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State of South Carolina
In the Supreme Court

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable G.P. Morgan, Jr., Circuit Court Judge

Iron Haney, Petitioner

vs.

State of South Carolina, Respondent

Appellate Case no. 2020-001307

Pro se response in opposition to
Counsel's Johnson Petition

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S.C. SUPREME COURT

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ISSUE PRESENTED

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Did the PCB Judge erred in ruling Counsel provided effective representation when Counsel failed to investigate reliability of CB31, Blue ticket leading to invalid Traffic Stop and Warrantless Search and discuss Potential defense to suppress the entire State Case for evidence obtain in violation of the 4th and 14th Amendment of the United States Constitution rendering Petitioner's Plea involuntarily, unknowingly and unintelligently entered

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Statement of the Case

S.C. SUPREME COURT

On December 5, 2016, members of the Spartanburg County Sheriff's office narcotics unit received an anonymous tip that an "individual known as Tee was driving a black Dodge truck, a rental, with a quantity of methamphetamine kept in a silver or gray box." App. 19, 11.21-24. After receiving the tip, officers encountered a black Dodge truck on Highway 221 near California Avenue in Spartanburg County. Officers initiated a traffic stop on the truck for allegedly failing to use a turn signal. App. 19, 11.16-20. The driver of the vehicle was identified as Tron Hancey Petitioner.

Officers had Petitioner exit the truck after they learned he was driving under suspension (DUS), Petitioner was arrested for DUS and Search - incident - to - arrest. The search of his person yielded \$ 7,100, two bags of white powdery substance that tested positive for Cocaine, three bags of heroin, two brown pills and one white pill identified as oxycodone. The total weight of the Cocaine was 2.58 grams. The total weight of the heroin was .77 grams. App. 20, 11.1-14; App. 20, 11.12-14; App. 180-183

During an inventory search of the truck, officers located a bag of methamphetamine weighing 20.93 grams sitting in a ashtray under the radio next to a set of digital scales. In a black backpack in the back seat officers located a "locked box". Inside the locked box was six bags of methamphetamine weighting approximately 169 grams and another set of digital scales. App. 20, 11.15-22. Prior to the search of the truck, Petitioner was given his Miranda Warnings. Law enforcement maintained that Petitioner claimed ownership of the drugs found in the truck while on scene and later while being booked into the County Jail. App. 20, 1.23; App. 21, 1.2.

Petitioner was indicted during the August 2017 term of the Spartanburg County Grand Jury for trafficking methamphetamine greater than 100 grams Second offense, possession with intent to distributed heroin Second offense, possession with intent to distribute Cocain Second offense, and driving under suspension third or subsequent offense. App. 31-38.

On January 8, 2018, Petitioner appeared before the Honorable J. Derham Cole to enter guilty Plea. The State was represented by Linsey H. Overby. Petitioner was represented by Steven D. Epp Esq. App. 1. Petitioner Plea to the Lesser included offense of trafficking methamphetamine 28-100 grams Second offense and to the three other Charges as indicted. App. 3, 11.4-14; App. 22, 11.12-15. Judge Cole Sentenced Petitioner to twelve Years imprisonment for the trafficking Charge, ten Years imprisonment on each possession with intent to distribute Charge, and 90 days imprisonment for DVs, all to be Served Concurrently. App. 25, 1.15-App. 26, 1.3; App. 39-40

Petitioner filed a direct appeal of his guilty plea and sentence which was dismissed as untimely on February 2, 2018. The Permittitur was issued on February 21, 2018. App. 28-30. On October 25, 2018, Petitioner filed an application for post-Conviction Relief. App. 43-56. The State filed a return dated August 8, 2019. App. 57-71. PCR Counsel Susannah Proas filed an Amended PCR application dated January 31, 2020. App. 70.

An Evidentiary hearing was Convened on April 20, 2020, before the Honorable G.D. Morgan, Jr. The State was represented by Chelsey Marto. Petitioner was represented by Counsel Pross. App. 73-74.

PCB HEARING

Petitioner Counsel Ms. Pross filed an amended application to the case adding ineffective of trial Counsel failing to move to dismiss due to the involvement of an investigator, Lauren Williams, in this case, and then process violation. App. 77, 11.15-23. Further, this was a Pull (initial traffic stop) based on a C.I. tip. Petitioner in the original application, alleged failure to investigate the case and Review arrest, the dash cam, Surveillance Camera from Family Dollar; failing to Challenge the Search and alleging that the tip was illegal, and that investigator Lauren Williams, did not determine whether the tipser was a Confidential reliable informant. App. 77, 11.23-App. 78, 11.1-7. Further, no Prelim, failure to Call witness Jennifer Smith . . . and just the fact Lauren Williams, signed the warrant and [this] investigator had some issues a while back with a bad warrant, and

was terminated from the job here, so that gives rise to that allegation. App. 78, 11.8-16. Petitioner acknowledge he could face a potential 30 years or possible life without Parole. App. 79, 11.5-6. Yet, still chose to move forward with the Post-Conviction-Relief (PCR) hearing. App. 79, 1.9.

