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S.C. SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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MAR 24 2023

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

On Petition for Writ of Certiorari to
Beaufort County Jhon C. Hays, III Trial Judge
R. Ferrell Cothran, Jr, Post-Conviction Relief Judge

Appellate Case No. 2023-000302

RODNEY GALIMORE,

Petitioner.

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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S.C. SUPREME COURT

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Re: Rodney Galimore V. State
Appellate Case No. 2023-000302

In this matter i am asking the court of appeals to review this case for counsel inexcusable failure of not filing a motion on issues raised in P.C.R. and not ruled on. As i will show the court: In order to establish a claim for ineffective assistance of counsel, the defendant must show that: (1) Counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced defendant's case. To establish prejudice, as element of ineffective assistance of consel, a defendant must show that but for counsel's error, there is a reasonable probability sufficient to undermine confidence in the outcome, that the result of the proceedings would have been different. In other words the defendant must show that the fact finder would have had a reasonable doubt respecting guilt. The first reason is that one of the issues raised was that the statute was not observed.

Which is §56-5-2953 Incident site and breath test site video recording. (A) A person who violates §56-5-2930, 56-5-2933, or §56-5-2945 **MUST** have his conduct at the incident site and the breath test site Video recorded. (1)(a) The video recording at the incident site must: (i) not begin later than the activation of officer's blue lights; (ii) include any field sobriety test administered; and (iii) include the arrest of a person for a violation of §56-5-2930 or §56-5-2933, or a probable cause determination in that the person violated § 56-5-2945, and show the person being advised of his **MIRANDA RIGHTS**. Also states in part (B) However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. this issues was raised by appellant in the original application. At the P.C.R. hearing the Judge the attorney general and appellants attorney discuss this topic at length in chambers (SEE P.C.R. TRANSCRIPT) Page-6 lines-22-24 " Pursuant to discussions in chambers, we are leaving the record open in this case to take a later deposition." When the appellant was on the stand, this topic was asked about and i stated that the reason the officer gave for not having the video was it was not protocol for him to have a video of the arrest. See trial transcript (page -130 line -10-19.

The officer also testifies that he was trained in numerous classes at the justice academy (see trial transcript P-94 line -24-25 P95- line-1-6.) this officer should have known that not having a video of the Felony D.U.I. violates §56-5-2953. By the statement of its not protocol the attorney general stands and says that he objects that is hear say. I say that i got that from the trial transcript he says that he did not know that it was coming from the transcript. (see P.C.R. transcript p-20 line-12-25 P-21-line-1-25 P-22-L-1-20. the hearing proceeded on with the judge and attorney general stating that the record will be left open for a deposition from trooper sprouse. The P.C.R. Court sent down it's order denying P.C.R. with out a ruling on the issue of failure to observe statute 56-5-2953 which was one of paramount issues. And not having the video recording also violates section 56-5-2950 implied consent to testing for alcohol or drugs; procedures;inference of DUI. (B) no test may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the teasing procedure, In town of mount pleasant V. Roberts 713 se2d 278 States in part "our appellate courts have strictly construed §56-5-2953 and found that a law enforcement agency's failure to comply these provisions is fatal to the prosecution of a DUI case.

This is one of the most meritorious issues appellant has to argue. The P.C.R. Attorney should have known and if not he should be looked at as being ineffective assistance of counsel. In Hines V. State 868 S.E. 2d 387 states in part that "In a Post-Conviction Proceedings, The burden of proof is on the applicant to prove the allegations in his application." By raising the claim of the lack of the arrest video it was stated in the original application, also discussion at the hearing and the proof was the arresting officer stating that it was not protocol and the attorney general stating that he object to hear say. And at that point i told him that it was in the trial transcript the court court stated that it wasted to do a deposition was to be taken. Based on these facts the Write of Certiorari be granted and this case should be sent back to P.C.R. Court for fact finding and conclusion of law. on issues raised and not ruled on or knowing and intelligently waved by applicant. In Willson V. State 348 S.C. 215 states in part. A petitioner is entitled to an Austin appeal if the PCR judge affirmatively finds either that (1) the applicant requested and was denied an opportunity to seek appellate review, or (2) the rite to appeal review of a previous PCR order was not knowing and intelligently waved. the appellant should have one complete bites at PAR PCR .

(4 OF 4)

RODNEY GALIMORE #332336

Wesley Galimore 3/21/23