitioner expressly waived his right to challenge his guilty plea or sentences through post-conviction relief. (Ct's Ex. No. 8). Judge Nicholson questioned Petitioner regarding this waiver at the guilty plea hearing and determined the waiver was knowingly, freely, and voluntarily made. Judge Nicholson accepted Petitioner's plea and sentenced Petitioner according to the terms of the negotiated plea agreement to an aggregate thirty-five-years' imprisonment.

On June 9, 2015, all parties appeared for a subsequent hearing before Judge Nicholson, where the weapons plea was vacated and Petitioner waived presentment to the grand jury to possession of a stolen handgun. Judge Nicholson sentenced Petitioner to a consecutive five years' imprisonment pursuant to the plea agreement. Petitioner did not pursue a direct appeal.

On November 25, 2015, Petitioner filed an application for post-conviction relief, alleging counsel was ineffective for failing to advise him of a ten year plea offer.[1] This original application only challenged his voluntary manslaughter conviction. The State served its return on May 9, 2016. Thereafter, on July 25, 2017, Petitioner, through counsel Rodney D. Davis, filed an amended application to include his weapons conviction. On November 3, 2017, Respondent

[1] Nothing in the record, including testimony and exhibits presented at the evidentiary hearing, supports that the State ever extended a ten year plea offer to Petitioner. Petitioner seemingly acknowledges this, as he did not go forward on this ground at the hearing, but rather, asserted that counsel failed to convey a twenty-three-year offer made by the State.

served an amended return and partial motion to dismiss all allegations beyond whether counsel was ineffective in advising him to enter into the plea agreement waiving his right to post-conviction relief pursuant to his plea agreement and waiver.

A hearing on Respondent's partial motion to dismiss was held on December 5, 2017, at the Charleston County Courthouse before the Honorable Michael G. Nettles, circuit court judge. Following the hearing, Judge Nettles denied Respondent's motion to dismiss and granted Petitioner a full evidentiary hearing. An order to this effect was filed on March 6, 2018.

Thereafter, an evidentiary hearing was held on July 24, 2018, at the Charleston County Courthouse before the Honorable Deadra L. Jefferson, circuit court judge. Following testimony from Petitioner and his plea counsel, Petitioner elected to withdraw his application with prejudice after a colloquy with Judge Jefferson. An order withdrawing the application with prejudice was filed on July 25, 2018.

On August 3, 2018, Petitioner filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, seeking to rescind his withdraw of his application. Respondent consented to the requested relief. Judge Jefferson granted his motion and vacated her order of dismissal by written order filed October 1, 2018.

An evidentiary hearing was held on December 4, 2018, before the Honorable G. Thomas Cooper, Jr., circuit court judge, at the Charleston County Courthouse. At the hearing, Petitioner proceeded forward on the sole allegation that plea counsel was ineffective for failing to convey a twenty-three-year plea offer from the State and asked for specific performance of this plea offer as relief. Testimony was taken from plea counsel Kozelski, Petitioner, and Deputy Solicitor DuRant. Additionally, the exhibits for the plea court's May 12, 2015, hearing were jointly moved into evidence and were referenced at the hearing by the exhibit number used at the May 12,

2015, hearing. Following the hearing, the court took the matter under advisement and requested proposed orders from both parties. Thereafter, the court signed an order denying relief, finding Petitioner had not met his burden of proof because he failed to establish the twenty-three-year plea offer would have been timely accepted without being cancelled by the prosecution or rejected by the plea court. This order was filed on February 27, 2019. Petitioner filed a timely notice of appeal on March 7, 2019.

Statement of Facts as Presented at the Plea Proceeding

At the May 13, 2015, pleas proceeding, Deputy Solicitor placed the following factual summary on the record:

> The victim in this case, who was James Butler, he was a 67-year-old-gentleman and Mr. Jones' great-uncle. They lived together at 611 Brandon Road, lot number one, which is part of the Burbage mobile home park.
>
> There is some evidence that Mr. Jones had, shortly before this incident, been put out of the house. Mr. Butler's body was found on April the 5th, 2013, about 12:00 in the morning. He suffered from some superficial stab wounds to the back, a gunshot wound to the left temple, and what appeared to be a shotgun wound to the back of his head.
>
> Mr. Jones was pretty quickly developed as a suspect because several people had seen him driving around in a gray Chevrolet pickup truck, which was Mr. Butler's company truck, and they had seen him driving around in this truck on Thursday, the day before Mr. Butler's body was found, but this was odd because Mr. Butler never allowed anybody to drive his company truck. And Harold had never been seen driving that truck, but had been seen driving by a couple of people, so he became a suspect.
>
> The same date that Mr. Butler's body was found, April the 5th, about 5:00 that afternoon, they received a tip that Mr. [Jones] was at a barbershop in Hollywood, South Carolina, so the detectives from the sheriff's office went to that location and found Mr. Jones in the barbershop, getting his haircut.
>
> They asked him his name and date of birth. He provided them false information. They had a DMV photo e-mailed to him, found out it was, in fact, Harold Jones and took him into custody at that point. When he was being searched to subsequent his arrest, they located a .32 caliber revolver in his pocket.

