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S.C. SUPREME COURT

IN THE SUPREME COURT  
[state of south carolina]

Randall D. Price # 386694	)	C/A No: <u>2023-001625</u>
Appellant.	)	
	)	
-vs-	)	Pro-se Breif in Support
	)	of Appellate Anders Brief.
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	
_____	)	

Now comes Petitioner, Randall D. Price, # 386694 Pro-se, who respectfully, files this Memorandum of Law in support of his Appellant Brief Pursuant to Anders v. California, to protect his Constitutional Rights to be free from the illegal conviction and sentence handed down by the Court of common pleas in the Seventh Juditial Circuit, County of Spartanburg South Carolina. The Petitioner has "standing" to Appeal because of the final order handed down by the Post-Conviction Releif Courts decision in this case see: Fulmer V. Cain, 380 S.C.466, 670 S.E.2d 652 also see: State v. Issac, 405 S.C. 177, 747 S.E.2d 677 and Brunson v. American Koyo Bearing, . The Petitioner's claims of ineffective assistance of counsel at the foundation of his criminal proceeding fell way below the standard of the professional norms used to judge the performance of any Attorney practicing criminal

law today. The Applicant makes these claims based on the following facts and conclusions of law.

A. STATEMENT OF THE CASE

Petitioner was indicted by the Spartanburg Grand Jury During it's October 2020 term, the Spartanburg County Grand Jury indicted Applicant for traffic/hit and run with death Indictment No: (2020-GS-42-2595). Applicant was represented by Steve Sumner, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On December 8, 2021, Applicant appeared before the Honorable Letitia Verdin, circuit court judge, and pled guilty as indicted without any negotiations or recommendations. Judge Verdin sentenced Applicant to twelve years' imprisonment. Applicant did not pursue a direct appeal. The Applicant filed an application for Post-conviction relief pursuant to S.C. Code Ann. § 17-27-20. In his amended application the applicant alleged that he is being unlawfully held in custody

because of ineffective assistance of counsel in that: (1).

Ineffective assistance of counsel: (a) Failure to investigate all of the facts/issues. Applicant filed an Amended application on July 14, 2022, alleging: (1). Trial counsel was ineffective for having a pre-trial conference outside the presence of the Applicant; and (2). Trial counsel was ineffective for not allowing the Applicant to present mitigation evidence at the guilty plea. An evidentiary hearing was held on October 20, 2022 at the Spartanburg County Courthouse. Rodney W. Richey, Esquire represented Applicant. Assistant Attorney General Chelsey F. Marto represented the Respondent After all the testimonies were in and the records were reviewed, the court found that the Applicant did not meet his requisite burden of proof that he is entitled to post-conviction relief and dismissed his application with prejudice. The Applicant requested that his court appointed Attorney file a 59 (e) Motion to correct the misstated facts that was intentionally put on the record by the state, but was denied on October 6, 2023. The Applicant received notice on October 10, 2023. This Appeal follows.

QUESTIONS PRESENTED?

WAS TRIAL COUNSEL INEFFECTIVE FOR NOT INVESTIGATING ALL OF THE  
FACTS/ISSUES OF THE CASE?

WAS TRIAL COUNSEL INEFFECTIVE FOR HAVING A PRE-TRIAL CONFERENCE  
OUTSIDE THE PRESENCE OF THE APPLICANT?

WAS TRIAL COUNSEL INEFFECTIVE FOR NOT ALLOWING THE APPLICANT TO  
PRESENT MITIGATING EVIDENCE AT THE GUILTY PLEA HEARING TO  
FACTUALLY DEVELOPE THE RECORD?

DID THE CIRCUIT COURT HAVE JURISDICTION TO ACCEPT THE APPLICANT'S  
GUILTY PLEA AFTER THE TRIAL JUDGE'S ABUSE OF DISCRETION?

ARGUMENT IN SUPPORT OF PRO-SE BRIEF ISSUES (1) (2) (3) (4)

The Petitioner is alleging that he is being held in custody unlawfully because of Ineffective Assistance of Counsel in that counsel failed to investigate all of the facts and issues of his case. Counsel was ineffective for not investigating the facts of his client's case diligently, Mr. Sumner was well aware of the fact that the Petitioner had (3) witness ready to testify on his behalf. One witness who was picked up and taken to the alleged scene of the accident would have testified that the Petitioner came back and looked around to see what he had hit, but found nothing. The other two witnesses testified at the pcr hearing that they went back to look for proof of an accident but found nothing. Mr. Sumner knew this and he should have insisted on going to trial. The petitioner was not aware of the facts that the state would have to prove in order to convict him of felony hit and run resulting in death. Counsel never told his client what the aggravating circumstances the state would have to prove at trial, because Counsel never wanted to go to trial in the first

