STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County
G.D. Morgan,Jr.,Circuit Court Judge

CECIL BLACKWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE NO.2022-001052

PETITION FOR WRIT OF CERTIORARI

Cecil Blackwell
Perry Corr.Inst.
430 Oaklawn Rd.
Pelzer, SC 29669

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ISSUE PRESENTED

Whether the PCR court erred by failing to find trial counsel rendered ineffective assistance for failing to investigate and advise Petitioner about challenging the admissibility of drug evidence in a suppression motion, where the State failed to establish a proper chain of custody, since counsel's failure to advise Petitioner about this important defense resulted in Petitioner's entry of a plea that was not voluntary, knowingly, and intelligently made?

STATEMENT

Petitioner pled guilty to trafficking methamphetamine and failure to stop for a blue light on October 10,2018, at the Cherokee County General Sessions Court before Judge R. Keith Kelly. Petitioner's plea resolution included a recommended fifteen-year sentence on a lesser drug charge (trafficking ten to twenty-eight grams, 2nd offense) and a recommended sentence of five years concurrent on the failure to stop for a blue light charge. App.36-45.

Petitioner's sentencing was defferred for seven days until October 17,2018. Petitioner failed to appear for sentencing as scheduled. In January,2019, Petitioner was apprehended by law enforcment and a sentencing hearing was convened on February 4,2019, before Judge Kelly at the Cherokee County Courthouse. Petitioner was sentenced to an aggregate twenty-year prison term. App.47-53. Petitioner was represented by John Rekenbeil at the guilty plea proceeding and sentencing hearing held in the case, and Assistant Solicitor Kimberly L.Leskanic appeared on behalf of the state for both proceedings. Petitioner did not appeal his convictions or senteces.

On January 10,2020, Petitioner filed a PCR application with the Cherokee County Office of the Clerk of Court. App.56-61. The respondent filed a return on June 17,2020. App.79-89. Amended PCR applications were filed on June 5,2020, and August 28,2020. App.62-78; App.91-108. A PCR hearing was convened on April 18, 2022, at the Spartanburg County Courthouse before Judge G.D. Morgan. App.116-164. At the PCR hearing, Petitioner was

represented by Attorney Rodney Richey, and Assistant Attorney General Chelsey Marto appeared on behalf of the state.

At the PCR hearing, Petitioner testified that he did not see any discovery until three days after the plea was accepted. App.123,line 7-9. Petitioner further testified that counsel did not research and advise Petitioner about an unknown individual named Rodney Kinard that dropped item 1 and item 2 into evidence, and that Kinard was not identified on Petitioner's chain of custody report. App.127,line 6-18; App.130, line 13-20. Petitioner confirmed through testimony and exhibits that a Rodney Kinard had never been employed through the Cherokee County Sheriff's Office. App.129,line 18-25; App.130,line 1-9; App.138,line 8-25; App.139,line 1-7; App.157. Further, Petitioner testified had he known about the incomplete chain of custody, he would not have pleaded guilty but would have insisted upon exercising his right to trial. App.133,line 3-6.

Counsel admitted that Rodney Kinard directly handled the drugs and should be on the chain of custody report. App.146,line 11-25; App.147,line 1-8. Counsel also admits that since Rodney Kinard was not identified on the chain of custody, that it would be a reasonable basis to suppress the drugs. App.147,line 9-21. Counsel testifies that he did not recognize or know Rodney Kinard. App.147,line 22-25; App.148,line 1-16.

On July 14,2022, the PCR Court issued an Order of Dismissal. App.165-175. The order of dismissal held that Applicant claims counsel was ineffective for failure to investigate the chain

of custody report. He stated that had counsel investigated the chain of custody, counsel would have noticed that one of the individuals on the chain did not work at the institution reflected on the report. However, counsel credibly testified that he did not see anything incorrect on the chain and that he believed that Applicant sought out this individual's records from the wrong institution. Thus, counsel acted reasonably in reviewing the report and finding nothing incorrect on it and is not deficient as a result. Additionally, even if this was not investigated, there is seemingly no change in counsel's recommendation as to the plea and prejudice has not been established as a result. Accordingly, relief is denied on this ground. App.174.

ARGUMENT

The PCR Court erred by failing to find trial counsel rendered ineffective assistance for failing to investigate and advise Petitioner about challenging the admissibility of drug evidence in a suppression motion, where the state failed to establish a proper chain of custody, since counsel's failure to advise Petitioner about this important defense resulted in Petitioner's entry of a plea that was not voluntary, knowingly, and intelligently made.

Counsel admitted that an unknown individual named Rodney Kinard directly handled the drugs. Counsel further admits that since Rodney Kinard was not identified on the chain of custody report, that was a resonable basis for a suppression motion. Counsel's failure to advise Petitioner that he could challenge the admissibility of the drug evidence was ineffective assistance of counsel.

The failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the Strickland analysis, as such omission cannot be said to fall within "the wide range of professionally competent assistance" demanded by the Sixth Amendment. Hill,474 U.S. at 62, 106 S.Ct. at 372; Strickland v. Washington, 466 U.S. 668,690, 104 S.Ct. 2052,2066, 80 L.Ed. 2d 674 (1984).

For a guilty plea to represent an informed choice so that it is constitutionally knowing and voluntary, the counsel must be familiar with the facts and law in order to advise the

defendant of the options available. A defendant cannot knowingly and voluntarily plead guilty unless he possesses an understanding of the law in relation to the facts, which includes available defenses. Further, a guilty plea can be involuntary if the defendant was not informed by his lawyer of his defenses to the criminal charge. U.S. v. Mooney, 4th Cir. 497 F.3d 397 (2007). A guilty plea must represent a voluntary and intelligent choice amoung the alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25,31, 91 S.Ct. 160,164 27 L.Ed. 2d 162 (1970). The assistance of counsel recieved by a defendant is relevant to the question of whether a defendant's guilty plea was knowingly and intelligent issofar as it affects the defendant's knowledge and understanding. McMann v. Richardson, 397 U.S. 759,770-71, 90 S.Ct. 1441,1448-49 (1970).

An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland. Hinton v. Alabama, 571 U.S. 263 134 S.Ct. 1081,188 L.Ed. 2d 1 (2014); and see Williams v. Taylor, 529 U.S. 362,395, 120 S.Ct. 1495,146 L.Ed. 2d 389 (2000).(finding deficient performance where counsel failed to conduct an investigation that would have uncovered extensive records that could be used for death penalty mitigation purposes, and not because of any strategic calculation but because they incorrectly thought the state law barred access to such records.) Here, defense counsel's failure to conduct a reasonable investigation and advise Petitioner about a suppression motion for the state's

incomplete chain of custody, where an unknown individual named Rodney Kinard directly handled the drug evidence and was not identified on the chain of custody was ineffective assistance of counsel. App.146,line 11-25; App.147,line 1-8.

A party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Sweet, 374 S.C. 1,647 S.E.2d 202,205 (S.C. 2007); see also Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534,537 (S.C. 1957) (stating "it generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence".)

Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. Hatcher, 708 S.E.2d at 753. South Carolina law requires every individual who handled the evidence to be specifically identified, either by providing testimony under oath or producing sworn statements pursuant to Rule 6 (b) SCRCrimP.

The PCR Court's order of dismissal is based on an unreasonable factual finding, when it ruled that counsel testified that he did not see anything incorrect on the chain and he believed that Applicant sought out this individual's records from the wrong institution. The PCR Court ignored the evidence before the court and made an unreasonable factual finding. Petitioner submits to the Court clear and convincing evidence from the Cherokee County Sheriff's Office that shows

a Rodney Kinard does not nor has he ever worked for the Cherokee "INCLUDED" County Sheriff's Office. see exhibit 1. The PCR Court's factual finding is based on an error.

In the context of an alleged failure to make an appropriate suppression motion Strickland requires that a defendant show that:(1) a competent attorney would have made the motion; (2) the suppression motion would have been successful; and (3) the outcome of the proceeding would have been different absent the excludable evidence. see Kimmelman v. Morrison, 477 U.S. 365, 384-85, 106 S.Ct. 2574, 91 L.Ed. 2d 305 (1986).(stating that "where trial counsel fails to make a motion to suppress because he neglected to make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary then ineffective representation is shown".) Here, trial counsel rendered ineffective assistance for failing to investigate and advise Petitioner about a suppression motion, where an unknown individual named Rodney Kinard directly handled the drug evidence and was not identified on the chain of custody report. App.146,line 11-25; App.147,line 1-8. A suppression motion would have been meritorious and would have made a trial different absent the drug evidence in Petitioner's case.

Counsel's performance is constitutionally deficient if he fails to act according to the duty to investigate and research a client's case in a manner sufficient to support informed legal judgments.

To establish prejudice when challenging a guilty plea, a

PCR applicant must prove "there is a reasonable probability that, but for, counsel's errors, the defendant would not have plead guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408,602 S.E.2d 48,49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Frierson v. State, 423 S.C. 257,262, 815 S.E.2d 433,436 (2018). Here, Petitioner's testimony supplied prejudice. Petitioner testified that had he known he could move to suppress the drug evidence, where the state had an incomplete chain of custody, he would not have pleaded guilty but would have insisted upon exercising his right to trial. Petitioner's guilty plea was not voluntary, knowingly, and intelligently made, where counsel failed to advise Petitioner about suppression of evidence.

"CONCLUSION"

Therefore, Petitioner respectfully request that the Court grant a writ of certiorari on the following issue and allow full briefing.

Respectfully submitted,

Dated: 3/6/23

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