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SWORN to and subscribed before me this
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[Signature] (L.S.)
Notary Public for South Carolina

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE SUPREME COURT]

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APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

APPELLATE CASE NO: 2011-201590

ROBERT A. LAROCHE APPELLANT

v.

THE STATE OF SOUTH CAROLINA RESPONDENT

[INITIAL] BRIEF OF APPELLANT

ROBERT A. LAROCHE, # 330647,
APPELLANT, PRO SE,
SELOC-B, ROOM 168,
TURBEVILLE CORRECTIONAL INSTITUTION,
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STATEMENT OF ISSUES ON APPEAL

- 1) WAS COUNSEL INEFFECTIVE FOR FAILING TO SHOW COMPETENCY WHEN HE DID NOT PRESENT THE ARGUMENT OF THE APPELLANT'S FOURTH AMENDMENT VIOLATION?

- 2) WAS COUNSEL'S PERFORMANCE DEFICIENT ACCORDING TO REASONABLE PROFESSIONAL NORMS, AND DID THE DEFICIENT PERFORMANCE PREJUDICE APPELLANT'S DEFENSE?

STATEMENT OF THE CASE

On March 29, 2007, the Appellant was arrested for Trafficking in 400 or more grams of cocaine, and Possession with intent to Distribute Marijuana.

Appellant plead guilty, upon advice of counsel, on September 15, 2008, in the Florence County Court of General Sessions to Trafficking in cocaine 28 to 100 grams, first offense.

On February 12, 2009, Appellant filed a (PCR) Post-Conviction Relief application based on Ineffective Assistance of Counsel.

On September 08, 2011, a hearing was convened and the issues were presented before the Honorable Michael G. Nettles.

On September 29, 2011, the Honorable Michael G. Nettles dismissed the (PCR) application.

In October of 2011, the Appellant filed the Notice of Appeal to the Supreme Court of South Carolina.

FACTS

The first issue, RP 65, lines 15-17, on the Post-Conviction Relief transcript, Mr. James W. Smiley, IV., states the first issue to challenge would have been the stop. I didn't know we would be successful there, but be one place to challenge.

The second issue on RP 67, lines 24-25, stating, cause one of my prongs attacking a search would have been that the toilet box wasn't open.

The third issue on RP 70, lines 14-20, Mr. Smiley, yes, sir. I've tried - - its not like this was as you know, your Honor, it wasn't like it was something new to me. I mean, all I do is criminal defense. It's not that I do a little bit of this, a little bit of that. So I handle cases like this on a very regular basis, so I certainly know the law. I know the search and seizure issues fairly inside and out.

The fourth issue on RP 75, lines 1-6, Okay. You mention that you really wanted to try this case. You thought it would be fun with the two issues of search and seizure and the witnesses that were just talking about.

The fifth issue on RP 76, lines 23-25; and on RP 77, lines 1-8, It raises the level of criminal activity a foot coupled with the nervousness cause that would have been towards the fact that whether they could in fact get him out, detain him or not for crossing the white line. He then consented to the search, but we would have been going after the stop itself. Question. Don't let me assume you can follow up. You mention there was going to be some type of attack on the search and seizure was that because the cocaine was actually in a sealed toilet box we talked about earlier? Answer, Right.

ARGUMENT

The Appellant alleges ineffective assistance of counsel as a ground for relief, the Appellant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E. 2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, Strickland, 466 U.S. at 690.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Appellant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms" Cherry v. State, ID. at 117, 386 S.E. 2d at 625 (quoting Strickland, 466 U.S. at 688).

Second, counsel's deficient performance must have prejudiced the Appellant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ID. at 117-18, 386 S.E. 2d at 625 (quoting Strickland, 466 U.S. at 689).

The Constitutional effective-assistance standards laid out in Strickland v. Washington, 466 U.S. 668, 668 (1984); and Hill v. Lockhart, 474 U.S. 52, 59 (1985); prove that counsel must be effective in all criminal proceedings involving trial and guilty pleas.

In addition, the Supreme Court provided the Exclusionary rule is a "prudential" doctrine, created by the Supreme Court to compel respect for the Constitution guaranty contained in the Fourth Amendment. "Exclusionary rule" is a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation.

After the Appellant retained Mr. James W. Smiley, IV., for the sum of 25,000 dollars, he claimed to be a "Top Flight" criminal attorney.

Mr. Smiley stated on Appellant's (PCR) Post-Conviction Relief transcript RP 70, lines 14-20, he knows the search and seizure issues fairly inside and out.

Fraudulent misrepresentation states a false statement that is known to be false or is made recklessly-without knowing or caring whether it is true or false-and that is intended to introduce a party to detrimentally rely on it. The Appellant submits Mr. Smiley never researched any issues pertaining to the search and seizure which was deficient performance under Strickland.

The Appellant submits his research was restricted due to the fact of the Turbeville Correctional Institution's law library is (13) thirteen years outdated to relevant case law. The South-Eastern 2nd Edition, (S.E.2d), books containing case law stem from 100 to 576 , with some books in-between missing. Thus, limiting the research that should have been submitted in the Appellant's (PCR) Post-Conviction Relief Application.

However, recently installed computers containing WESTLAW, have been provided, "allowing inmates to research newer case law" allowing the Appellant to learn about search and seizure issues that Mr. James Smiley should have researched and submitted for the Appellant's defense.

Since the new computers have been installed the Appellant has found multiple cases to support an illegal detention. If Mr. James Smiley put forth a defense for the Appellant the results of his case would have been different. At the time of the Appellants arrest in March 2007, the case law listed below were ruled upon or still pending in court. The cases listed are substantial in nature, and they will prove the unlawful detention in the Appellants case.