place so he never considered anykind of a defense for his client. Even though his client continually made it known to Counsel that he stopped to try to find out what he had hit. See: (PCR Transcript Pages 5-9) The direct testimony of Mr. Lloyd E. Plumley, also See: ( The direct testimony of Mrs. Gina Kelly Price. PCR Transcript Pages 9-15). Furthermore, See: (The Direct Testimony of Mr. Trey Plumley PCR Transcript Pages 16-18) But Specifically See: ( The Direct testimony of Mr. Randall David Price, PCR Transcript pages 18-21) Counsel could not let these facts get intered into the record by any means nessary, because if these facts had made it into the record, the plea judge could not accept his plea because it would have been an issue for the jury, and no rational trier of facts would have found the Appellant guilty of the crime charged, with all of the witnesses and the lack of evidence, the state could not get a conviction because of reasonable doubt, and there is reasonable doubt throughout this entire case. The evidence "must muster" and in this case it clearly does not, the Applicant was prejudiced by the ineffectiveness of trial counsel, and the Abuse of Descretion of the Circuit Court Judge. The outcome would have been different had counsel investigated this case like he should have and

insisted on going to trial. The state would have dropped this witch hunt instantly, because they knew that they could not win this case without the help of trial counsel. See: Hill V. Lockhart, 474 U.S. 52, 59 (1985). also see: Strickland v. Washington, 466 U.S. 668, 686 (1984). Here counsels conduct undermine the proper functioning of the adversarial process so that it cannot be relied upon as having produced a just result. Counsel's performance was deficient and fell outside of the zone of "reasonableness under prevailing professional norms." See: Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). This is a sixth (6) Amendment violation that resulted in "Ineffective Assistance of Counsel." No rational fact finder would have found the Petitioner Guilty of hit and run with death because he stopped, and this eliminated that element of the crime. Mr. Sumner knew that the state had the black box information, and intended to use it against his client to show that he was traveling at a high rate of speed when the accident occurred. Mr. Sumner could have obtained conflicting evidence from that black box that would have negated the element of failure to stop that was in the indictment thus, rendering counsel ineffective. This is what it was an accident, with no criminal intent at all. See

indictment No: (2020-GS-42-2595) the aggravating circumstance here was the failure to stop. The Appellant Always said from the beginning to the end that he stopped, and because of this fact no rational trier of facts would have found the Applicant guilty of hit and run resulting in death. The information from the same black box would have negated the states case at bar. Counsel had an obligation to his client to render the best defense that he could give at the most crucial time in this case. The court sentenced the Applicant to 12yrs. Confindment in the South Carolina Dept. of Corrections, which should have never happened in the first place. The state could not have made a case out of an accident had counsel investigated all the facts of the case at bar. The Applicant would have insisted on going to trial, but was told that he did not have a legal defense by his trial Attorney See: Hill v. Lockhart, 474 U.S. 52.59 (1985). The Applicant has made a colorful showing, and that he is entitled to releif on the grounds of ineffective Assistance of Counsel pursuant to Strickland. The Fourteenth Amendment (14). of the United States Constution Gaurantees the right to Effective Assistance of Counsel, " A Constitutional Requirements of Substantial equality and fair process can only be attained where counsel acts in role

of active advocate in behalf of client. U.S.C.A. Const. Amend.

(6) (14). "Furthermore" how could the Post-Conviction Court make a decision on the totality of the evidence when the evidence was never presented, but was misstated by the prosecutor resulting in prosecutorial misconduct allowed by the circuit court because of ineffective assistance of trial counsel, and the abuse of discretion by the Court. The mitigating evidence testimony could not have hurt the Applicant because it was an accident that should never have happened, had the Greenville County Sheriffs Office done their jobs in the first place. The Applicant stopped thus no criminal conducted could be infured from his actions.

(4). After hearing the Applicants statements in chambers and hearing that he continued to profess his innocence, the Circuit Court abused its discretion and lost Jurisdiction when it did not set this case for trial. This was bias on the behalf of the Circuit Court that clearly prejudiced the Applicant. The acts of a Court with no Jurisdiction is Void not simply voidable as a matter of law See: Whitner v. State, 492 S.E.2d 777 (1997). In a criminal case, the Supreme Court sits to review errors of law only and it is bound by factual findings of the trial court unless an abuse of discretion is shown. See: State v. Crisp, 608

S.E.2d 429. as in this case at bar. (See: complete PCR Transcript).

CONCLUSION

For the following reasons and conclusions of law, this instant Case should be vacated with prejudice, or reversed and remanded Back down to the lower courts for a new trial in front of a Different lower court judge.

The Appellant forever Prays.

*Randall D. Fin*

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