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State of South Carolina
County of Lexington

APR 08 2024
S.C. SUPREME COURT

Supreme Court of
South Carolina

Nathaniel A. Hunter
Petitioner

Appellate Case No.
2023-061611

v

State of South Carolina
Respondent

Amendment to Petitioner
Response to Respondent's
Response to Petitioner's
motion to Relieve Counsel
and Appoint New Counsel

Amendment to Petitioner's Response to Respondent's
Response to Petitioner's motion to Relieve Counsel and
Appoint New Counsel

Attorney Ashley A. Memahan failed to do a brief on
Petitioner's behalf in Petitioner's Post-Conviction - Relief proceedings
which is standard procedure. Counsel Memahan never consulted
with Petitioner as to the claims and case law.

Now comes the Petitioner, amending his motion to Relieve Counsel
and Appoint New Counsel based upon the following facts.

There is nothing in the record to support that counsel Memahan
did a brief on Petitioner's behalf, nor is there anything in the
record to reflect that counsel Memahan responded to the State's
Return.

Partial motion to Dismiss and motion for a more Definite Statement, that was filed with the Lexington County Clerk of Court on April 13, 2020.

Petitioner will show this court for the record, Counsel Memahan's incompetent representation and was inadequate representation of Petitioner when she violated the Rules of Professional Conduct.

Rule 1.1 (lawyer shall provide competent representation to client). Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client). Counsel Memahan inadequate representation of Petitioner falls below the standard set forth in Strickland v. Washington 466 U.S. 668 (1984).

In the Defense Function General Standards, Standard 4-5.1 advising the accused (A) after informing himself or herself fully on the facts and the law, defense counsel should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

Counsel Memahan's failure to do a brief to support Petitioner's arguments severely prejudiced Petitioner because Petitioner could not show the PCR court the facts of the case that supported Petitioner claims as well as the witnesses, exhibits and any additional testimony that would have supported Petitioner claims. The meritorious claims that Counsel Memahan should have raised that were requested by Petitioner for her to raise were not.

PLEASE SEE PETITIONER'S ORIGINAL MOTION TO RELIEVE COUNSEL THAT WAS FILED WITH THE SOUTH CAROLINA SUPREME COURT ON FEBRUARY 26, 2024.

PETITIONER ATTACHED A LETTER THAT HE WROTE TO COUNSEL MEMAHAN DATED FEBRUARY 22, 2023 TO HIS ORIGINAL MOTION TO RELIEVE COUNSEL, REQUESTING HER TO RAISE THE FOLLOWING MERITORIOUS ISSUES TO HIS AMENDED PCR APPLICATION.

1. APPLICANT'S 5TH AMENDMENT RIGHT TO A FAIR TRIAL AND HIS 14TH AMENDMENT RIGHT TO DUE PROCESS WAS VIOLATED WHEN THE TRIAL COURT INSTRUCTED BOTH COUNSEL'S TO WITHHOLD THE VICTIM'S IDENTIFICATION OF APPLICANT AT THE JACKSON V. DENNO HEARING FROM THE JURY.

2. APPLICANT'S 5TH AND 14TH AMENDMENT RIGHTS WERE VIOLATED WHEN THE STATE FAILED TO CORRECT FALSE TESTIMONY AT APPLICANT'S TRIAL WHEN THE VICTIM TESTIFIED.

3. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST THE PHOTO-LINEUP OF APPLICANT TO BE INCLUDED IN APPLICANT'S DISCOVERY.

4. APPLICANT'S 5TH AND 14TH AMENDMENT RIGHTS WERE VIOLATED WHEN THE STATE FAILED TO DISCLOSE TO APPLICANT THE PHOTO-LINEUP AND THE VICTIM'S INABILITY TO IDENTIFY APPLICANT IN THE PHOTO-LINEUP, WHICH WAS EXCULPATORY EVIDENCE.

5. Trial counsel was ineffective for failing to call a Touch-DNA Expert at trial to explain the complicated concepts of Touch-DNA.

The following issues were reworded by Counsel memos in Petitioner's amended PCR Application, please see Petitioner's amended PCR Application page 1, section i (1) while the applicant was warned about the dangers of testifying, he was never warned that his voice would be used against him during a pre-trial hearing.

Petitioner was never warned about the danger of testifying in the presence of the victim at Petitioner's Jackson v. Denno, hearing which resulted in Petitioner being identified by his eyes and voice by the victim. (2) The victim identified the applicant during this hearing by his voice, counsel failed to object when the prosecutor asked her if she actually identified him while he was sitting at the table with trial counsel's.

This issue is also reworded, my trial counsel Jason Chehoski asked the victim did she identify me while I was sitting at the table with trial counsel's not the prosecutor, see trial transcript page 363, lines 16-25 and page 364, lines 1-2.

Page 3 (h) (Trial counsel's were ineffective for failing to inform applicant of his 5th amendment right against self-incrimination and the consequences of exercising or waiving those rights.

This issue was also recorded, please see Petitioner's original motion to Relieve Counsel and the letter attached to Counsel memorandum in which I requested her to raise the following issue:

(Trial counsel was ineffective for failing to inform applicant of his 5th amendment rights and the consequences of exercise and waiver of those rights, depriving applicants of his 6th amendment right to counsel and his 14th amendment right to due process).

The following claims were frivolous claims that Counsel memorandum raised at the PCR hearing: see amended PCR application.

Page 2(A) Failure to object to the jury pool not being an adequate cross-section of the residents of Lexington County. A jury pool must represent a cross-section of the applicant's peers.

(b) Failure to request sequestration of the victim during the Jackson v. Dennis hearing - (Counsel memorandum failed to acknowledge or research S.C. Code Ann. 16-3-1550(B) which clearly states "a person must not be sequestered from a proceeding adjudicating an offense of which he was a victim".

(d) Trial Counsel did not adequately move to quash Applicant statement. (Counsel memorandum did not properly investigate this issue, had she done so she would have discovered that Petitioner trial counsel retroactively did adequately move to quash the statements by requesting a Jackson v. Denard, hearing as well as presenting to the trial court the fact that Petitioner's alleged second statement to investigators was given after Petitioner had requested the public defender represent him.

Page 2 (f) Trial Counsel's failed to conduct sufficient pre-trial research and investigation to adequately evaluate and challenge the state's in-court identification of the Applicant. State v. