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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY

HON. DEBRA R. McCASLIN, CIRCUIT COURT JUDGE

MR. ANTHONY M. HUDSON, #381313

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO: 2023-001687

PRO-SE PETITIONER FOR WRIT OF CERTIORARI

/s/ *Anthony Hudson*

MR. ANTHONY M. HUDSON, #381313

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PRO-SE PETITIONER

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3. WHETHER THE PCR COURT ERRED IN FINDING THE PLEA COUNSEL'S TESTIMONY CREDIBLE WHEN QUESTIONED ABOUT THE PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS TO FILE A DIRECT APPEAL AFTER REQUEST ?

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ISSUES PRESENTED

1. DID PCR COURT ERRED FINDING PLEA COUNSEL WAS EFFECTIVE WITH RESPECT TO THE CONSEQUENCES OF PETITIONER'S GUILTY PLEA ?
- 2.. WHETHER THE PCR COURT ERRED IN FINDING THAT THE PETITIONER WAS NOT SUBJECTED TO ANY CONSTITUTIONAL VIOLATIONS OR DEPRIVATIONS ?
- 3.. WHETHER THE PCR COURT ERRED IN FINDING THE PLEA COUNSEL'S TESTIMONY CREDIBLE WHEN QUESTIONED ABOUT THE PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS TO FILE A DIRECT APPEAL AFTER REQUEST ?
4. DID THE PCR COURT ERRED BY FAILING TO FIND WHETHER OR NOT THE PETITIONER'S RIGHT TO A WHITNEY v. STATE REVIEW EXIST OR WHETHER THE PETITIONER KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL DUE PROCESS RIGHT TO A DIRECT APPEAL ?

STATEMENT

PETITIONER MR. ANTHONY M. HUDSON, PLED GUILTY WHILE UNDER DURESS AT THE ADVICE OF HIS PLEA COUNSEL ~~STEVEN~~ SWILLEY, ESQUIRE, TO VOLUNTARY MANSLAUGHTER AND ATTEMPTED ARMED ROBBERY WITH A MISUNDERSTANDING OF HIS GUILTY PLEA, WITH RESPECT TO HIS SENTENCING AND THE CONSEQUENCES. PETITIONER WAS PRESENT DURING THE AUGUST OF 2019 TERM OF THE FLORENCE COUNTY GENERAL SESSIONS COURT, APPEARING BEFORE THE HON. D. CRAIG BROWN, CIRCUIT COURT JUDGE. JUDGE BROWN, SENTENCED HIM TO IMPRISONMENT FOR A PERIOD OF (28) TWENTY-EIGHT YEARS, APP. 18-49.

MATTHEW SWILLEY, ESQUIRE REPRESENTED PETITIONER AT HIS GUILTY PLEA PROCEEDING, AND ASSISTANT SOLICITOR RYAN WHITE, APPEARED ON BEHALF OF THE STATE. A MOTION TO RECONSIDER SENTENCING WAS FILED ON SEPTEMBER 4TH, 2019, AND DENIED BY ORDER DATED NOVEMBER 22ND, 2021. APP. 50-~~51~~51.

PETITIONER SUBMITTED SEVERAL OF LETTERS TO MR. SWILLEY, REQUESTING SOME TYPE OF APPEAL, IN REGARDS TO A DIRECT APPEAL OF HIS GUILTY PLEA AND SENTENCING APP. 50-51. ON APRIL 7TH, 2022, PETITIONER RECEIVED FROM THE FLORENCE COUNTY CLERK OF COURT, AN APPLICATION FOR POST-CONVICTION RELIEF, IN WHICH THE PETITIONER DID HIS BEST AS HE COULD BY TIMELY FILING HIS APPLICATION. APP. 52-58

THE OFFICE OF THE ATTORNEY GENERAL'S FILED A RETURN AND MOTION FOR A MORE DEFINITE STATEMENT DATED OCTOBER 3RD, 2022. APP. 59-63. THE MOTION WAS GRANTED BY ORDER DATED OCTOBER 17TH, 2022. APP. 65-68. PETITIONER WAS ORDERED THAT HE MUST RESPOND TO THE MOTION WITHIN (60) SIXTY DAYS AND ONCE THE APPLICATION IS AMENDED, AN EVIDENTIARY HEARING SHALL BE SET. THE RESPONDENT'S STATED THAT ANY FUTURE AMENDMENTS OR RESPONSE TO THE MOTION MUST BE FILED BY HIS APPOINTED ATTORNEY (AND NOT BY THE APPLICANT) IS THE ONLY INDIVIDUAL AUTHORIZED TO FILE AMENDMENTS. PETITIONER ASSERTS BEING DEPRIVED OF HIS DUE PROCESS CONSTITUTIONAL RIGHTS THROUGH COUNSELS THAT WERE APPOINTED TO REPRESENT.

THEREFORE, HIS FIRST PCR HEARING WAS NOT AN FAIR AND IMPARTIAL EVIDENTIARY HEARING. APP. 62 PETITIONER'S PCR APPOINTED COUNSEL FAILED TO COMPLY WITH THE COURT'S ORDER DATED OCTOBER 17TH, 2022, BY THE HON. STEVEN DEBERRY IV., CHIEF ADMINISTRATIVE JUDGE, APP. 67-68. A PCR HEARING IN THIS CASE WAS CONVENED ON JUNE 13TH, 2023, AT THE FLORENCE COUNTY COURTHOUSE BEFORE THE HON. JUDGE DEBRA R. McCASLIN, APP. 92-139. PETITIONER WAS PRESENT AND REPRESENTED BY APPOINTED ATTORNEY STEVEN W, FOWLER, ESQUIRE, AND ASSISTANT ATTORNEY GENERAL D. RUSSELL BARLOW. PETITIONER APPEALS THE ORDER OF DISMISSAL BY JUDGE McCASLIN.

ARGUMENTS

1. DID PCR COURT ERRED IN FINDING THAT PLEA COUNSEL WAS NOT INEFFECTIVE WITH RESPECT TO THE CONSEQUENCES OF THE PETITIONER'S GUILTY PLEA ?

DISCUSSION

PCR COURT DID ERR FINDING THAT PLEA COUNSEL WAS EFFECTIVE WITH RESPECT TO UNDERSTANDING OF THE CONSEQUENCES AND AGREEMENT OF HIS SENTENCING. APP147 PETITIONER IS CITING S.C. CODE ANN §17-27-20(a) #6. PETITIONER ASSERTS THAT HIS CONVICTION OR SENTENCE IS OTHERWISE SUBJECTED TO COLLATERAL ATTACK BY WAY OF AN FAIR AN IMPARTIAL EVIDENTIARY HEARING, UPON ANY GROUND OF ALLEGED ERROR HERETOFORE AVAILABLE UNDER ANY COMMON LAW, STATUTORY, OR OTHER WRIT, MOTION, PETITION PROCEEDING OR REMEDY. APP. 161-162. ~~SEE~~ DALTON v. STATE, 376 S.C. 130, 654 S.E. 2d. 870 (2007), BOYKIN v. ALABAMA, 395 U.S. 238 (2000), AND ALSO SEE HILL v. LOCKHART, \$\$\$ U.S. 52 (1985).

PETITIONER ASSERTS THAT HE TOOK THE ADVICE OF HIS PLEA COUNSEL AND WAS COERCED UNDER DURESS INTO SAYING AND MAKING A GUILTY PLEA UNKNOWINGLY, UNWILLINGLY, AND UNINTELLIGENTLY TO AN OPEN PLEA DEAL OF 0-15, ACCORDING TO THE TALK THAT PLEA COUNSEL HAD WITH THE ASSISTANT SOLICITOR RYAN WHITE. BUT, FOR THE COUNSEL'S INEFFECTIVENESS, PETITIONER WOULD NOT HAVE PLED GUILTY.

2. WHETHER THE PCR COURT ERRED FINDING THAT THE PETITIONER WAS NOT SUBJECTED TO ANY CONSTITUTIONAL VIOLATIONS OR DEPRIVATIONS ?

DISCUSSION

PCR COURT DID ERRED BECAUSE ALL VIOLATIONS AND DEPRIVATIONS WERE BASED UPON THE PLEA COUNSEL'S ~~PER~~FORMANCES AND PREJUDICES. PLEA COUNSEL DID PREJUDICED THE PETITIONER WHICH VIOLATED HIS CONSTITUTIONAL DUE PROCESS RIGHT TO A DIRECT APPEAL IN VIOLATION OF S.C. CONST. ART. 1 §3 & 14, AND THE UNITED STATES CONST. AMEND 6 & 14 §1.

S.C. CONST. ART. 1 § 3, STATES IN PART, THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF THIS STATE AND OF THE UNITED STATES UNDER THIS CONSTITUTION SHALL NOT BE ABRIDGED, NOR SHALL ANY PERSON BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DJE PROCESS OF LAW, NOR SHALL ANY PERSON BE DENIED THE EQUAL PROTECTION OF THE LAW.

ARGUMENTS CONTINUED

PETITIONER ASSERTS THAT HE WAS DEPRIVED, DECEIVED, AND COERCED UNDER DURESS BY HIS PLEA COUNSEL MATTHEW SWILLEY, ESQUIRE. COUNSEL FAILED HIS DUTIES AND RESPONSIBILITIES BY FAILING TO FULLY ADVISE PETITIONER PROPERLY REGARDING SENTENCING CONSEQUENCES CONSTITUTED DEFICIENT PERFORMANCE AND POOR LEGAL REPRESENTATION IN VIOLATION OF S.C. CONST. ART1 § 14, AND THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONST. § 1.

S.C. CONST. ART.1 §14, STATES IN PART: THE RIGHT TO TRIAL BY JURY SHALL BE PRESERVED INVIOATE. ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY? TO BE FULLY HEARD, FULLY INFORMED, OF THE NATURE AND CAUSE OF THE ACCUSATIONS, TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM, TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR; AND TO BE FULLY HEARD IN HIS DEFENSE BY HIMSELF, OR BY HIS COUNSEL OR BY BOTH.

3. WHETHER THE PCR COURT ERRED IN FINDING PLEA COUNSEL'S TESTIMONY CREDIBLE WHEN QUESTIONED ABOUT THE PETITIONER'S REQUEST TO FILE A DIRECT APPEAL ?

DISCUSSION:

PCR COURT DID ERR IN FINDING PLEA COUNSEL'S TESTIMONY CREDIBLE WHEN QUESTIONED ABOUT THE PETITIONER'S REQUEST TO FILE A DIRECT APPEAL. APP. 151 BOTTOM PAGE.

PLEA COUNSEL AND PCR COUNSELS WERE ALL INEFFECTIVE AND BOTH FAILED IN THEIR RESPONSIBILITIES AS A COMPETENT ATTORNEY. THE PETITIONER WAS ORDERED TO RESPOND TO THE RESPONDENT'S MOTION FOR A MORE DEFINITE STATEMENT AND PCR COUNSEL DEPRIVED THE PETITIONER OF A FULL AND FAIR EVIDENTIARY HEARING REGARDING HIS CONSTITUTIONAL RIGHTS AND DEPRIVATIONS WHICH RENDERED HIM INEFFECTIVE 1. HE FAILED TO COMMUNICATE WITH PETITIONER WITH RESPECT TO AMENDING

ARGUMENTS CONTINUED

2. PCR COUNSEL FAILED TO COMPLY WITH THE COURT'S ORDER VIOLATING THE PETITIONER'S DUE PROCESS RIGHTS TO BEING FULLY HEARD AT THE EVIDENTIARY HEARING.

3. BEING QUESTIONED BY PCR COUNSEL DURING THE EVIDENTIARY HEARING DOES NOT CONSTITUTE BEING FULLY HEARD, IT WAS VERY PREJUDICIAL AND A DEPRIVATION.

4. PCR COUNSEL FAILED IN HIS DUTIES AND RESPONSIBILITIES CITING THE CASE OF *MARLAR v. STATE, 375 S.C. 407, 409 653 S.E.2d. 266, 266 (2007), TO PRESERVE ISSUES FOR APPELLATE REVIEW, AFTER AN ORDER IS FILE, COUNSEL HAS AN OBLIGATION TO REVIEW THE ORDER AND FILE A RULE 59(e) MOTION TO ALTER OR AMEND, IF THE ORDER FAILS TO SET FORTH THE FINDINGS AND THE REASONS FOR THOSE FINDINGS AS REQUIRED BY SECTION 17-27-80, OF THE S.C. CODE AND RULE 52(a) SCRPC. SEE *SIMMONS v. STATE, June 8TH, 2016, 416 S.C. 584, 788 S.E.2d. 220.

S.C. CONST. ART. 1 §14 STATES IN PART: THE RIGHT TO TRIAL BY JURY SHALL BE PRESERVED INVIOATE. ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT TO SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY; TO BE FULLY INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATIONS, TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM, TO HAVE A COMPULSORY PROCESS FOR ~~CRIMINAL~~ WITNESSES IN HIS FAVOR AND TO BE FULLY HEARD IN HIS DEFENSE BY HIMSELF, OR BY HIS COUNSEL, OR BOTH.

PETITIONER ASSERTS THAT HE IS ENTITLED TO A * WHITE v. STATE, REVIEW, 263 S.C. 110, 208 S.E.2d 35 (1974), IN PURSUANT TO THE SUPREME COURT RULE 50(9)(b)

ARGUMENTS CONTINUED

4. DID THE PCR COURT ERRED BY FAILING TO FIND THAT THE PETITIONER IS NOT ENTITLED TO A * WHITE v. STATE, REVIEW OR WHETHER THE PETITIONER KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL DUE PROCESS RIGHTS TO A DIRECT APPEAL ?

DISCUSSION:

PCR COURT DID ERR BY FAILING TO FIND WHETHER THE PETITIONER KNOWINGLY, AND INTELLIGENTLY WAIVED HIS RIGHTS TO A DIRECT APPEAL. APP 164 (PCR tr.p 26) THE COURT'S RULING WAS INSUFFICIENT BECAUSE IT DID NOT SET FORTH SPECIFIC FINDING WITH REGARDS TO THIS ISSUE NOR DID ITS CONCLUSIONS OF LAW.

PETITIONER ASSERTS THE JUDGMENT AS TO THE COMPETENCY OF PLEA COUNSEL WAS AN ERROR OF LAW, IN LIGHT OF BEING CREDIBLE WHEN ASKED ABOUT THE REQUEST TO FILE A DIRECT APPEAL. THE ACTIONS OF PLEA COUNSEL WAS VERY PREJUDICIAL WITH AN CONFLICT OF INTEREST TO THE PETITIONER. PLEA COUNSEL VIOLATED THE S.C. RULE 407, RULES OF PROFESSIONAL CONDUCT AND RESPONSIBILITIES, AND THE COURT SHOULD HAVE FOUND COUNSEL INEFFECTIVE.

CONCLUSION

WHEREFORE, THE PETITIONER PRAYS FOR RELIEF AS HE RESPECTFULLY ASKS THIS HONORABLE COURT, TO REVERSE AND REMAND TO LOWER COURT AND FOR ANY OTHER RELIEF THAT MAY BE DEEMED JUST AND PROPER AS A MATTER OF LAW.

RESPECTFULLY SUBMITTED,

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