

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

ROLANDO ALDAMA-OCAMPO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001129

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Trial counsel erred in failing to ascertain and convey the expiration date attached to the terms and conditions of the plea offer presented by the state because counsel had a duty to communicate the time limits to petitioner.

STATEMENT

Petitioner Rolando Aldama-Ocampo pled guilty to voluntary manslaughter during the August 2018 term of the Charleston County General Sessions Court before Judge R. Markley Dennis and was sentenced to imprisonment for a period of thirty years. Attorney Mark Andrew Peper represented petitioner at the plea proceeding and Assistant Solicitor Culver Kidd appeared on behalf of the state. App. 1-17. Petitioner did not appeal his conviction and/or sentence.

On October 23, 2018, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. 19-26. The respondent filed a Return dated January 31, 2019, requesting that a hearing be held in response to petitioner's PCR action. App. 27-32. A PCR hearing was convened on May 20, 2019, at the Charleston County Courthouse before Judge Bentley Price. Petitioner was present at the PCR hearing and represented by Christopher L. Murphy, and Assistant Attorney General Jacob A. Isenberg appeared on behalf of the state. App. 34-67.

On June 19, 2019, Judge Price issued an Order of Dismissal therein denying PCR relief to petitioner. App. 73-82. Petitioner appealed Judge Price's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to ascertain and convey the expiration date attached to the terms and conditions of the plea offer presented by the state because counsel had a duty to communicate the time limits to petitioner.

Petitioner was charged with murder in connection with the stabbing death of Rolando Jose Castro. Apparently, there was a relationship between the two that had previously ended. App. 11, l.6-p.13, l.25.

During the PCR hearing, trial counsel testified that the 15-20-year sentencing plea offer on a lesser charge of manslaughter was presented by one solicitor who had been assigned to petitioner's case, and that this solicitor was leaving the office and wanted to expedite the case by offering the plea bargain. However, counsel acknowledged that he was unsure as to the date on which the plea offer expired. The plea offer was made in December, 2017. Counsel testified that he did not receive permission from petitioner to accept the plea offer prior to the January 4-6, 2018 status conference, and admitted that he failed to indicate to petitioner the actual expiration date of the plea offer (presumably because he was not certain of the expiration date), and admitted further that he did not think there was an expiration date attached to the plea offer. Counsel explained that the "higher ups" later vetoed the plea offer, and by July, 2018, petitioner knew that the plea offer had expired. App. 58, l.16-p.62, l.3. Also, according to trial counsel, "there were strange communications going on in the solicitor's office" during that time period and there was confusion as to whether "the assistant solicitors had the authority to extend offers." App. 61, l.9-14.

Petitioner testified during the plea proceeding and stated that based on the letter he received from counsel, he thought he was set to receive a fifteen-year plea sentence at his plea

proceeding, but received a thirty-year sentence instead. Petitioner testified that there must have been a “miscommunication” because he believed that the 15-year negotiated sentence was in effect at the time of the plea proceeding. App. 40, 1.22-p.41, 1.20; App. 42, 1.23-p.44, 1.9; App. 48, 1.20-p.49, 1.5.

The PCR judge ruled that petitioner failed to overcome the burden to prove his plea was involuntary based upon misunderstanding the terms of his negotiated sentence. App. 78-81.

Implicit in counsel’s duty to convey a plea offer is the duty to obtain and communicate the expiration date for the plea offer. In Missouri v. Frye 566 U.S. 134 (2012), counsel was found ineffective because the plea offer lapsed since counsel has a duty to communicate the terms and conditions of a plea offer. The expiration dated attached to the plea offer is a component of the offer. Compare Collins v. State, _____ S.C. _____, 810 S.E.2d 871 (2018), where the Court entertained the viable issue of whether subsequent counsel of record had a duty to request a reinstatement of a prior expired plea offer made during the previous counsel’s representation despite the rule that a solicitor has the discretion as to whether to revive or not revive an expired plea offer.

Clearly, the expiration date of the sentencing plea offer in this case resulted in prejudice to petitioner in that he was denied an opportunity to accept a lesser sentence. There appeared to have been no outside boundaries or parameters from the time the plea offer was made in December 2017 up until the status conference that occurred during the first week in January 2018, and afterwards by the following summer (June/July 2018) when it became clear that the offer had expired at the time the proceeding was held on August 13, 2018. Thus, counsel’s failure to learn of the expiration date on the plea offer and communicate the same to petitioner in order for him to accept it in a timely manner constituted deficient legal representation.

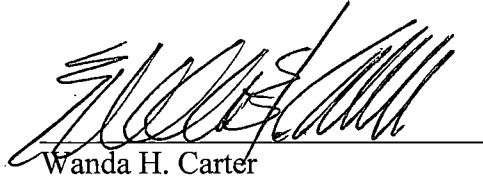
Petitioner labored under the mistaken impression that the sentencing offer remained viable up until the time of his plea proceeding and that he would have received the benefit of the plea bargain in the case.

It was counsel's duty to know of and advise petitioner on the expiration date of the state's plea offer. The United States Supreme Court held that a defendant has a Sixth Amendment right to effective assistance of counsel that extends to the plea bargaining process, and that defendants are entitled to effective assistance of counsel even during plea negotiations. Lafler v. Cooper, 132 S.Ct. 1376 (2012). In Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), the South Carolina Supreme Court held that the Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea bargaining process. Note the State v. Judge was overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000), to the extent that the complainant's statement that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. In Jackson, *supra*, counsel was found ineffective in failing to advise the defendant that the crime he was pleading to was a felony because but for that omission, the defendant would not have plead guilty in the case.

Here, it was obvious that counsel failed to advise petitioner of the expiration date on the plea offer extended to him in this case. Counsel's error in this regard prejudiced petitioner's case because he received a greater sentence in the case. Counsel's deficient performance in petitioner's case violated the Sixth Amendment. See Hill v. Lockhart 474 U.S.52 (1985). Moreover, but for counsel's error, a reasonable likelihood existed that petitioner would have accepted the offer and received a lower sentence than the sentence handed down in his case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that the petition be granted and full briefing allowed on the above-raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2020.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

ROLANDO ALDAMA-OCAMPO,

PETITIONER

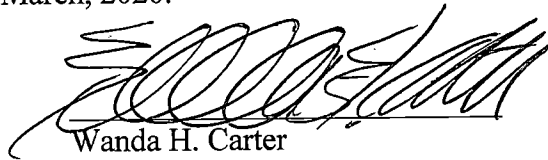
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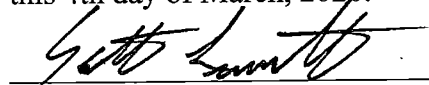
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Jacob Isenberg, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Rolando Aldama-Ocampo, #377384, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 4th day of March, 2020.



Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 4th day of March, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.