

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Feb 14 2022**

S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable H. Steven DeBerry IV, Circuit Court Judge

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PATRICK L. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001335

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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(803) 734-1330

ATTORNEY FOR PETITIONER

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Trial counsel erred in failing to move for the withdrawal of petitioner’s guilty pleas and/or to appeal the case in order to have the pleas invalidated after the solicitor dishonored the plea agreement by requesting a specific sentence in the case when the plea deal reached required the state to make no sentencing recommendations at all. ....3

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**ISSUE PRESENTED**

Did Trial counsel err in failing to move for the withdrawal of petitioner's guilty pleas and/or to appeal the case in order to have the pleas invalidated after the solicitor dishonored the plea agreement by requesting a specific sentence in the case when the plea deal reached required the state to make no sentencing recommendations at all?

## STATEMENT

Petitioner Patrick L. Davis pled guilty to assault and battery of a high and aggravated nature, possession of a weapon during the commission of a crime, larceny (enhanced) and escape during the October 2018 term of the Spartanburg County General Sessions Court before Judge Grace Gilchrist Knie. App. 1-41. Petitioner was sentenced to imprisonment for a period of twenty years (suspended upon fourteen years) on the assault conviction and ten years on both the larceny and escape convictions, and five years on the weapon conviction. Dan MacDonald represented petitioner at the plea proceeding and Assistant Solicitor Spenser Smith appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

Petitioner filed a PCR application on October 18, 2018, with the Spartanburg County Office of the Clerk of Court. App. 43-50. The respondent filed a Return dated February 18, 2020, requesting an evidentiary hearing be held in response to petitioner's PCR action. App. 51-56. On March 22, 2021, petitioner filed an amended PCR application.

On August 3, 2021, a PCR hearing was convened at the Spartanburg County Courthouse before Judge H. Steven DeBerry, IV. App. 62-101. Petitioner was present at the hearing and represented by Rodney Richey, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

On October 25, 2021, Judge DeBerry issued an Order of Dismissal in the case. App. 103-118. Petitioner appealed Judge DeBerry's Order. This petition follows.

## ARGUMENT

Trial counsel erred in failing to move for the withdrawal of petitioner's guilty pleas and/or to appeal the case in order to have the pleas invalidated after the solicitor dishonored the plea agreement by requesting a specific sentence in the case when the plea deal reached required the state to make no sentencing recommendations at all.

During the PCR hearing, petitioner testified that the plea bargain included the agreement that no sentencing recommendations would be put forth by the state. However, at the plea proceeding, the solicitor recommended that petitioner receive a prison sentence of 15 to 20 years. Petitioner stated that as a result, he wanted counsel to appeal in effect on the plea agreement violation issue, but that counsel never discussed any appeal or any remedy with him.<sup>1</sup> App. 72, 1.7-p.76, 1.20. App. 80, 1.10-p. 81, 1.14.

Trial counsel testified during the PCR hearing and explained that the plea agreement included concurrent sentencings, but that no recommendations would be made by the state. Counsel added that he objected when the solicitor violated the agreement and recommended sentencing for 15 to 20 years because this violated the agreement, and that a bench conference followed. Counsel admitted that he failed to get a ruling on his objection, and that he did not request a ruling; and admitted further that he failed to move for the withdrawal of the pleas, and that he could not recall if there was a discussion regarding an appeal to present the issue before the appellate court. App. 84, 1.9-p.86, 1.12. App. 90, 1.2-p. 93, 1.11; App. 96, 1.16.

The PCR judge ruled that counsel was not deficient with respect to the plea agreement violation because counsel objected to the same and alerted the plea judge to the violation of the plea agreement, and that there was no prejudice shown because petitioner wanted the option of a

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<sup>1</sup> Solicitor: ...[W]e've struck a deal, but we would ask for something in the 15-to-20 year range on him.

Defense Counsel: Your Honor, may we approach for a second? We object.  
Whereupon a bench conference was held. App. 29, lines 5-11.

plea rather than a trial, and that the judge's sentence established that the solicitor's recommendation did not influence the sentences handed down in the case. App. 103-118.

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. 70, 652 S.E.2d 444 (2007).

Here, the solicitor breached the plea bargain by recommending a sentencing range when the agreement was that no recommendations would be made by the state. 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. See more recently the case of Smith v. State, 413 S.C. 194, 775 S.E.2d 696 (2015), where the state's recommendation of the maximum sentence was a breach of a plea agreement that included the state's promise to remain silent at sentencing, which in turn warranted the invalidation of the plea agreement on a manslaughter prosecution.

Also, 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 (6<sup>th</sup> Cir. 1988) and United States v. Morrison 449 U.S. 361 (1981). Compare 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,

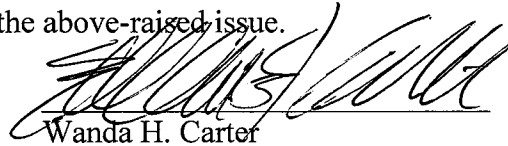
the plea agreement breach was the solicitor's classification of the defendant's second-degree burglary offense as violent because this deviated from the plea agreement. See also Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the case was remanded for specific performance where counsel was 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.

There was a breach of the plea agreement in petitioner's case, and thus counsel erred in failing to move to have the pleas withdrawn and/or to appeal the case in order to invalidate the pleas based on the violation of the plea agreement. Counsel's error violated petitioner's right to competent legal counsel in a criminal case as guaranteed under the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as the error led to sentencing in light of the state's recommendation.

Moreover, petitioner did not voluntarily waive his right to an appeal because he was unaware of his right to an appeal and is entitled to a belated appeal per White v. State, 263 SC 110, 208 S.E.2d 35 (1975). A voluntary waiver is only freely given when there is a known right waived. Johnson v. Zerbst, 304 U.S. 458 (1938). Had counsel appealed, then there was a reasonable likelihood that the plea agreement would have been addressed on appeal and remanded.

**CONCLUSION**

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



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of February 2022.

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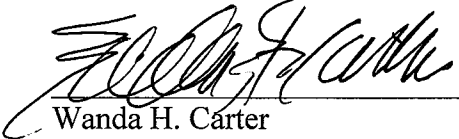
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Patrick L. Davis states:

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 H. Steven DeBerry IV, which was held on August 3, 2021, 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 Patrick L. Davis.

Respectfully Submitted,

  
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Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of February, 2022.

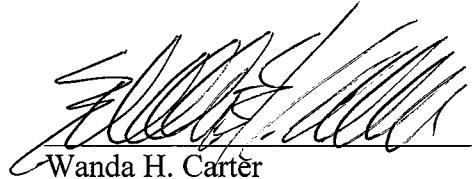
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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