

State Of South Carolina  
For State Supreme Court  
Certiorari to Charleston County  
G.Thomas. Cooper, Jr., Circuit. Court Judge

**RECEIVED**

JUN 26 2020

S.C. SUPREME COURT

Harold Jones, Jr.,

Petitioner,

Vs.

State of South Carolina,

Respondent

**RECEIVED**

Jun 29 2020

SC Court of Appeals

Appellate# 2019-000396

Pro Se Supplemental brief

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**Question One:**

**Whether the Pcr court was in error when it found counsel was not ineffective, after petitioner had accepted plea deal but counsel failed to inform the prosecution of the acceptance, which prompted prosecution to withdraw the deal?**

No duty is more basic to the role of defense counsel than that of informing the client of the plea offer made by the prosecutor “ An attorney undoubtedly has a duty to consult with the client regarding important discussions, including an offer to plead guilty which is an event of signal significance in criminal proceeding”. See, Florida v. Nixon, 543 U.S.175 (2004); Davie v State, 381 S.C. 601(2009)

However, in the case at bar the facts are novel to this court as none of our state precedents or the United State Supreme Court have addressed, the proper remedy when counsel bring the deal to client and it is accepted but counsel failed to inform the prosecution of the defendants acceptance of the offer

**Mr. Kozelski: So I have attempted to get him the help that he needs, but I think that has been largely untruthful, not entirely the Doctor’s fault, but I would say, just for my own sake, that I do think that I deprived him of his ability to take that 22-and-half years.**

**The Court: I'm sorry. You what?**

**Mr.Kozelski: That I deprived him of his opportunity to take that 222-and-a-half years**

**The Court: I'm looking at court's exhibit 3 and exhibit 5, which is a sentence sheet that has your signature on it; is that correct? Did you sign these sentencing sheets? There's one for possession of firearm during commission of a crime and on for voluntary manslaughter.**

**The Defendant: Yes, sir**

**App.pg102; lines 2-10; lines 19-25**

The court has made it clear that it is the responsibility of defense counsel to inform a defendant of the advantages and disadvantages of plea agreement. Nixon, id, at 187, Davie, id at 609,

Since defense counsel has a constitutional obligation to consult with a client about plea offer, and the advantages and disadvantages of accepting a plea offer, counsel has a constitutional obligation to inform the defendant that the prosecutor has made a plea offer, likewise the Davie and Nixon court has reach the facts as expressed herein but the same legal analysis applies when the petitioner herein has accepted the offer the counsel obligation is to inform the state of the clients acceptance of the offer. Davie, id, Nixon, id.

Every State/Federal court, which has addressed this issue, has held that defense counsel failure to advise a client of plea offer amounts to constitutionally deficient performance. Dvaie, id, at 610, in the instant case the evidence is unrefuted that the petitioner had accepted the offer but it was counsel who deprived his client of the benefit of the offer. Furthermore, it must be noted that the record is also unrefuted that the petitioner never wanted to got trial but insisted on pleading guilty to the charges

**The Court: Mr.Jones, if you'll stand. When you signed these two guilty pleas, the sentence sheets, was it your intention to plead guilty to voluntary manslaughter and the commission--- possession of a firearm during the commission of violent crime?**

**The defendant: yes sir.**

**The Court: That was based upon the offer of voluntary manslaughter and 22-and-a-half years; is that correct.**

**The Defendant: Yes sir**

**The Court: Now you're facing murder.**

**The Defendant: Yes, sir**

**The Court: And that's a different charge do you understand?**

**The Defendant: yes sir.**

**App.pg 103: lines 24-25; pg 104; lines 1-14**

The court has used the America Bar Association as guidelines for determining whether counsel's performance is reasonable. See, *Wiggins v. Smith*, 539 U.S. 510 (2003) The ABA's model rules of professional conduct require a lawyer" **to promptly inform the client of any decision or circumstance with respect to which the client informed consent...is required by these rules"**

While the extensive plea colloquy depicts the deficient performance by counsel, the result must be the same, as this court expressed in its jurisprudence that counsel actions which for instance as counsel stated at hearing that:

**Mr. Pennington: Because he made a mistake. He made a big mistake. He thought he would be able to persuade the prosecutor to not react the way he has reacted to this two-or three-month delay and forfeit the offer;**

**App.pg117; lines11-15**

While guilty plea waives some claims of constitutional error occurring prior to the plea, it does not waive a claim of ineffective assistance of counsel relating to “the voluntary and intelligent character of guilty plea”. See, Tollett v.Henderson, 411 U.S. 258 (1973)

Furthermore, counsel never informed the prosecution of the fact that it was petitioner mother that informed counsel about possible mental issues with the petitioner

**The Court: Who expressed this?**

**Mr.Kozelski: Members of---**

**The Court: His family?**

**Mr.Kozelski: Yeah**

**The Court: Okay. That’s fine**

**Mr.Kozelski; Expressed anger at me that I had not had Harold evaluated. They said it was very clear, and it’s been clear throughout Harold’s adolescence, that he has mental health issues and that they did not believe he was making this decision voluntarily.**

**App.pg90; lines; 12-22**

Petitioner has demonstrated forbids the trial of incompetent individuals and that one is competent if the evidence so preponderates. These views reflect the age-old understanding that to try a person who cannot comprehend the proceedings and defend himself is both unfair and unproductive to the ends of justice. See, Dusky v United States, 362 U.S. 402 (1960)

It is no wonder that history refuses to endorse a standard of proof higher than preponderance.

Such an inappropriately high standard would substantially increase the likelihood that constitutionally incompetent defendants would be convicted and in some instances condemned to death. See, Ramirez v State, 413 S.C. 351 (2016); Garren v State, 423 S.C. 1 (2018)

Wherefore, it is prayed court will grant writ.

Date: 19 day of June, 2020,

Respectfully Submitted;

s/ Harold Lee Jones Jr

Harold Jones