Petitioner asked Plea Counsel Steven Epps Esq. "Intell, where the blue ticket at where they say I failed a signal... "Did You go and Look at the dash Cam"... "There was a safe and a Lockbox in the back seat of the truck." They Pried the safe open with a Crowbar." App. 80, 11.8-16.

Petitioner stated, Steve Epps. never brought a Copy of the Statement Search warrant. App. 85, 11.18-20. And from day one, Petitioner told him, "I'm going to trial. App. 85, 11.24-25. Steven Epps Esq. Conceded from the beginning of his representation of Petitioner he wanted to negotiate a deal due to the LWOP, and he informed Petitioner the facts. App. 109, 11.5-25. Mr. Epps Conceded when he first met Petitioner, he wanted to go to trial. [REDACTED]; App. 23, 11.19-25; App. 25, 11.2-3; App. 109, 11.2-4

Petitioner testified he pull over in a family dollar's parking lot. App. 81, 11. 2-3. Petitioner testified he did not consent to the search of truck. App. 81, 11. 16-24. Nor did Jennifer Smith consent. App. 81, 11. 16-24. Petitioner testified he told the officer that anything I'll find is not mine. App. 82, 11. 7-8. Petitioner testified the officer told him they had a call or tip. App. 82, 1. 19.

Mr. Steven Epps Esq. Conceded he was aware of defenses like suppression potential and issues. App. 101, 1. 2. Yet, Mr. Epps. Conceded taking any plea was in Petitioner best interest because suppression could not be won in full, Petitioner would have lost trial. App. 104, 11. 12-25 - App. 105, 11. 1-15.

However, Petitioner stated, "If the Solicitor told me that we can win the suppression hearing. If I can win the suppression hearing, what else there is to suppress? Its the drugs. App. 87, 11. -1-22; App. 21, 11. 11-12.

Petitioner agree Mr. Epps. told him not to go to trial so that he wouldn't spend the rest of his life in prison, its a strong case, He just don't feel like taking [Petitioner] to trial. App. 97, 11. 15-24. Further, Mr. Epps. esq. testified that he did inquiry about the dash cam and the C.I., App. 105, 1. 25 - App. 106, 11. 1-2.

Petitioner PCR Counsel question Mr. Epps about the Supplemental Report by Lauren Williams which was apart of his discovery. App. 110, 1.13-App. 111. She question him about the CRAI mention in the Report. Mr. Epps. Conceded there was no statement from Lauren Williams describing indicia of reliability, or back ground information whether the informant was reliable, that he didn't see any Paper Work. App. 111, 11.1-18.

Further, Mr. Epps. Conceded at trial [he] would've attack just the whole basis of the Poll being [the] tip leading to the Poll. App. 111, 1.19-App. 112, 11.1-6. Mr. Epps Conceded he was getting ready for trial and he just had to attack the Poll but he didn't have any statement from anyone to show was this really a reliable informant or is this them [Lauren Williams] going back and covering a bad Poll. App. 112, 11.7-16.

Petitioner PCR Counsel put Applicants Exhibit 1 into evidence without objections. App. 112, 1.17-App. 113, 11.1-7. Further, Petitioner Stated the outcome of Challenging the Search or the Poll - the state had to dismiss, they'd had to throw it out. App. 90, 11.16-19. App. 131.

Moreover, Petitioner stated, "[I] mean, if Mr. Epps would have did what I asked him to do, maybe the other gentleman who found Larrero William ineffective, maybe he would've been in this situation. I would have been the one that found him ineffective. Mr. Epps. Could've put him on the stand, and we'd have found him ineffective. I knew strong a possibility that he was wrong due to the fact when he sat here and told me, "If I was you, I wouldn't have no informations for me neither." App. 91, 11. 10-22; App. 131.

Further, Mr. Epps stated, "Last the same time, what's a blue ticket gonna do, when you got a PWS, a whole bunch of meth, Coke, Seven grand in Your Pocket." App. 113, 11. 8-13. Mr. Epps Conceded that the Lack of a blue ticket and the Lack of any information about [the] informant gives a line of attack on the poll itself. App. 113, 11. 14-18.

Furthermore, Mr. Epps ask PCR Counsel, "[I]s it the line of attack that's gonna shut down the entire State's Case? That's the million dollar question,

or in the case of him, the 25 years or more question. App. 113, 11. 20-24. Mr. Epps Conceded that he did not have the information about the informant and the tipster beyond what was in the Supplemental Report. App. 114, 11. 14.

