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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Dorchester County
The Honorable Diane Schafer Goodstein, Circuit Court Judge

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APR 25 2013
S.C. Supreme Court

Appellate Case No 182846

TIMOTHY DION ROGERS,

Respondent,

vs.

STATE of SOUTH CAROLINA,

Petitioner.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTIONS PRESENTED

1. "Did the PCR judge erroneously find trial counsel ineffective in his handling of the guilty pleas to the two charges of CSC with a minor in the second degree, including counsel's not moving to withdraw the pleas when Rogers reneged on the guilty plea to murder, where the only evidence is that counsel's strategy in offering the pleas was reasonable and there was no prejudice under *Strickland*, and Rogers' unilateral rejection of the murder plea, without prior notice to counsel, did not provide a basis to withdraw his previous knowing and voluntary pleas to the charges?" State at v. State's Question Two

2. "Did the PCR judge err in granting relief on the two charges of CSC with a minor in the second degree because (1) it was improper for Rogers to challenge these separate convictions in his Amended Application, which only properly challenged his murder convictions; and (2) the statute of limitations for filing a change to these convictions had long since run?" State at v. State's question one.

I. Statement of the Case

Respondent adopts Petitioner's statement of the case

II. Argument

A. Probative Evidence Supports the Lower Court's Judgment that Mr. Rogers Received Ineffective Assistance of Counsel with Regard to Convictions for Criminal Sexual Conduct, 2nd degree, which were the Direct Result of His Counsel's Failed Plea Negotiations in this Case

1. Standard of Review

This Court must affirm the findings of a PCR judge when there is any evidence of probative value to support them. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). This Court will reverse the PCR judge's decision when that decision is controlled by an error of law. *Sheppard v. State*, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004).

2. Relevant Facts

On the evening of November 25, 1992, an altercation occurred at Spell's Grocery Store in Summerville, SC. As the events unfolded, nine year old Stephanie B, who was seated in her father's pick up truck, was shot through the truck's back window. On December 2, 1992, Timothy Rogers was arrested and charged with her murder. App. 948. At the time of his arrest, Mr. Rogers admitted to authorities that he had shot Stephanie, but was adamant that he had not intended to. App. 948-51. The next day, the State indicted Mr. Rogers and announced its intention to seek the death penalty. Mr. Rogers was appointed two attorneys: William Runyon and Mark Leiendecker.[1]

Sometime prior to trial, as early as August 31, 1993, App. 4887, Mr. Runyon decided he would pursue a guilty plea on behalf of Mr. Rogers. First Judicial Circuit Solicitor Walter Bailey

[1]About one month prior to the series of pleas at issue in this case, Mr. Leiendecker replaced the prior contract public defender originally appointed to Mr. Rogers. App 2808.

had informed Runyon that he would not accept a plea to less than life without parole. App. 3777. Since a murder conviction alone did not carry such a sentence at the time, Mr. Runyon decided to generate convictions for Mr. Rogers that would subject him to the State's then existing "three strikes" law and render him eligible for a sentence of life without parole. *See* S.C. Code Ann. §24-21-640 (Supp. 1993) (providing for life without parole for murder where defendant has two prior convictions for violent felonies).

Mr. Runyon was aware that Mr. Rogers, who was twenty four years old, had impregnated his then sixteen year old girlfriend, victim. Therefore, Runyon concluded, Mr. Rogers must have had sexual contact with her when she was fifteen as well, making him guilty of Criminal Sexual Conduct against a minor.[2] [Hereinafter "CSC 2d"]. Without obtaining his client's permission, or even discussing the matter with him, Mr. Runyon brought Mr. Rogers' criminal activity to the attention of the Solicitor. App. 3494-95. No one had registered a complaint or investigated Mr. Rogers for his conduct with victim prior to that time. App. 2837, 3046-47. In fact, neither Mr. Runyon, the Solicitor, nor any member of law enforcement ever contacted victim to determine the accuracy of Mr. Runyon's allegations.[3] App. 3825-26. App. 4875. Instead, Mr. Runyon simply advised Mr. Rogers to do as he said: go into open court in Charleston County and admit to Criminal Sexual Conduct with a child. Doing so, Runyon said, would enable Mr. Rogers to plead guilty to murder.

