

These are the constitutional violations that took place in the plea bargain process. The court should consider these things in the appeal.

There was on plea agreement for 20yrs. for all charges / 1) Arm. robbery, 2) possession of a weapon during the commission of a ~~violent~~ violent crime, 3) Unlawful carrying of pistol, + 4) possession of a firearm by person convicted of violent felony. On the day of the plea hearing the prosecutor dismissed the three weapon charges. The prosecutor did not inform me or the counsel about any charges dealing with the plea agreement. I did not want to plea because, the plea was not part of the original agreement. Dismissing the other three charges was not part of the original agreement. I was essentially threatened that if I did not plead guilty to the new plea, the plea offer would be revoked and I would be forced to go to trial. Judicial pressures to plea poses a serious threat to the voluntariness of a guilty plea in violation of the due process clause as well as to the separation of powers envisioned by the constitution.

Dealing with this matter the prosecutor violated due process and breached the plea agreement; and wrongfully convicted the defendant

Evidence to support / From p.c.r. transcript pg. 66 and 67 proof of evidence credible testimony from former counsel Ms. Timmons,

Questioned by Attorney General Mr. Neubauer / pg. 66 line 20-25 /

"Would Mr. McFadden have been aware that the state was prepared to dismiss the other three charges?" (Mr. Neubauer)

"I'm not sure. But I remember that it was 20yrs. negotiated on arm. robbery because, the arm. robbery was the most serious of those charges and that would "include" all the weapon charges." Ms. Timmons.

Pg. 67; 15-17 / words by Ms. Timmons /

"The solicitor even indicated that if Mr. McFadden decides not to take the plea offer, the offer will be drawn and he could ~~potentially~~ potentially seek life without the possibility of parole in this case."

On pg. 66 line 20-25 it support the fact and matter of the counsel not knowing of any charges because the plea was to be for all charges, + support the breach plea. On pg. 67 line 15-17 it support that fact judicial pressures was applied in order for the defense to accept the plea that was breached.

When a guilty plea rests in the significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of inducement or consideration such promised must be fulfilled. If the prosecution has breached its promise given in a plea agreement whether that breach was intentional or inadvertent it can not be said that the defendant's plea was knowing and voluntary for the defendant has been led to plea guilty on a false promise. / State v. Baker 156 Idaho 209/322 p. 3d 291/

Dealing with constitutional law allowing the agreement to breach a promised that induced a guilty plea violates due process. / U.S. C. A Const, Amend 5

Due process clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently, by defendants. / Pittman V. State 337 S.C. /

Additionally a defendant entering a guilty plea must be aware of the nature and the crucial elements of the offense.

Dealing with this matter due process was violated because, the plea was involuntarily, unknowingly, + ~~un~~intelligently.

I did not want ~~any~~ plea because, the plea have been changed and was not the negotiated plea that we agreed on. The prosecutor breached the plea agreement, and that was an constitutional violation of due process. Entering on guilty plea the defendant must be aware of the nature and the crucial elements of the offense. The nature of arm. robbery is violent and the crucial elements of the offense is an deadly weapon. The U.S. Constitution states that arm. robbery (16-11-330) A person who commits robbery while armed with pistol, dirk, stilet, shot, metal knuckles, razor or other deadly weapon or while alleging either by action or words he was armed while using a representation or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and upon conviction a person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due process clause of the fifth or fourteenth Amend. of the U.S. Const. / U.S. Const, 5, 14

When prosecutor dismissed the three weapon charges, that change the nature of the offense. Arm. robbery, ~~the~~ the nature is consist of being violent, and the crucial elements consist of having on ~~an~~ deadly weapon. By dismissing the weapon charges changes the violent nature to an non-violent nature and the arm. robbery offense is then eliminated and the charge is to be dropped to an lesser included offense.