He was wearing some blue overalls, and underneath the blue overalls were some jeans that were bleach stained and apparently had bloodstains on them as well.

In addition to the pistol, he also had a pocket watch on him that belonged to the deceased, Mr. Butler. He had the keys to Mr. Butler's personal vehicle, a Mercury Sable, and almost $800 in cash, which we believe came from Mr. Butler as well because his daughter had just given him $900 to pay his bills with.

He was arrested on that, arrested at that time for murder. The bullet removed from the victim's head at the autopsy along with the pistol that were retrieved from Mr. Jones was sent to the GBI lab in Atlanta, Georgia for reasons I explained to Court yesterday.

Yesterday, it turned out that the .32 caliber revolver was the murder weapon, at least the weapon used to shoot Mr. Butler in the temple. It also had the jeans he was wearing with maybe six cuttings from six different locations on the jeans. There was DNA matched to the victim on all six locations on the jeans he was wearing.

In addition, there was fingerprints. His fingerprints were found inside the truck on the rear-view mirror and the passenger door to the truck. The truck had obviously been used to move the victim's body from 611 Brandon Road where the murder occurred, or the killing occurred, across the highway to 6021 River Run Extension, where the body was dumped out behind an abandoned mobile home there.

Mr. Jones did provide the initial statement and admitted having shot Mr. Butler based on an altercation had he been involved in, and that's all we would have.

(App. 158-160). Petitioner agreed with these facts and told the plea court he did not disagree with any of them. (App. 161).

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly determined Petitioner failed to establish any constitutional depravations entitling him to relief based on a uncommunicated conditional plea offer where probative evidence established the plea offer was conditioned on a finding of competency prior to the entry of the plea and acceptance within a defined period, neither of which would have been met before the plea offer was rescinded by the prosecution due to Petitioner's actions.

On appeal, Petitioner argues the post-conviction relief court erred in denying him relief because plea counsel was deficient in his handling of a twenty-three-year plea offer and that this deficiency resulted in him entering a negotiated guilty plea for significantly more time. Petitioner argues this establishes that counsel was constitutionally ineffective and this ineffectiveness warrants remanding the matter back to the court of general sessions for resentencing. However, the post-conviction relief court properly rejected this argument, finding Petitioner failed to establish that the uncommunicated plea offer—conditioned on entry within the week after a finding of competency after assurances from counsel that such could be accomplished—would have been accepted prior to being cancelled by the prosecution for failing to meet the conditions of the plea offer or would have been accepted by a plea court prior to expiration. These findings are not controlled by an error of law and are supported by probative evidence in the record. This Court should deny certiorari.

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Petitioner must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (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. 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. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

"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. Frye, 566 U.S. 134, 145 (2012). When alleging plea counsel was ineffective 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 Frye, 566 U.S. at 147); 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"). An applicant must establish not just that a favorable plea offer was not communicated, but also that "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it." Id.

In the present case, the uncontroverted testimony establishes a twenty-three-year plea offer was extended by the State and counsel did not convey this offer to Petitioner. However, the events before and after the extension of this offer and the terms of the offer itself that were in dispute before the post-conviction relief court, particularly whether the offer had certain conditions for acceptance and whether it would have been accepted by the plea court before it expired or the prosecution rescinded it. Based on the evidence presented at the evidentiary hearing, the post-conviction relief court properly determined Petitioner failed to meet his requisite burden of proof because he could not establish the conditional offer would have been accepted before being rescinded by the prosecution. There is probative evidence to support these findings.

At the evidentiary hearing, Kozelski reluctantly acknowledged the plea offer had two conditions for acceptance—a finding of competency and acceptance by the following Tuesday. (App. 368-69). Kozelski also testified he did not have any reason to doubt Petitioner's competency and believed he could quickly secure a letter of competency from the same doctor who had performed a mitigation evaluation. (App. 353-55). Deputy Solicitor DuRant similarly testified that he unequivocally informed Kozelski that the twenty-three-year plea offer was conditioned on Kozelski providing an opinion that Petitioner was competent and acceptance by the end of the week. (App. 388). Deputy Solicitor DuRant testified he did not believe that there were any competency concerns with Petitioner and this was a negotiation tactic to delay and secure a more favorable plea offer. (App. 387). This testimony clearly establishes the plea offer was conditional and neither condition was met before the offer was revoked by the prosecution.

