

The State Of South Carolina
For The State Supreme Court

CERTIORARI TO YORK COUNTY
PAUL M. BURCH, CIRCUIT COURT

LA DARRIUSE A. GAITHER,

Petitioner.

- against -

State Of South Carolina,

Respondent.

PRO SE BRIEF

The Petitioner, files this brief based on issues addressed in rule 59(E) motion that respondent did not allow to be addressed and counsel in a letter to me refused to file accordingly. since I personally filed a Pro se motion before notice of appeal was filed, then I am entitled to have these claims adjudicated and failure of counsel to do so procedurally bars me. As such, in this instance it is respondent and counsel fault for not allowing motion to be addressed in violation of my due process rights under Coleman v. Thompson, 501 U.S. 722 (1991); Holland v. Florida, 560 U.S. (2010); Martinez v. Ryan, 566 U.S. (2012) my issues are as follows:

Question One:

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Whether Trial Counsel Was Ineffective For Failure To Challenge Arrest Warrants?

It is my argument, that counsel was ineffective for not challenging arrest warrants. See *Hill v. Lockhart*, 474 U.S. 52 (1985) Under Hill, the PCR court does not have supporting evidence counsel in this instance, that my trial attorney advice to Plead Guilty was not erroneous when arrest warrant states at time it was obtained witnesses confirmed I was involved. Accordingly, at no time according to the Rule 5 discovery did victim pick me out in line-up, as alleged and it contrary to counsel testimony that an investigation was done. (APP. PG 43; lines 23-25; PG 44; lines 1-25; PG 45; line 1-25; PG 46; lines 1-7) Having looked over discovery, and reading arrest warrants it is outside the duty of counsel to not challenge warrants. Furthermore, without Probable cause to support arrest then my Fourth amendment right to illegal search and seizure was violated. Especially in light of fact that, as my trial counsel testified that:

A. The individuals from the Park who were playing basketball they couldn't really see the people because all they saw was the guys running so they weren't up close on them so like to say who it exactly was....

APP. PG 45; lines 22-25

So this would mean, that any reference to fact Police have witnesses to prove these facts will be false. See, *Franks v. Delaware*,

Moreover, even the co-defendant statement(s) are questionable when he gave more than one statement to Police (APP. PG 46; lines 12-15) and at no

time can these statements be deemed reliable. When as herein, reliability is one of the factors which as mentioned is critical to support factual circumstances. The Police can not attest to the truthfulness or reliability when co-defendant has given conflicting and or shown inconsistencies in statements he gave to officers.

Solicitor Collins: "... And had Victor Williams ultimately started to testify and then deny..."

APP. PG 14: lines 10-11

Q: How many letters did you receive from the co-defendant?

A: I believe it was maybe one or two but I think it was just one...

APP. PG 46: lines 8-10

Everyone knew my co-defendant credibility was questionable, and in spite of all this counsel testimony that:

A: "... and I believe he wasn't there but I felt like the state's evidence was going to be overwhelming..."

APP. PG 50: lines 9-10

My co-defendant wrote my trial counsel, and basically removed me as a participant in this crime. Moreover, it was my testimony that had this been shown to me I would not have pleaded guilty but gone to trial. (APP. PG 55: lines 25; PG 56 lines 1-3) Whereas, according to this letter if my co-defendant statement was made under pressure and out of fear, then question of admissibility comes front and center. By virtue of his own writing, cast significant doubt on his credibility and while it would be question for jury. This was only eyewitness who state was relying on for corroboration of its evidence that I was at the scene. However, even the description of man with dreads (APP. PG 55: lines 16-24) which is supported by trial counsel testimony that:

"... But then you know after I did this plea with him, there was something that came to mind that and maybe if I was -- well I don't know if this would be ineffective assistance of counsel, but his co-defendant had dreadlocks so that explained who the dread lock person. The

Person with the deadlocks?

APP. PG 50; lines 12-17

Counsel testimony reveals, that after my Guilty Plea she had doubts concerning facts which state says Placed me at scene. (APP. PG 50; lines 12-25) But in reality it shows, a lack of investigation on her Part as this is something that would truly have come out during trial. Moreover, even use of a Jailhouse snitch would be unconstitutional under *Massiah v. United States*.

Without more this needed to be addressed at hearing, because there is no other credible to determine whether my constitutional rights were violated by questioning from this Person. (APP. PG 13; lines 18-25; PG 14; lines 1-10) This is something counsel should have challenged but did not and all information contained or used is fruits of Poisonous tree.

Wherefore, I Pray court Grants Writ

Date: 17th day of September, 2012

Respectfully Submitted:
Ladarrise A. Gaither
Ladarrise A. Gaither / Pro Se

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September 17th, 2012

Honorable Daniel Shearouse, Chief Clerk
South Carolina State Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: LaDorriuse A. Gaither v. South Carolina.
SUBJECT: COPY OF PRO SE BRIEF STAMPED FILED.

Honorable Chief Clerk Of Court

Please find enclosed my original of Pro Se brief
to be filed in this court. I respectfully ask that you please send me a clock
stamped filed copy for my records.

With kind Regards
LaDorriuse Gaither
LADORRIUSE A. GAITHER / PRO SE

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