The ~~plea~~ plea was unconstitutional and unlawful, the ~~prosecutor~~ prosecutor manifested injustice and manifested constitutional error, by charging defendant with an charge that did not fit the constitution. After dismissing the weapon charges that changed the nature of the offense and the offense is to be dropped to an lesser included offense, but, it didn't. Still yet this violated due process and equal protection clause. Prosecutor breached the plea agreement that also fit these violations. This deprived defendant of his liberty of his constitutional rights.

Defense counsel's advice to defendant that he could be convicted of arm-robbery without proof of a physical representation of ~~an~~ deadly rendered counsel's performance deficient. / State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002)

Counsel was aware of the constitutional violations still yet the counsel still advised the defendant to plea. ~~The~~ counsel manifested constitutional error, that knowing of the breached plea agreement, and did nothing to provide client with equal protection of the laws. Counsel knew of the violation of due process that constitute error of law / counsel failure to object error of law by doing that Counsel fell below reasonable standards of professional conduct ~~and~~ violation right to effective counsel + due process violation of 6<sup>th</sup> and 14<sup>th</sup> amendment.

Counsel was ineffective, by failure to accurately advise of elements of lesser-included felony offense and the subsequent advice to accept the plea offer after knowing of all constitutional violation constituted ineffective assistance, U.S.C.A. Amend. 6

Counsel deprived defendant of my liberty of my constitutional rights of effective assistance of counsel. (On pg. 66 line 20-25 in p.c.c. transcript)  
(Words from counsel) "I remember that it was 20yrs, negotiated on arm-robbery because the arm-robbery was the most serious of those charges and that would include all the weapon charges."

Counsel failure to object plea knowing and being aware of the nature and crucial elements of the offense. This makes the counsel ineffective and that violated due process + equal protection of laws. Counsel knew of the breached plea agreement and knew that the crucial elements that's needed to make arm-robbery to be arm-robbery. Due to counsel deficient performance prejudice the outcome.

Counsel's conduct so undermined the proper functioning of the adversarial process that it can not be relied upon as having produced a just ~~result~~ result. / Strickland v. Washington, 466 U.S. 668, ~~466 U.S. 668~~

~~Butter~~ Butter, 286 S.C. at 442, 334 S.E.2d at 84

Counsel performance was deficient that counsel did not object the plea bargain after knowing of the ~~and~~ constitutional violations. Violations that consist of breach of plea agreement, violation of due process, + unlawful conviction.

If a prisoner pleads guilty on the advice of counsel, he must demonstrate that the advice was not within the range of competence demanded of attorneys in criminal cases, *Tollett v. Henderson*, 411, U.S. 258, 266 (1973)

Counsel was aware of the constitutional violations and did nothing to provide client with equal protection of laws. Still yet counsel advised client to plea guilty after knowing of the constitutional violations. Counsel even failed to object, Counsel also aware that the prosecutor dismissed the crucial elements of the offense, by doing that change the nature of the offense and that change the offense to be dropped to an lesser-included offense. By counsel performance being deficient and being ineffective prejudiced the outcome. Counsel advice was not ~~within~~ within the range of competence required in criminal cases.

Butler 286, S.C. 442, 334, S.E.2d at 824

Counsel 'manifested injustice' that is an direct ~~and~~ <sup>and</sup> obvious <sup>and</sup> observable error. Counsel failed to object plea bargain after knowing of the constitutional violation, counsel inadequately advised client to plea after being aware of due process violation, and counsel failed to do an adequate investigation to properly prepare for trial. Counsel could have interrogate the witness to see if statements were true or false. There was no audio recording nor video recording of any interrogation against client plus there was no written statement from client. And the evidence in the case was not in the client's possession. Counsel could have file for a motion to suppress evidence and proceed to trial.

Counsel's deficient performance prejudiced the applicant such that there is a reasonable probability that but for counsel's ~~an~~ unprofessional errors the ~~just~~ result of the proceeding would have been different.

But for counsel's alleged errors I would have not pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474, U.S. 52 (1985)