The emails between Deputy Solicitor DuRant and Kozelski, which again reference both conditions of the plea offer, are also probative evidence to support the post-conviction court's findings. See App. 430 ("John, If Dr. Knight is of the opinion that Mr. Jones is competent to stand trial I would appreciate you providing at least a letter to that effect so this will not be an issue in the future. Also, I have been thinking about this over the weekend and just see no reason why Mr. Jones should receive the benefit of the same offer he turned down last week. I really don't care if it is his fault, his families' fault or your fault. That is the whole point of making plea offers and setting time limits. Not much sense in doing it if you make an offer, the defendant doesn't accept and then you go back and give him the same offer. At this point I will allow your client to plead to Voluntary Manslaughter and the Weapons charge for a negotiated sentence of 23 years. If we are going to do this it will need to be done next Tuesday at the status conference, assuming that Judge Harrington has a court reporter available. Let me know what your client

wants to do. I will need to know something by the end of this week so I can arrange to get the victim's family here again. Thanks."). Kozelski also testified he did not believe any plea court would have accepted the plea without a finding of competency, although he stated repeatedly both during the general sessions proceedings and at the evidentiary hearing that he personally had no concerns about Petitioner's competency. He also acknowledged Petitioner was at least partially responsible for the delay in evaluation due to his lack of cooperation and malingering. See App. 433-43. Kozelski acknowledged that the report indicated Petitioner was malingering. See App. 440. ("Mr. Jones' scores on the M-FAST suggest a high probability that he was feigning or exaggerating symptoms of mental illness, including extreme symptomatology, rare combinations of symptoms, and unusual hallucinations."). There is abundant evidence of probative value to support the post-conviction relief court's findings.

Moreover, these findings are not controlled by an error of law. For relief to be granted, an applicant has to show not only that there was a more favorable plea offer that was not conveyed and he or she would have accepted it, but also must establish that the prosecution would not have cancelled the offer and the court would have accepted it. Collins, 422 S.C. at 262, 810 S.E.2d at 877 (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."). Here, Petitioner could not establish the uncommunicated plea offer would have been accepted without the prosecution cancelling it or being rejected by the plea court. Deputy Solicitor Bruce DuRant explicitly testified that the

twenty-three-year offer was rescinded when Kozelski had not presented him with a competency finding by the clearly delineated time limit. Despite Petitioner's protestations otherwise, the post-conviction relief court clearly found this testimony, along with the emails that support it, to be credible and controlling on the case.

Despite clear evidence and case law supporting the post-conviction relief court's findings, Petitioner asserts the court erred in denying him relief simply because the twenty-three-year offer was not communicated and was more favorable than the plea he ultimately entered. However, that is contrary to case law that makes it clear an applicant must also establish the offer would not have been rescinded by the prosecution and would have been accepted by the court. Collins, 422 S.C. at 262, 810 S.E.2d at 877.

Petitioner also wrongly asserts that this is a situation where he was wrongly penalized for wanting a competency evaluation prior to the entry of his plea. That again is not the situation before the Court. Evidence establishes Petitioner was uncooperative in attempts to be evaluated and ultimately was deemed to be malingering, all which led to significant delays in the resolution of his case. The prosecution repeatedly informed Petitioner and his counsel that the various plea offers (including the twenty-three-year plea offer) were conditional and had expiration dates, and that the offers would likely increase as the case progressed as more and more inculpatory evidence was discovered. There is nothing improper about the prosecution placing conditions on plea offers and rescinding the offers when these conditions are not met. See Collins, 422 S.C. at 261, 810 S.E.2d at 877 ("[T]the decision whether to revive the expired plea offer rested exclusively with the solicitor."); State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating "[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a

plea bargain"); see also Weatherford v. Bursey, 429 U.S. 545, 561 (1977) (finding "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial"). The prosecutor acted within his discretion in setting conditions for Petitioner's plea and rescinding the offer when those conditions were not met.

Ultimately, the post-conviction relief court found Petitioner was unable to establish the twenty-three-year plea offer would have been accepted prior to cancellation by the prosecution or acceptance by the plea court. These findings are supported by probative evidence and not controlled by an error of law. This Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional depravations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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By: [signature]
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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the interagency mail to be delivered to Petitioner at the address below:

Appellate Defender Adam Sinclair Ruffin
South Carolina Commission on Indigent Defense—Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.

This 3rd day of February, 2020.

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