



ALAN WILSON
ATTORNEY GENERAL

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MAR 13 2020

S.C. SUPREME COURT

March 13, 2020

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Hollis G. Brock, Jr., v. State of South Carolina
Case No. 2018-CP-42-02262

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. The PCR transcript is being requested on today's date. Enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/my

cc: Susannah C. Ross, Esquire
South Carolina Department of Corrections
Spartanburg County Clerk of Court
Honorable Barry J. Barnette
Office of Appellate Defense
Victim Advocacy Division

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO SPARTANBURG COUNTY S.C. SUPREME COURT
Court of Common Pleas
G. Thomas Cooper, Jr., Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02262

Hollis G. Brock, Jr.,Respondent,
v.
State of South Carolina, Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable G. Thomas Cooper, Jr.'s order granting post-conviction relief filed February 3, 2020. The State filed a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRPC, which was denied by Judge Cooper by writing order filed on March 5, 2020, and received by Respondent on March 6, 2020. Copies of the order granting post-conviction relief and the order denying the State's motion to reconsider, alter, or amend are attached hereto.

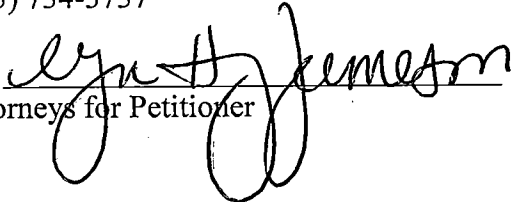
March 13, 2020

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By: 
Attorneys for Petitioner

Other counsel of record:
Susannah C. Ross
330 East Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Respondent

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02262

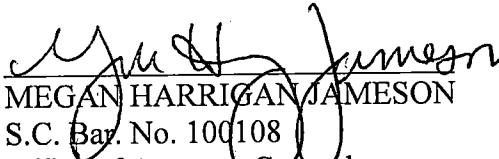
Hollis G. Brock, Jr., Respondent,
v.
State of South Carolina, Petitioner.

PROOF OF SERVICE

I, Megan Harrigan Jameson, Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

**Susannah C. Ross, Esquire
330 East Coffee St.
Greenville, SC 29601**

I further certify that all parties required by Rule to be served have been served this 13th day of March, 2020.


MEGAN HARRIGAN JAMESON
S.C. Bar. No. 100108
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

HOLLIS BROCK, JR.,
APPLICANT.

ORDER GRANTING PETITION FOR
POST CONVICTION RELIEF

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2018-CP-42-2262

This matter comes before the Court by way of application of post conviction relief filed June 28, 2018, alleging ineffective assistance of counsel. On July 16, 2018, Applicant filed an Amended Application with eleven specific allegations of ineffective assistance of counsel. A Return was made on April 12, 2019. Applicant's appointed counsel, Susannah Ross, filed an amended application adding the following allegations:

1. Ineffective assistance of trial counsel for

- (a) failure to investigate and prepare for trial;
- (b) moving to be relieved as counsel when Applicant refused plead guilty;
- (c) advising that if he plead he would get up to twenty-five years;
- (d) failing to make a motion to reconsider the sentence;
- (e) failure to advise Applicant of his right to appeal; and
- (f) failing to appeal the plea and sentence on behalf of the Applicant.

The Applicant also alleged Due Process violations because his plea was not knowingly and voluntarily made. Prior to the plea, Applicant was not clearly advised of the amount of time he could and did receive as a result of pleading guilty.

An evidentiary hearing was convened October 9, 2019, before this court at the Spartanburg County Courthouse. Applicant was present and represented by Susannah Ross.

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Assistant Attorney General, Jacob Isenberg, represented the State. Testimony was presented by the Applicant, Tina O'Sullivan, Tonya Pinder, and Applicant's plea counsel, Albert V. Smith. The court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, and the pleadings. After a thorough review of the evidence and testimony in the record, this court finds that the application for post-conviction relief should be GRANTED.