On January 25, 1994 and January 27, 1994, Mr. Rogers pled guilty to two separate counts of

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[2]There was of course no allegation that Mr. Rogers committed any physical violence against victim, only that she was two months shy of the age of consent when he had sex with her. App. 12, 23.

[3]The lower court found Solicitor Bailey's testimony on these points "credible and refreshingly candid." App. 4871.

Criminal Sexual Conduct. App 1-26. On February 2, 1994, however, the plan went awry. On that day, the parties arrived before Judge Whetstone to enter Mr. Rogers' plea to the murder of Stephanie B. When Mr. Rogers was asked to admit that he had intended to kill Stephanie, however, he balked. The court refused to accept his plea. Mr. Runyon was annoyed that his handiwork in crafting the plea had been squandered. According to Mr. Leindecker, Runyon was "very angry" and "yelled at" Rogers, telling him "he had 'screwed it up.'" App. 2879-81.

Then, inexplicably, despite the fact that the pleas to criminal sexual conduct had been generated by Runyon as part and parcel of the murder plea deal, Runyon did not move to have them vacated, but left these two convictions – which carried enormous consequences – in place. Ultimately, Mr. Rogers was tried, convicted, and sentenced to death. The Solicitor made heavy use and took great advantage of the CSC 2nd convictions. App. 4871. For but one example, Solicitor Bailey urged the jurors to consider a death sentence based on Applicant's violent felony conviction for "sex with children." App. 2462

On PCR, Mr. Rogers alleged his counsel had provided ineffective assistance of counsel in all phases of their representation of him. The lower court vacated Mr. Rogers' death sentence as well has the two counts of Criminal Sexual Conduct 2nd his lawyer had manufactured in the course of his representation of Mr. Rogers, finding that Mr. Rogers' rights under the Sixth and Fourteenth amendments to the United States Constitution were violated.

3. Relevant Legal Principles and Argument

In order to demonstrate a violation of his Sixth Amendment right to the effective assistance of counsel, a PCR applicant must make a now familiar two part showing. First, he must show that his counsel's performance was deficient such that it fell below an objective standard of

reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Alexander v. State*, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Second, he must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687; *Alexander*, 303 S.C. at 541-42, 402 S.E.2d at 485. In the case of a guilty plea, the applicant must show a reasonable probability that but for counsel's ineffectiveness, he would not have pled guilty. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 367 (1985).

a. *Deficient Performance*

The lower court correctly found as a matter of fact and law that Mr. Runyon's performance was deficient when he failed to move to withdraw the CSC pleas when the larger plea agreement fell through. In this case, when the larger plea fell through, the State received a benefit of two CSC 2nd convictions the underlying conduct supporting which it had previously been unaware of, and was not even investigating.[4] The defendant, however, was left not only without a benefit, but in a far *worse* position than he had been before his lawyer had urged the State to bring the indictments against his client.

It is a fundamental principle of law that plea agreements are based on ordinary contract principles by which each side is to give something up in exchange for a benefit to each party. *See, e.g., State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 S.C. (1994). Thus, when one party fails to receive the benefit of a plea agreement that party *can and should* move to withdraw it. *See Thompson v. State,* 340 S.C. 112, 531 S.E.2d 294 (2000) (counsel's failure to ensure defendant received benefit

[4]In ordinary contract principles, this would be called "unjust enrichment," which occurs when a benefit is conferred upon a party, that party realizes the benefit, and retention of the benefit is inequitable under the circumstances. *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C.1, 8-9, 532 S.E.2d 868, 872 (2000).

of bargain fell below reasonable professional norms); *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (S.C. 1988) (plea reversed for ineffective assistance of counsel where counsel failed to move to withdraw plea after defendant did not receive what he bargained for). Counsel patently failed to discharge his duty to withdraw the pleas once it was clear that his client would not receive any benefit from it. The lower court was manifestly correct in finding that the counsel was deficient for failing to move to withdraw the pleas.

No reasonable strategy saves counsel's failure. *See, e.g.*, *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness."). Although counsel initially said he never considered moving to withdraw the pleas, App. 3746, he subsequently offered two strategies for failing to do so, each of which was rejected by lower court who received his testimony.

