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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable George M. McFaddin, Circuit Court Judge
Case No. 2020-CP-40-4856-PCR
Appellate Case No. 2022-001643

Arthur Q Jones Jr — Appellant

V.

State of South Carolina — Respondent

Pro Se Appellate's Johnson Response

Arthur Jones Jr
Evans Correctional Institution
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Pro Se Appellate

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Review

During the 2019 term of the Richland General sessions court before Judge L. Casey Manning. Appellate Arthur A Jones Jr, pled guilty to three counts of attempted murder, possession of a weapon during the commission of a violent Crime, and unlawful possion of a weapon.

Appellate was sentenced to an aggregate forty-year prison term. App. 1-43.

Issue Number One

Appellant guilty plea was not made voluntarily, knowingly, and intellingelty.

Argument

Appellant guilty plea was not made Voluntarily, knowingly, and intellingently.

Appellant testified at his PCR hearing that his plea of guilt was off advice of counsel. App. 72, l. 14-p. 73, l. 1-21; App. 74, l. 11-21; App. 75, l. 14-18.

Appellant also testified that his plea was a product of fear and coercion. App. 74, l. 22-p. 75, l. 1-2.

At the Plea hearing Appellant was asked by Trial Judge did he understood the presentation by the solicitor's office and all that the solicitor says was it substantially accurate and correct regarding to the case against him and if their was any real dispute about any of it. Plea Tr. pp 26, l. 18-21.

Appellant responded back by saying, Sir? The trial judge went futher to explain to Appellant the question he just asked him about the presentation by the Solictor's office regarding the case. Plea Tr. pp 26, l. 22-27. l. 1.

Appellant did not respond but trial judge begins to make a statement to the trial counsel, then trial counsel say's, Yes, sir, Yes, sir, Yes. Plea Tr. pp 27, l. 2-5.

Trial Judge then proceeds to accpect the Plea of the Appellant, finding substantial factual basis for Appellant plea and that Appellant's plea was voluntarily, knowingly, and intelligently. Plea Tr. pp 27, l. 5-12

The plea transcript reflects a violation of Appellant's Fifth Amendment and a violation of The Federal Rules of Criminal Procedure, Rule 11. McCarthy V. U.S., 394 U.S. 459 (1969)

The due process clause requires guilty pleas be entered into voluntarily, knowingly, and intellingently. Boykin V. Alabama, 395 U.S. 238, 89 S.Ct, 1709, 23 L.E. 2d 274.

A trial judge must, make certain that the defendant admits to conduct which would establish a factual basis for a plea of guilty. McCarty V.U.S., 467, 89 S.C.t. at 1171.

The plea transcript reflects the trial judge accepted the plea from the admission of the Appellant's trial counsel, not the appellant.

McCarthy V. United States, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed. 2d 418 (1968), the court held that Rule 11 must be strictly construed, that strict compliance there with is required, and that the failure of the judge to personally address the defendant to ascertain that the plea is being tendered voluntarily with understanding of the nature of the charge and the consequences of the plea or to satisfy himself that there is a factual basis for the plea is not strict compliance.

Statements and admissions by a defendant's Counsel do not satisfy's Rule 11's requirement that the court personally addresses the defendant to ascertain that defendant understands the nature of the charge. Nor do generalized admissions or statements by a defendant's counsel meet the requirement that the court be satisified that there is a factual basis for the plea from the defendant's own admission that he engaged in conduct which constitutes the charged offense. See relevant case law.

When asked by trial judge was the presentation by the Solicitor's office substantially accurate and correct regarding the case, appellant never made a admission that it was true and never made a admission that their wasn't anything to dispute. It was trial counsel that answered and trial judge accepted trial counsel's admission not appellant's.

A voluntary and intelligent plea of guilty is an admission of all the elements of a formal criminal charge and constitutes an admission of all material facts alleged in the charge. United States V. Willies, 992 F.2d 489, 490 (4th Cir. 1993) (quoting United States V. Broce, 488 U.S. 563, 569, 109 S.Ct. 757, 102 L.Ed. 2d 927 (1989); McCarthy V. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed. 2d 418 (1969); and United States V. Johnson, 888 F.2d 1255, 1258 (8th Cir. 1989).

In case at bar appellant guilty plea were not made voluntarily, knowingly, and and intellingently. which is a violation of appellant's Fifth Amendment Due Process.

The Due Process clause requires guilty pleas he entered voluntarily, knowingly and intellingtly. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.E. 2d 274.

