

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 20 2020

S.C. SUPREME COURT

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Certiorari to Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge
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JANOBLIN M. BRACY-BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001261
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JOHNSON PETITION FOR WRIT OF CERTIORARI
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Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT.....2

ARGUMENT

Trial counsel erred in failing to move for the withdrawal of
petitioner’s guilty pleas in response to the breached plea agreement
at the sentencing hearing because petitioner did not receive the
benefit of the plea bargain in the case.....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL6

ISSUE PRESENTED

Trial counsel erred in failing to move for the withdrawal of petitioner's guilty pleas in response to the breached plea agreement at the sentencing hearing because petitioner did not receive the benefit of the plea bargain in the case.

STATEMENT

Petitioner Janoblin Bracy pled guilty to attempted armed robbery, armed robbery, and three counts of first degree assault and battery¹ during the March 2013 term of the Richland County General Sessions Court before Judge G. Thomas Cooper. Petitioner was present at the plea proceeding and represented by James P. Cooper, and Assistant Solicitor Dolly Garfield appeared on behalf of the state. App. 1-10. On June 4, 2014, petitioner was sentenced to imprisonment for an aggregate sixteen-year sentence by Judge Letitia H. Verdin. App. 12-30. Petitioner was represented by Jennifer C. Davis² at the sentencing hearing and Assistant Solicitor Garfield appeared on behalf of the state. A sentencing reconsideration motion was subsequently filed and denied. App. 31-33.

Petitioner appealed, but his case was affirmed by the South Carolina Court of Appeals. See State v. Brown, Op. No. 2017-UP-372/S.C. Ct. App. Filed October 11, 2017). Petitioner was represented on direct appeal by Taylor D. Gilliam, Esquire, of the South Carolina Commission on Indigent Defense.

On November 9, 2017, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 34-40. The respondent filed a Return dated February 28, 2018. App. 41-46. A PCR hearing was convened on July 17, 2018, at the Richland County Courthouse before Judge DeAndrea G. Benjamin. App. 47-86.

On November 8, 2019, Judge Benjamin signed an Order denying PCR relief to petitioner. App. 97-106. Petitioner appealed. This petition follows.

¹ Petitioner was indicted for first degree assault and battery, two counts of armed robbery, attempted armed robbery and two counts of attempted murder and two counts of possession of a weapon during the commission of a violent crime.

² Petitioner's guilty plea attorney passed away before the sentencing hearing.

ARGUMENT

Trial counsel erred in failing to move for the withdrawal of petitioner's pleas in response to the breached plea agreement at the sentencing hearing because petitioner did not receive the benefit of the plea bargain in the case.

In the case at bar, petitioner and a co-defendant were charged with the robberies and assaults involving three taxi-cabs in 2011. App.2, l. 11 – p. 10, l. 9. Petitioner gave a statement implicating himself and his co-defendant.

During the PCR hearing held in the case, petitioner testified that he was supposed to have received a ten-to-twelve year negotiated sentence in exchange for his cooperation in the case by the submission of his statement implicating himself and his co-defendant involved in the case, but the state reneged on the deal and he received a sixteen-year sentence instead. Petitioner stated that the solicitor promised to recommend a ten-year sentence for him. App. 53, l. 12 – p. 67, l. 21.

Trial counsel testified at the PCR hearing and explained that she filed a sentencing reconsideration motion after sentencing because she understood that petitioner was set to receive a ten-year sentencing recommendation even though the solicitor denied any such agreement; and that the solicitor promised to apprise the judge of petitioner's cooperation per the agreement, but to the contrary, the solicitor minimized petitioner's cooperation. App. 75, l. 23 – p. 81, l. 17.

Clearly, petitioner did not receive the benefit of the bargain here to the extent that he did not receive a ten-to twelve-year sentence in exchange for submitting a statement that admitted his and his co-defendant's guilt. Hence, the breached plea agreement.

Specific performance is the remedy used where one has been denied a constitutionally-guaranteed right. Davie v. State, 381 S.C. 601, 675 S.,E.2d 416 (2009), citing to Turner v.

Tennessee 858 F.2d 1201 (6th Cir. 1988) and United States v. Morrison 449 U.S. 361 (1981). In Davie, the court held that counsel was ineffective in failing to communicate a plea offer to the defendant. Moreover, specific performance of a plea agreement is an allowable remedy. In Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003), the case was remanded for specific performance on the plea agreement where counsel was ineffective in failing to ensure that the state adhered to the original plea agreement in order to grant the defendant the benefit of the bargain. In Sprouse, supra, the plea agreement breach was the solicitor's classification of the defendant's second-degree burglary offense as violent because this deviated from the plea agreement. See also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the case was remanded for specific performance where counsel was ineffective in failing to have a plea agreement enforced because the defendant detrimentally relied on the promised plea bargain. In Custodio, supra, there was a breach of a plea agreement that included a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was reliance on the plea bargain by the defendant when he pled guilty in the case. In Jordan v. State, 247 S.C. 52, 374 S.E.2d 683 (1988), the Court remanded the case for specific performance on the plea agreement where the solicitor did not fulfill his promise not to oppose probation at the plea proceeding according to the plea agreement. See Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000), where the Court remanded for specific performance in both cases on both of the plea agreements where both of the solicitors promised not to make sentencing recommendations on the defendants' voluntary manslaughter pleas, but breached the agreements and asked for maximum sentencing in those cases.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the

promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. Thompson v. State, *supra*.

In the case at bar, counsel's error in failing to object to the plea bargain breach at the sentencing hearing (and not after the sentencing hearing with a reconsideration motion), and in failing to move for the withdrawal of petitioner's pleas violated petitioner's right to due process and competent legal counsel, both of which are rights guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above-raised issue presented in the case.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2020.

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Counsel for Janoblin M. Bracy-Brown states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge DeAndrea G. Benjamin, which was held on July 17, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.
Therefore, counsel requests that the Court relieve her as counsel for Janoblin M. Bracy-Brown.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of May, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/Wanda H. Carter
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