

State of South Carolina
In The Supreme Court

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

Tyquan Jared Amir Jones-EL

Movant

v.

State of South Carolina

Respondent

Appellate Case No. 2012-212303

Motion to amend Pro Se Response

Tyquan Jared Amir Jones-EL
Movant

Issue Presented

Whether counsel rendered ineffective assistance in derogation of the Sixth Amendment for his failure to make use of hearing testimony on cross examination, when testimony was crucial evidence to prove inadmissibility of state evidence?

Argument

Counsel rendered ineffective assistance in derogation of the Sixth Amendment for his failure to make use of hearing testimony on cross examination, when testimony was crucial evidence to prove inadmissibility of state evidence.

Relevant Facts

The Family Court held a Jackson v. Denno, 378 U.S. 368 (1964) hearing regarding the voluntariness of petitioner's statement. App. 145.11.11-152.1.22. During this hearing only Ofc. Robinson's testimony was heard. App. 145.11.11-152.1.22. Ofc. Robinson testified that Lt. Ron Swaggard was present when the statement was taken. App. 145.23-24. The Family Court ruled that statement was admissible. App. 152.1.25-153.1.25.

The following day Lt. Swaggard was called upon by the state to testify. App. 182.11.9-183.1.21. Lt. Swaggard testified that petitioner initially did not say anything at all, until he was told "And under the Law, what we could do for him. We would do." App. 186.11.19-187.1.5. Upon cross examination by petitioner's counsel Lt. Swaggard was asked "what type of hearing did you think you were coming up here for?" Lt. Swaggard replied "I figured we were going to court on the charges against Mr. Jones" Petitioner's Counsel: "Why did you make that assumption, Officer Swaggard?" Lt. Swaggard: "I thought that having spoken to everybody that, that's the way this was going to go." App. 195.4-18. During the State's redirect examination Lt. Swaggard was questioned "To your knowledge was he promised anything if he participated in this case?" Lt. Swaggard: "The only promise that anybody ever made to him was that we would talk to, you know, members of the Court, Members of the Solicitor's office, whomever." App. 206.11.23-207.1.4 Petitioner's counsel did not file motion to suppress in general sessions court after waiver. App. 359.10-19

Discussion

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's erroneous advice to plead guilty was not an intelligent choice among the alternative courses of action open to petitioner. Counsel clearly shows prejudice with his assumption of statements admissibility based on Family Court ruling before Lt. Swaggard's testimony. App. 358.11.22-359.1.5. Petitioner's statement would have been suppressed in General sessions because Lt. Swaggard's promises of leniency rendered petitioner's statement involuntary. *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight). Petitioner is entitled to a new trial because of the deficient advice from his attorney induced his guilty plea. *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991)

May 29, 2013

Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, S.C 29211

Re: Motion to Amend Pro Se Response

Being that I am a novice to law I feel my first response did not present the facts in Appellate case No. 2012-212303 the way they needed to be addressed. I am confident in this amendment. I did not receive a response from the state as of yet, so I pray this motion is on time. If not I would like the record to reflect that an attempt to file was made.

Enclosed is three page amendment.

Tyquan Jones-EL
T. Jones-EL

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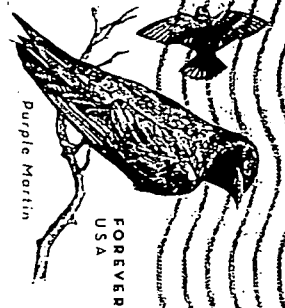
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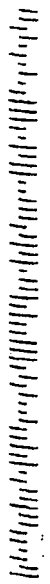
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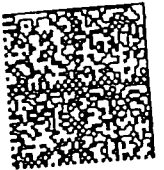
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