Appellant was prejudiced by the violation of his Fifth Amendment and the violation of the Federal Rules of Criminal Procedure Rule 11.

In conclusion the submitted plea record shows that counsel answered the judge's question to appellant in appellant's place; The law requires that appellant answered that question posed by the judge.

Issue Number Two

Trial Counsel erred in failing to conduct a fully reasonable investigation in Appellant case.

Argument

Trial Counsel erred in failing to conduct a fully reasonable investigation in Appellant case.

During the PCR hearing, Appellant testified that he never had full disclosure of his discovery that held material facts that supports a claim of innocence. App.68, l.12-p.69, l.1-2; App. 70, l.11-19.

Appellant testified that he believed it was trial counsel's duty to investigate and that he would of went to trial if he knew of the exculpatory evidence within his discovery. App. 71, l.2-p.72, l.1-13; App. 75, l.3-13.

Trial counsel testified that their was speculation that somebody other then Appellant had a weapon but it was irrelevant to the case and no bearing on whether or not other people got shot. App. 79, l.17-p.80, l.1-15; App. 94, l.5-7.

Trial counsel testified that the only real defense would have been self-defense kind of narrative and that nobody knew were the other guys in the conflict were at. App. 81, l.9-20.

Trial counsel testified that their wasn't "much" evidence of anybody else with a gun and it didn't have an effect on the case.

Trial Counsel never stated he discussed full details in discovery with Appellant. App. 81, l.25-p.86, l.1-25.

Trial counsel did not state he was adequately Prepared to proceed to trial. App. 87, l. 23- p. 88. l. 1-5.

Trial Counsel testified that their wasn't "much" investigating to do. App. 84, l. 6-11. and that their was public and political pressure for people to be tough on crime in five points.

Trial Counsel also testified that he doesn't remember appellant bring up their being any other "suspects". App. 93, l. 18-22.

Trial counsel testified that there was "no" other witnesses that anybody else shot anything. App. 94, l. 4-5.

In case at bar, it is clear that trial Counsel rendered Ineffective Assitance when he failed to do a independent reasonable investigation Surrounding Speculation of Somebody else having a gun besides Appellant, that could have raised a reasonable doubt of guilt for the charges of attempted murder. U.S.C.A const. Amend 6.

Attempted Murder requires proving the specific intent to commit murder. State V. williams (S.C. App 2018) 422 S.C. 525, 812 S.E. 2d 917.

Trial Counsel testified that he did not remember appellant bringing up any thing up about other suspects but then trial counsel states that nobody knew were the "other guys" in the conflict were at.

While the scope of a reasonable investigation depends upon a number of issue at a minimum, Counsel has the duty to interview potantial Witnesses and to make an independent investigation of all facts and circumstances of the case. Ard, 377 S.C. at 331-32, 642 S.E.2d at 597.

Appellant testified that he never had full disclosure of his discovery, an if he did he would of insisted to go to trial.

A video that alleges showing Appellant is the only detailed evidence that trial counsel testified he showed petitoner. Trial counsel testified that their was public and political pressure for People to be hard on crime in five points. Also trial counsel staked in his testimony that their were speculation that somebody else had a gun but that it had no "no bearing" on the case. Trial counsel also testified that their wasn't "much" evidence not "no" evidence of any body else with a gun.

When asked did he discuss any or other potential defenses with Appellant and was he a adequatley prepared to proceed to trial, trial counsel did not State cleary that he indeed discussed defenses with appellant for a pontential trial or that he was adequately prepare to proceed to trial.

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. McKight v. State, 378 S.C 33, 46, 661 S.E2d 354, 360 (2008)

In case at bar, trial counsel was not acting as the reasonable counsel guaranteed by the Sixth Amendment. Appellant confidence was undermined by trail counsel's lack of diligent and adequate assitance to reasonable investigate all facts and circumstances of the case which prejudiced appellant an lead him to make an unintelligent plea.

The Sixth and Fourteenth Amendments gurarantee a person accused of a crime the right to the aid of a lawyer in preparing and presenting his defense. It has long been settled that the right to counsel is the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 397 U.S. 771, n. 14 (1970)

But for counsel's ineffectiveness in this case, a reasonable probability existed that appellant would not have pled guilty in the lower court.

Conclusion

Based on the foregone argument's Pro Se Response for appellant, it is requested that this Court grant the petition to Vacate the Sentence and Conviction and allow full briefing on the aforementioned raised issue's.