First, Mr. Runyon stated that he did not attempt to withdraw the pleas because, "we're sitting there stuck with the fact that we – this these allegations as to this conduct with this young lady" and trying to "represent that didn't happen... would be bordering on ethical violations." App. 4817 (citing App. 3502).[5] Second, Mr. Runyon stated that in fact he intentionally chose not to withdraw the pleas so he could use the two prior convictions to argue that the jury should be instructed that Mr. Rogers would be subject to life without parole if not sentenced to death as dictated by *Simmons v. South Carolina*, 512 U.S. 154 (1994). App. 4817 (citing 3746-47). The lower court properly rejected each of these purported strategies.

[5]Counsel Leiendecker also testified that he was "not aware of information" at the time that would have supported the withdrawal of the pleas. App. 4871 (citing App. 2901).

1. Counsel was wrong as a matter of fact that there were no grounds to withdraw the pleas.

Counsel's assertion that he could not withdraw the pleas, because he could not "represent" that the criminal sexual conduct "didn't happen" is simply wrong as a matter of law. A defendant's ability to withdraw a plea lies within the sound discretion of the trial court. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). It does not require the defendant to, as the State contends, "personally controvert the representations that he made at the time of his guilty plea." State at 12.

Moreover, there is every reason to believe the lower court would have exercised its discretion to permit withdrawal of the pleas in this case. As the lower court found, the CSC 2nd pleas were part and parcel of the larger bargain. The prosecutor knew it and the judge knew it. It was plain that when the larger plea fell through, Mr. Rogers was entitled to withdraw the pleas when it became clear he would receive no benefit from them. In this case, the plea court was on full notice of the role of the CSC 2nd pleas in the larger agreement.

There was also another basis on which the pleas could have been withdrawn. Mr. Rogers retained a right to be tried in the county where the crimes occurred. *State v. Crocker*, 366 S.C. 394. 621 S.E.2d 890 (S.C. App. 2005). As discussed, it was not Mr. Rogers, his girlfriend, or law enforcement that brought the issue of Mr. Rogers sexual conduct with victim to the attention of Solicitor Bailey. It was Mr. Runyon. Mr. Runyon did so without discussing the issue with his client or victim. Had he done so, as the lower court found, he would have learned that the offenses did not in fact take place in Dorchester County where the pleas were entered. Victim testified at the PCR hearing that all sexual conduct with Mr. Rogers took place at her grandmother's house in

Charleston County.[6] App. 3048-49. Mr. Runyon never advised Mr. Rogers that this fact could have formed a basis to withdraw the plea.[7] App. 4871.

The State attempts to excuse counsel from his outrageously deficient performance by holding *Mr. Rogers* responsible for not recognizing the concept of proper venue and failing bring it to the attention of his attorney and the Court. The State's effort should be rejected.

First, the State should be reminded that it was Mr. Runyon who brought accusations against his own client to the attention of the State without consulting Mr. Rogers. Mr. Rogers did not bring the fact of his sexual conduct with victim and what county it did or did not happen in to Mr. Runyon. It is unclear where Mr. Rogers obtained any sort of obligation to his counsel in that exchange.

Second, the State makes the outrageous suggestion that Mr. Rogers made "erroneous statements" and even lied at the CSC plea hearings on the issue of the county in which the sexual conduct took place. State at 22. To be very clear: no reference whatsoever to the county in which the offenses took place was made at either plea colloquy. Mr. Rogers made no statements whatsoever about where this conduct took place.

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[6]This Court should reject the State's effort to have this Court revisit the issue of victim's credibility. State at 22 n.11. *See Reed v. Ozmint*, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (noting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony). This Court has often stated that "[o]ur broad scope of review does not require us to disregard the findings below or ignore the fact the trial judge was in a better position to assess the credibility of the witnesses. *Dorchester County Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 477 S.E.2d 476 (Ct.App.1996),*cited in* Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 187 (1999)"

[7]The lower court found that Mr. Rogers waived the issue of territorial jurisdiction, App. 121, however, the issue is not covered in the plea colloquies at all. Mr. Rogers is not asked where the conduct occurred or whether it was in Charleston County. Mr. Rogers makes no statements regarding where the conduct occurred. Moreover, there is no on the record waiver of territorial jurisdiction. Therefore, even if Mr. Rogers did waive the issue, Mr. Rogers should have been advised to challenge the constitutionality of that advice.

