

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

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DARIAN S. HILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001450

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PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Petitioner's guilty pleas were given involuntarily because the pleas were based on his belief that there was an informal arrangement established wherein his sentences would be reduced subsequently in exchange for his testimony against the co-defendants in the case.

STATEMENT

Petitioner Darian S. Hill pled guilty via North Carolina v. Alford, 400 U.S. 25 (1970), to second degree burglary (violent), ABHAN, possession a weapon during the commission of a violent crime, and armed robbery during the March 2018 term of the Spartanburg County General Sessions Court before Judge Grace G. Knie. App. 1-43. Petitioner was sentenced to imprisonment for a period of twenty years on the ABHAN conviction, suspended upon service of fifteen years and probation for a period of five years, fifteen years on the burglary conviction, fifteen years on the armed robbery conviction, and five years on the weapon conviction. Petitioner did not appeal his convictions and sentences.

On June 10, 2019, petitioner filed a PCR action with the Spartanburg County Office of the Clerk of Court. App. 46-53. On November 5, 2019, the state filed a Return in response to petitioner's PCR action. App. 54-65.

A PCR hearing was convened on September 14, 2021, at the Spartanburg County Courthouse before Judge William A. McKinnon. App. 67-104. Petitioner was present at the PCR hearing and represented by Attorney Susannah Ross, and Assistant Attorney General William H. Ray appeared on behalf of the state.

On November 29, 2021, Judge McKinnon signed an Order of Dismissal in the case denying and dismissing petitioner's PCR action. App. 106-115.

Petitioner appealed Judge McKinnon's Order of Dismissal filed in the case. This petition follows.

ARGUMENT

Petitioner's guilty pleas were given involuntarily because the pleas were based on his belief that there was an informal arrangement established wherein his sentences would be reduced subsequently in exchange for his testimony against the co-defendants in the case.

In the case at bar, counsel suggested and hinted to petitioner during the plea proceeding that he might receive a reduction of his sentences if he gave testimony against his co-defendants, although this possibility was never formalized as part of the plea bargain. The plea bargain in the case was the guarantee that petitioner would not receive a sentence of life imprisonment in exchange for his guilty pleas. App. 101, l.22- p. 103, l. 20; App. 89, l. 20 – p. 90. l.8.

During the PCR hearing, petitioner testified that after he was sentenced and sent to SCDC, he was later transported back to the circuit court to testify against co-defendant Lorenzo Gaines at trial, but that the trial never happened because Gaines pled guilty. Petitioner's testimony was that he relied on the possibility of a reduction of his sentences if he gave the solicitor information implicating his co-defendants when he pled guilty, and also that he believed his willingness to testify against his co-defendants would result in the reward of his receipt of reduced sentences in his case. Petitioner interpreted counsel's advice to mean that there was some type of informal arrangement wherein his sentences would have been reduced in exchange for his cooperation against the cases of his co-defendants, notwithstanding the fact that this arrangement was never actually stated formally. App. 74, l. 15 – p. 87, l.2.

The solicitor testified at the PCR hearing and explained that there was no promise for a downward departure on sentencing as part of petitioner's plea bargain based on petitioner's subsequent submission of information against his co-defendants. However, the solicitor admitted

that the information petitioner submitted to him led to the conviction of the female co-defendant in the case. App. 87, l. 11 – p. 92, l. 25.

Trial counsel testified at the PCR hearing and stated that a sentence reduction in exchange for petitioner's testimony against the co-defendants had not been a part of the plea agreement, but he admitted that he hinted and suggested to petitioner that his cooperation might result in a downward departure of his sentences at a later date. App.96, l. 4 – p. 101, l. 14.

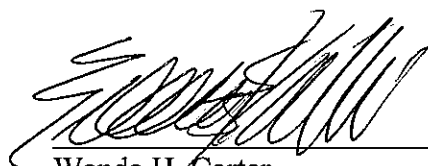
This case was a home invasion that occurred on September 11, 2015, which resulted in an assault upon a woman inside the home, who stated that two black males entered her home, beat her, asked for money, and confiscated her bank ATM card. Petitioner and Lorenzo Gaines were arrested in connection with this incident. Ultimately, a third perpetrator, who was female, was found to have been involved in the case as well. App. 15, l.8-p.20, l.18.

A defendant must be fully informed of the consequences of his plea, which includes the sentencing consequences of his plea. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). In the case at bar, counsel failed to clearly delineate the difference between a firm agreement stated in the plea bargain regarding sentencing and the possibility of an informal reduction of his sentences, which might or might not have occurred based on his subsequent cooperation with the solicitor to obtain convictions against his co-defendants. Counsel did not fully explain sentencing consequences to the extent that the grant of a subsequent downward departure regarding sentencing was a possibility only, rather than a confirmed agreement as part of his plea bargain in the case. As a result, counsel's misadvice and petitioner's sentencing misunderstanding meant that his guilty pleas were not given voluntarily because counsel erred in failing to adequately explain sentencing consequences to him. Counsel's ineffective assistance as outlined above in this regard violated the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985), such that but

for counsel's error, a reasonable probability exists that petitioner would not have pled guilty in the case. Also, in light of the circumstances, counsel erred in failing to file a motion requesting that the solicitor reduce petitioner's sentence under S.C. Code Ann. Section 17-25-65.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of May, 2022.