PROCEDURAL HISTORY

The Applicant is serving a fifty year prison sentence for charges arising out of a felony driving under the influence (DUI) incident resulting in the death of two victims and great bodily injury to one. On February 23, 2017, the Spartanburg County Grand Jury indicted the Applicant for felony DUI with great bodily injury (2017-GS-42-799) and two counts of felony DUI with death (2017-GS-42-800 and 2017-GS-42-801). Albert V. Smith represented the Applicant at his plea and Solicitor Barry J. Barnette prosecuted the case.

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The Applicant plead guilty on August 24, 2017, at the Spartanburg County Courthouse. The Honorable J. Mark Hayes II sentenced the Applicant to the maximum twenty-five years on each count of felony DUI with death and ran the sentences consecutively. He gave the maximum sentence of fifteen years on the felony DUI with great bodily injury to be served concurrently, thus resulting in a fifty year sentence. There was no motion to reconsider the sentence or notice of appeal filed on behalf of the Applicant.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

The Applicant testified that he understood that the relief given in PCR would be to put him back in the position he was in before the plea and he would again face all the charges made



against him and potentially face more time. He said he thought his sentence was excessive given that he was forty-nine years old with health issues and no prior driving under the influence convictions. He said that he wished to pursue a PCR action for ineffective assistance of counsel because his lawyer failed to prepare the case, misled him as to the sentence he was facing, pressured him to plead guilty, moved to be relieved when he refused to plead guilty on the day his case was called for trial, and failed to move for lesser sentence, or appeal his case. The Applicant testified that his lawyer told him that if he pled guilty he would receive twenty-five years, but if he went to trial, the State would "throw the book" at him. He said that the day of the plea, counsel said he had spoken to the solicitor and the judge and told the Applicant that if he pled that day, he would get a sentence of from eighteen to twenty-five years. He said that when he expressed hesitation, feeling like something was not right, his family came to the holding cell with Mr. Smith to urge him to accept the plea. They told him that the attorney had agreed that even though there was no official recommendation, the Applicant was looking at a maximum of twenty-five years if he pled guilty. He said that when he was still hesitant to plead when he came to Court that day, Mr. Smith suddenly made a motion on the record to be relieved from the case (Tr. P. 4, ll. 14-16) At that point he testified he feared he would be without representation and felt pressured to plead guilty. The Applicant testified that, had he understood that he could get consecutive sentences, he would not have pled guilty and, instead, would have insisted on preceding to trial. He stated that after the plea Mr. Smith came to him and apologized and said he would come back and discuss the case with him, but never did. He said if Mr. Smith had come back as he said he would, he have asked Mr. Smith to make a motion for the judge to reconsider the sentence or file an appeal.

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Tina O'Sullivan testified that she is Applicant's sister and she hired Mr. Smith to represent her brother. She testified that Mr. Smith was a friend of the family and had agreed to take the case for ten thousand dollars when others had asked thirty thousand. She said that at Mr. Smith's request she had urged her brother to plead guilty. She said Mr. Smith told her that if the Applicant pled guilty, he would receive a maximum sentence of twenty-five years. She said she saw Mr. Smith talking to the Solicitor Barnette and Judge Hayes and then he came to her and said it would be eighteen to twenty-five year sentence if Mr. Brock pled guilty. Mr. Smith told her she should convince her brother to take the plea. Ms. O'Sullivan testified that Tonya Pinder also witnessed Mr. Smith state that the Applicant would get no more than twenty-five years if he pled guilty. She produced affidavits of two other witnesses who could not be present at the hearing but she claimed they had also witnessed Mr. Smith state that Applicant would get no more than twenty-five years if he pled guilty. These affidavits were proffered over the State's objection. She said she trusted Mr. Smith and would never have urged her brother to plead guilty if she had known he could get more than twenty-five years. She also testified that she was told by Mr. Smith that the plea was not going forward so she left and was not present to offer mitigation on behalf of her brother.

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Tonya Pinder testified that she also witnessed Mr. Smith say that the Applicant would get no more than a twenty-five year sentence if he pled guilty. She also went to the holding cell to help pressure the Applicant take a plea with the understanding that he would get no more than twenty-five years.

Albert Smith, Esquire, testified that he was retained to represent Applicant. He said he was only paid five thousand dollars. He said he reviewed the discovery in the case but did not hire a toxicologist because the family could not afford one. He stated that Judge Hayes' former

law partner represented the victims' families in a civil action, but he trusted that the judge would not allow that to cloud his judgment and saw no reason to request that Judge Hayes recuse himself. He said he advised the Applicant to plead guilty and the Solicitor agreed to allow him to pick the judge but there would be no recommendation. He said that he had a conference with the solicitor and the judge and understood them to be receptive to a plea with a sentence of under twenty-five years. He said that he understood how Applicant's family members could have understood him to say the Applicant would be sentenced to no more than twenty-five years. However, Mr. Smith suggested that Mr. Brock's hesitancy to plead without a specific recommendation showed that he did understand that he could receive more than twenty-five years. Mr. Smith admitted that he did move to be relieved of representation when it looked like Mr. Brock was not going to plead guilty. He made no reference to a retainer contract specifying that the Applicant's failure to plead guilty would be grounds for counsel to be relieved of representation. He admitted that after the plea he went to the Applicant and said he would come back to discuss the case, but never did. He said that he did not move to have the sentence reconsidered nor did he file notice of appeal the plea because he did not recall discussing an appeal with the applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Strickland v. Washington established a two-prong test for evaluating claims of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The first prong requires a defendant to prove his counsel's deficiency by demonstrating counsel's performance fell below an objective standard of reasonableness. *Bennett v. State*, 371 S.C. 198, 203, 638 S.E.2d 673, 675 (2006) (citing *Strickland*). The second part of the test requires a defendant to show there is a reasonable probability that, but for counsel's

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unprofessional errors, the result of the proceeding would have been different. *Id.* To prove that counsel was ineffective when a guilty plea is challenged, petitioner must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered. *Griffin v. State*, 361 S.C. 173, 176-77, 604 S.E.2d 394, 396 (2004).

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas be entered into voluntarily, knowingly, and intelligently by defendants. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. *Pittman v. State*, 524 S.E.2d 623, 337 S.C. 597 (S.C., 1999). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Id.*

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The PCR hearing testimony and the plea colloquy show that the Applicant's decision to plead guilty was not fully informed as he did not have a clear understanding of the potential sentence he could, and did in fact receive. All the conversations Mr. Brock had with his lawyer and his family centered upon a sentence of no more than twenty-five years. And, these conversations took place immediately after Mr. Smith had spoken to Solicitor Barnette and Judge Hayes.

The Applicant testified his lawyer advised him that if he pled he would get eighteen to twenty-five years. His witnesses corroborated that testimony saying that after seeing Mr. Smith converse with the solicitor and the judge, he told them that if the applicant pled, he would get up

to twenty-five years. Based on counsel's advice to this effect and at his behest, the witnesses were brought to the holding cell with the Applicant and begged him to take the plea. Counsel agreed that he advised applicant to plead guilty and confirmed that he brought family members to the holding cell to encourage Applicant to take the plea with the understanding that Mr. Brock would be sentenced to no more than twenty-five years if he pled.

The deficiency was not cured by the plea colloquy. The plea colloquy from Judge Hayes regarding a possible sentence was ambiguous. (Tr. p.17, ll.6-8) There is no mention of consecutive sentences and there is no mention of a possible fifty (50) or sixty-five (65) year sentence. For a plea hearing to cure deficient advice, the plea hearing must unambiguously address and resolve the incorrect advice. See *United States v. Akinsade*, 686 F.3d 248, 255 (4th Cir. 2012) (recognizing, "in order for a district court's admonishment to be curative, it should address the particular issue underlying the affirmative misadvice"). This did not occur here.

According to Applicant, Mr. Smith's motion to be relieved as counsel immediately prior to the plea put undue pressure on him to plead, especially since it was apparent that Mr. Smith was not prepared to take the case to trial. The transcript shows that the Applicant's case was called and Mr. Smith moved to be relieved because the Applicant would not plead guilty. (Tr. p. 4, l. 15) This tact demonstrated representation that fell below an objective standard of reasonableness because it was contrary to the client's best interests, evidenced a failure to prepare the case for trial, and it put undue pressure on the Applicant to plead guilty or be without legal representation. Immediately after counsel moved to be relieved, without ruling on the motion or notifying the Applicant that he could be appointed alternate counsel, the judge asked the Applicant whether he did not wish to proceed. The Applicant said he was having second thoughts. (Tr. pp. 4&5) The plea judge then explained the plea process and that mitigation could

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be presented, at which point the Applicant explained that his mitigation witnesses had all left the courthouse. (Tr. 6, l. 17) Under this pressurized situation, where counsel was threatening to quit if the Applicant failed to plead guilty, the case was recalled and the guilty plea proceeded without the Applicant's mitigation witnesses. Mr. Smith then presented only minimal mitigation prior to sentencing. The undue pressure to plead created by Mr. Smith's motion to be relieved and apparent lack of preparedness, indicates to this Court that the Applicant's guilty plea was not knowingly and voluntarily made.

I find trial counsel's motion to be relieved at a critical moment in the plea process to have been coercive and deprived Applicant of effective representation. Counsel's performance in this regard fell below an objective standard of reasonableness. *Id.*

Counsel admitted that he told the Applicant he would come see him immediately after the plea. He did not and failed to file a motion to reconsider the sentence or file a notice of appeal. The Applicant testified that immediately after the plea counsel apologized to him and told him that he would come back again to discuss options. He testified he would have requested Mr. Smith file a motion to reconsider the sentence and to appeal the plea and sentence if Mr. Smith had come back like he said he would. To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. *See Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986). That did not occur in this case. There was no mention from Mr. Smith or the court of Mr. Brock's right to appeal. I find, given the harsh sentence of fifty years along with Mr. Smith's suggestion that something further was being considered by stating that he would come back and discuss options with Applicant, I find was ineffective assistance in this case.

After a thorough review of the record in its entirety and the testimony and argument

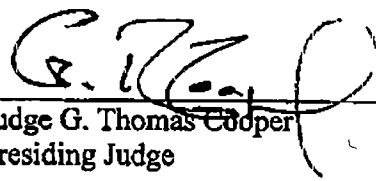
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PARTNER REG COUN
AMY M. COX
Sequette, State

presented at the evidentiary hearing, this Court finds that the Applicant was denied effective representation and due process of law and thus established constitutional violations that require this Court to grant his application for post-conviction relief. He established ineffective assistance of counsel in that Applicant was misadvised and not made to understand the maximum penalty he was facing by pleading guilty. Furthermore, he was unduly pressured to plead by his counsel's untimely motion to be relieved. Counsel's deficiency was not cured by the colloquy during the guilty plea.

THUS, IT IS THE ORDER OF THIS COURT that the Applicant's sentence and conviction is vacated and his case is remanded to the court of General Session of the State chooses to appeal this Order, I retain jurisdiction to address the appeal bond.

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SPARTANBURG COUNTY
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AND IT IS SO ORDERED this 28 day of January, 2020.



Judge G. Thomas Cooper
Presiding Judge

Clemson, South Carolina.



ALAN WILSON
ATTORNEY GENERAL

January 29, 2020

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Hollis Brock, v. State of South Carolina
2018-CP-42-02262

Dear Ms. Cox:

Enclosed please find the original **Order Granting Petition for Post-Conviction Relief**, signed by the Honorable G. Thomas Cooper, in the above-captioned case for filing in your office. Please forward a time stamped copy back to our office for our file.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General

JAI/my
Enclosure

cc: Susannah Ross, Esquire

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SPARTANBURG COUNTY
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