Finally, in perhaps the most egregious reach of all, the State takes Mr. Rogers to task for "never suggest[ing] that the crimes (which his counsel informed Mr. Rogers he was guilty of) did not occur in Dorchester County." State at 10. In fact, it is the obligation of the *lawyer* to explain legal concepts like jurisdiction and their relevance to defendants and the obligation of the court to ensure that the defendant understands the concept before he waives it. *See, e.g.*, Rules of Professional Conduct, Rule 407, SCACR Rule 1.4 ("lawyer shall .... explain matter to extent reasonably necessary to permit client to make informed decisions regarding the representation."). Neither of these parties appropriately advised Mr. Rogers before these pleas were accepted. The State now wants to lay that failure at the feet of Mr. Rogers. The lower court rebuffed that effort, and this Court should as well.

2. Counsel's assertion of reliance on as yet nonexistent case law was deemed not credible by the lower court

Counsel's second purported strategy, in which he claimed to avoid withdrawal of the pleas to gain advantage at trial, was also properly rejected by the lower court. *Simmons* had not been decided, nor was its principle embedded in South Carolina law at the time of Mr. Rogers' trial. App. 4871. The lower court dismissed Mr. Runyon's "strategy" as an "afterthought" and a "reason of convenience...formulated ten years after the fact." [8].

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[8]The State's flimsy argument that but for counsel's "strategy" not to withdraw the pleas, Mr. Rogers' original death sentence would not have been reversed, State at 25, should be dismissed as the rank speculation that it is. Critically, the death sentence may never have been *incurred* had the Solicitor not been able to argue to the jury that Mr. Rogers had admitted having sex with a child, which was almost insurmountably prejudicial in a case involving the death of a young girl.

3. The lower court properly found the failed plea was not Mr. Rogers' "fault"

The State suggests that Mr. Rogers should be bound to his CSC pleas because he unilaterally refused to admit his guilt at the third prong of the plea plan - the murder plea. Counsel Runyon claimed at the PCR hearing that he was unaware of Mr. Rogers' unwillingness to admit that he intentionally shot the victim. App. at 3752. The lower court found, however, that Mr. Rogers "never wavered" from his assertion that, although he had shot Stephanie Burditt, he had not intended to. App. 4860. Mr. Rogers was consistent in this position from the time of his arrest and statement to Alabama authorities through to his testimony at trial. The lower court's conclusion was supported by counsel Leinedecker, who testified that Mr. Rogers "never had any problem admitting his responsibility or that he fired the gun or that his reckless conduct caused the death of Miss Burditt," but he did have

> a problem *from the beginning* with the idea of the intentionality of that act, that it was with malice aforethought as defined under the murder statutes. And he expressed those concerns from the beginning when I knew him until the final time that I spoke with him, you know with his comments always being that, 'yes, I did it; yes, I pulled the trigger; yes, I'm responsible, but I didn't know and I didn't mean to.' I think that's the easiest way to describe it.

App. 2824. Runyon testified very similarly. "Yeah, I don't think it would be suggested that he knew the girl was there." App. 3545. While it is possible that Mr. Runyon had hoped that he could push a plea through without Mr. Rogers' having to make an admission regarding his intention to shoot Ms. Burditt, the record simply does not reflect that he advised Mr. Rogers that would have to do so,[9] and

[9]The fact that Mr. Runyon first approached Solicitor Bailey requesting a plea to voluntary manslaughter (App. 3776) further indicates that Mr. Rogers also maintained his lack of intent to shoot S.B. when discussing the matter with his counsel. App. 3545 ("He didn't know she was there.")

that Mr. Rogers inexplicably changed his mind thereby exposing himself to a death sentence and two convictions for Criminal Sexual Conduct 2nd for no reason.

b. *Prejudice*

The prejudice resulting from counsel's deficiencies with respect to the CSC 2nd pleas is hard to overstate. Counsel alerted the State to criminal conduct committed by his client, prompted the State to indict his client for that conduct, and urged his client to plead guilty to that conduct to gain a benefit at his upcoming sentencing trial. Mr. Rogers never gained that benefit but was nonetheless stuck with the results. The lower court's order speaks for itself on this point:

> But for trial counsel's efforts, Applicant would not have even been charged with the offenses in question in the first place. Thus, it is without question to this Court that Applicant would not have entered into, or have been stuck with, the guilty pleas but for trial counsel's ineffectiveness.

App. 4875.

> Applicant now stands convicted of two independent violent felonies, two sexual offenses against a child no less, as a direct and sole result of ineffective assistance of counsel. Standing alone, they subject Applicant to all manner of sentencing enhancment. At a minimum, he must register as a sex offender for the rest of his life. These sentences render him potentially eligible to be declared a sexually violent predator, a category of offender the state can literally detain indefinitely under a civil commitment order. S.C. Code. Ann. 44-48-10 to -170 (Supp. 2004).

App. 4875. Under these circumstances there is a reasonable probability that the court that accepted the pleas would have exercised its discretion to permit Mr. Rogers to withdraw them. *See Rolen v. State*, 384 S.C. 409, 683 S.E.2d 471 (2009) (finding prejudice from failure to withdraw a plea where judge might have exercised his discretion and where if he didn't issue could have been raised on direct appeal).

The lower court's order vacating Mr. Rogers' two CSC 2nd pleas for ineffective assistance of

counsel is amply supported by the record and is not erroneous as a matter of law.

B. The Lower Court Did Not Err as a Matter of Law When it Vacated Mr. Rogers' Convictions for Criminal Sexual Conduct where those Pleas were the Direct Result of the Ineffective Assistance of his Counsel and Inextricably Bound with his Conviction and Sentence for Murder

The State, recognizing that the lower court's findings of fact and conclusions of law leading to the vacatur of his CSC 2nd pleas are impenetrably sound, insists that the lower court must nonetheless be reversed for two technical violations of post-conviction procedure. First, the State insists that the lower court was without authority to vacate the CSC 2nd convictions under the Uniform Post-Conviction Relief Act, S.C. Code Ann. §§ 17-20-10 - 160 (1988 & Supp. 2007), which refers to a challenge to "the conviction" or "the sentence." Second, the State complains that even if the lower court did properly entertain his challenges to his CSC 2nd convictions, the challenges to them were time barred by the statute of limitations contained in S.C. Code Ann. § 27-45(A) (Supp. 2012). The State's argument finds no harbor in fact or law.

1. The Post Conviction Relief Act

The State argues that the lower court was without authority to vacate the CSC pleas, because under §17-20-10 *et. seq.*, the court may only address "the conviction" or "the sentence." That is, in fact, exactly what the lower court did. The lower court determined, based on the record, that it was the understanding of Mr. Runyon, Mr. Rogers, Solicitor Bailey, and Judge Whetstone, who accepted the CSC 2nd pleas, that those pleas were "part and parcel" of a larger plea agreement related to the conviction and sentence below. The lower court found that the cases are "inextricably entwined," thus there is no bar found in the post-conviction statute precluding the court from granting the relief it did. *See Austin v. State*, 305 S.C. 453, 409 S.E. 395 (1991) (PCR court must craft a remedy to

correct the unfairness which has occurred).

To honor the lower court's findings that the CSC 2nd convictions were part and parcel of the conviction and sentence at issue here does no harm to the legislature's intent or the plain language of the statute as the State complains. The State's own interpretation of that intent – which it characterizes as "obvious" – is that the legislature sought to preclude unitary resolutions of matters involving "different trial counsel or different witnesses." State at 16. That interest is quite plainly not infracted here. There is a complete unity of parties in these matters: Mr. Runyon was Mr. Rogers' trial counsel in all matters, Solicitor Bailey was the Solicitor in all matters. There was no fact finding required at the guilty pleas, because Mr. Rogers admitted his conduct. And, at the risk of repetition: all of these parties, as well as the lower court judge that accepted the pleas and the lower court judge in this case all agreed these pleas were part and parcel of the murder prosecution underlying this matter.[10]

The State's appeal to principles of statutory construction do not point to a different result. In fact, principles of statutory interpretation provide that courts should not apply statutes in a manner that would lead to "absurd results." *Gentry v. Yonce*, 337 S.C. 1, 13, 522 S.E.2d 137, 143 (1999) ("Statutes should not be construed so as to lead to an absurd result."). To interpret South Carolina's post conviction statute in a manner which allows Mr. Rogers' *death sentence* to be vacated in part based on ineffectiveness that led to the pleas, Order at 17, but not to result in a vacatur of *the pleas*

[10]The States's reliance on *State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990) as precluding vacatur of the CSC pleas is wildly misplaced. *Atkins* involved a direct appeal from a resentencing during which counsel sought to challenge the Appellant's fifteen year old prior conviction during the resentencing proceeding itself. The case is inapposite both in posture and fact. The prior conviction at issue in *Atkins* was fifteen years old, utterly unrelated to the case at bar, and not the subject of a post-conviction action.

themselves would be just such an absurdity.

Moreover, this Court has stated that, contrary to the State's position, hyper-technical adherence to the terms of the post-conviction statutes is inappropriate where doing so would lead to a violation of due process or a miscarriage of justice. *See, e.g., Washington v. State*, 324 S.C. 232, 236, 478 S.E.2d 833, 835 (1996) (a PCR application will not be procedurally barred under a hyper-technical analysis, where case beset by procedural irregularities amounting to deprivation of due process); *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (PCR statute should not be rigidly applied where doing so will result in a miscarriage of justice). Respondent has had only one bite at the PCR apple.

2. The Statute of Limitations

Similar principles apply to the State's insistence on a rigid application of the statute of limitations found in §§17- 27-45(A). Again, the lower court properly found these pleas to be inextricably entwined with the case at bar, thus no separate statute of limitations need be applied. Nonetheless, the State unabashedly resorts to the equitable benefits of the statute of limitations to which it believes the *State* is entitled, claiming that the lower court "rewarded" Mr. Rogers for "not being diligent and 'sleeping on his rights.'" State at 18. Mr. Rogers has not been rewarded with anything except for relief from an error created by his counsel *in this case*, in pursuing a plea *in this case*, which he challenged following the result *in this case*.

Moreover, the State has suffered no prejudice from the timing of this challenge. The State expended no effort in achieving these convictions, had no interest in pursuing them before they were suggested by Mr. Runyon, gave up no advantage in securing them, and according to Solicitor Bailey, had every expectation that counsel would move to withdraw them following the failure of the plea.

failure of the plea.

III. Conclusion

The lower court's decision that Mr. Rogers was provided ineffective assistance of counsel in plea negotiations pursuant to his prosecution for murder, the direct result of which was two convictions of CSC2d, is supported by probative evidence in the record. The lower court's legal determination that the court's remedy could include all of the result of that ineffectiveness is not erroneous.

As the lower court stated, for this Court to hold Mr. Rogers to pleas for crimes brought to the attention of the State by his own lawyer, uninvestigated and unverified by law enforcement or the alleged victim, to obtain a benefit he never received, and which, in fact, have grave and wide-ranging legal consequences, "would simply mock fundamental guarantees of 'vital importance.'" Order at 19 (quoting *Rickman v. Bell*, 131 F.3d 1150, 1160 (6th Cir. 1997). This Court should affirm the judgment of the lower court.

Respectfully submitted,

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April 25, 2013
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2011-182846

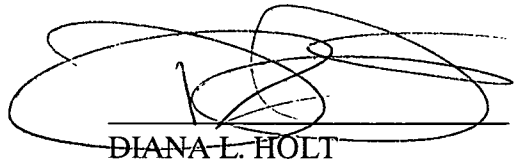
TIMOTHY DION ROGERS . . . . . .Respondent,

v.

STATE of SOUTH CAROLINA, ...Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Brief of Respondent in the above-entitled case has been served upon Petitioner's counsel by first class mail, postage prepaid, addressed to counsel of record, Edgar Salter, III, Post Office Box 11549, Columbia, South Carolina 29211-1549.



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