State v. Woodruff, 344 S.C. 537, 544 S.E. 2d 290 (S.C. App. 2001); In justifying a pat down search for weapons, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. U.S.C.A.Const.Amend.4.

Officer's second search of defendant following valid traffic stop was not related to any reasonable apprehension that defendant was armed with a weapon, but constituted an improper evidentiary search, or "fishing expedition" in violation of defendant's Fourth Amendment right to be secure against unreasonable searches and seizures; the officer already searched defendant for weapons.

In our view, this behavior constitutes the very type of evidentiary search, or "fishing expedition," Terry expressly refused to authorize and which has been condemned time and again by the United States Supreme Court, as well as the courts of this state.

In State v. Rivera, 682 S.E. 2d 307 (2009) it states: Nervousness, standing alone, did not create a suspicion of criminal behavior. In State v. Pichardo, 623 S.E. 2d 840 (2005) it states: Deputy did not have reasonable suspicion to further detain defendants, who were driver and passenger of vehicle, after traffic stop and issuance of ticket: only evidence of reasonable suspicion was deputy's belief that passenger was nervous, and nervousness alone was not enough.

In State v. Tindall, 665 S.E. 2d 188 (Ct. App. 2008); which the case began on April 15, 2004, states: A temporary detention during an automobile stop, even if only for a brief period and for limited purpose, constitutes a seizure within the meaning of the Fourth Amendment; thus, an automobile stop is subject to the constitutional imperative that it not be unreasonable under the circumstances. U.S.C.A.Const.Amend.4.

Furthermore, Tindall's case was Appealed. A Writ of Certiorari was filed and granted on April 10, 2009.

State v. Tindall, 698 S.E. 2d 203, 208 (2010). Police officer's continued detention of driver for questioning after checking license and registration and informing driver that he would write a warning ticket exceeded scope of traffic stop for speeding, following to closely, and failing to maintain lane and was a seizure under the Fourth Amendment; driver was seated in front seat of patrol car with two officers standing at his door, another officer to his left, and a police dog in the back seat, and a reasonable person in his position would not have felt free to terminate the encounter. U.S.C.A.Const.Amend.4.

In the Appellant's case, he was asked to step to the rear of his vehicle, "in front of the patrol car" which contained a barking K-9 dog, 3 officers was present at the scene, and the Appellant in his position did not feel free to terminate the encounter. Furthermore, the officers at the scene verbally told the Appellant his license and registration came back clean, then completed the warning as stated in the police report. However, the officer left out the fact of the license and registration came back clean and only stated the completion of the warning citation.

The only evidence in the Appellant's case against him was a plane ticket and CPL. Brown misquoted the Appellant's explanation as to why the Appellant retained the confirmation number on the ticket. The Southwest Airlines ticket agent told the Appellant to hold on to the confirmation number because a second ticket was purchased canceling out the first ticket which is what the Appellant had in his possession.

If CPL. Brown did not misquote the Appellant's story as to why he had the ticket, the traffic stop would have amounted to a simple warning citation.

However, the officer clearly misquoted the Appellant's story to fit his position as to assert suspicion to search the Appellant's vehicle. Furthermore, if Appellant's counsel completed a reasonable investigation, Mr. James Smiley would have learned why the ticket was switched. As stated in Appellant's (PCR) Post-Conviction Relief transcript Mr. James Smiley could not figure out the Appellant's case. The reason for this mistake is because Mr. Smiley never put forth an effort to defend his client. In the Appellant's case, search and seizure is talked about on five different occasions, however, what effort was presented to defend the clients rights.

Certain Appellant Court Rules apply to a lawyer in the representation of a client. Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Mr. James W. Smiley, IV., was paid 25,000 dollars to represent the Appellant. The Appellant hired Mr. Smiley under good faith and he deceived the Appellant into believing he had no supporting evidence in his favor.

Mr. James Smiley was inconsiderate with the Appellant's rights under the Fourth Amendment. Furthermore, according to Mr. Smiley's testimony in the Appellant's (PCR) transcript, RP 63, lines 10-18, Mr. Smiley could never comprehend the correct lesser-included offense of trafficking, and that's why the Appellant was allowed to plead guilty to an unindicted trafficking charge of 28 to 100 grams of cocaine. The Appellant has spent years of hurtful incarceration trying to have the Courts of South Carolina address the issue of what the General Assembly deems to be the only legal lesser-included offense of trafficking. In addition, the Appellant finally has ample means of research under search and seizure case law, which in turn, finally allows the Appellant to submit a substantial argument proving his defense involving the Fourth Amendment violations.

This was Mr. James W. Smiley's job as a criminal defense attorney right from the beginning of the Appellant's case. However, Mr. Smiley thought it would be fun with the two issues of search and seizure, (PCR) transcript, RP 75, lines 2-3, but somehow declined to put forth a defense after being paid the ridiculous fee of 25,000. No where in the Professional Rules of Conduct for a lawyer does it state that an attorney should have fun with a clients freedom.

CONCLUSION

The Appellant prays this Honorable Court allows this Amendment to be entered into the record based on the reasons stated herein.

The Appellant prays this Honorable Court addresses the deficient performance of Mr. James Smiley. The clear and ambiguous mistakes Mr. Smiley made in not knowing the correct laws or how to apply them. Therefore, greatly effecting the outcome of the Appellant's court procedure.

Moreover, the Appellant contends his conviction and sentence should be vacated based on the case law set forth under the Fourth Amendment violations that have been stated.

Thank you for your time with this matter.

DATED: 06/12/2013

Respectfully Submitted,
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SWORN to and subscribed before me this
12th day of June, 2013.
Emily H. [Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016