Consequently, PERA Counsel stated, "Judge, I just state that the P[ro]ll without knowing that that informant was reliable or having some indicia of that, that P[ro]ll could've been attacked and was a potential angle for a suppression motion, so we ask you to consider that. App. 115, 11. 1-25; App. 116, 11. 1-5; App. 23, 11. 20-21; App. 25, 11. 2-3.

Petitioner Conceded he agreed with the facts at the plea hearing after the fact. Petitioner Conceded before the facts, [he] never would've agree. App. 95, 11. 7-10.

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ARGUMENT

S.C. SUPREME COURT

The PCR Judge erred in ruling Counsel provided effective representation when Counsel failed to investigate reliability of CRI, Blue ticket leading to invalid traffic stop and Warrantless Search and discuss potential defense to suppress the entire State Case for evidence obtained in violation of the 4th and 14th Amendment of the United States Constitution rendering Petitioner's Plea involuntary, unknowingly and intelligently entered

[T]he longstanding test for determining the validity of a guilty plea is "Whether the plea represents a voluntary and intelligent choice among the alternate course of actions open to the [Petitioner]." Hill v Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985).

[W]hen a convicted defendant complains of the ineffectiveness of Counsel's assistance, the defendant must show that Counsel's representation fell below an objective standard of reasonableness. Hill 474 U.S. at 57, 106 S.Ct. at 369... We also held, however, that "[t]he defendant must show that there is a reasonable probability that, but for Counsel's unprofessional errors, the results of the proceeding would have been different."

[I]n many guilty plea cases, the "Prejudice" inquiry will closely resemble the inquiry engaged in by Courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of Counsel is a failure to investigate . . . , the determination whether the error prejudiced the [Petitioner] by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led Counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of Counsel is a failure to advise the [Petitioner] of a potential affirmative defense to the crime charge, the resolution of the "Prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 371 (1985) see Rollins v. State, 346 S.C. 506, 509, 559 S.E.2d 290, 292 (2001) (Failure to conduct an independent investigation does not constitute ineffective assistance of Counsel when the allegation is supported only by mere speculation as to the result).

Sikes v State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ([W]hen the [Petitioner] claim that Counsel failure to articulate a fourth Amendment claim was ineffective assistance, [Petitioner] must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded); (quoting Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S.Ct. 2574, 2583 (1986)); Johnny Mack Brown, S.C. Op. Atty. Gen. No. 77-187 (1977) ([T]hese [Supplemental] reports may contain hearsay...). cf. In Re Beckham, 365 S.C. 637, 642, 690 S.E.2d 69, 72 (2005) ([T]he Court emphasizes that while a Criminal defendant may plead guilty without any evidence of his guilt being submitted, a defendant who pleads not guilty cannot be convicted solely on the basis of a Police incident report...).

Application of Law to Facts

Counsel Epps Esq. representation fell below an objective standard of reasonableness when he failed to investigate. Conceding he inquired about the CIA and Laurens Williams did not have any statement describing indicia of reliability and

the state did not give him discovery, had it, his defense at trial would have been to say the whole thing was "bad" from the jump.

The alternative course of action open to Petitioner was in the advise rendered by Counsel to Plead Guilty because Suppression could not be won in full, and if Petitioner went to trial he would have lost and receive Life sentence. Petitioner testified he agreed to the facts of the guilty plea after the fact before the fact he did not agree.

Counsel Steven Epp. Epp. representation fell below an objective standard of reasonableness when he conceded at trial he would've attacked just the whole basis of the Poll being the tip leading to the Poll, and he was getting ready for trial, but was afraid the state was gonna dig up some evidence to use it against him, and that the lack of a Blue ticket and information about the informant gave a line of attack on the poll itself, and he did not have this information about the informant or tipster beyond what was in Lawrence Williams Supplemental Report.

There is a reasonable probability, had Steven Epps. 209. discuss this defense to suppress the entire State Case for evidence obtain in violation of the 4th and 14th Amendment, as Petitioner testified, "[I] mean if Mr. Epps would have did what I asked him to do, maybe the other gentleman who found Laurens Williams ineffective, maybe he would have been in this situation, I would have been the one that found him ineffective. Mr. Epps. Could've put him on the stand and We'd have found him ineffective. I knew strong a possibility that he was wrong due to the fact when he sat there and told me, "If I was you, I wouldn't have no information for me neither."

The Suppression hearing is meritorious, in that, the drugs remaining would have been dismiss because there is no evidence or paperwork beyond investigator, Laurens Williams, Supplemental Report, describing indicia of reliability of Confidential Reliable informant (CRI), which the report may contain hearsay, and the State could not convicted Petitioner solely on the basis of a Police Supplemental Report; Fore, Petitioner would have prevailed and would not have Plead guilty an assisted going to trial.

Conclusion

The PCA Court err in ruling Counsel rendered effective representation and Petitioner Plea was voluntary, knowingly and intelligently waive. Writ of Certiorari should be grant and reverse for New trial.

Respectfully Submitted

15/ J — H —

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June 1 2023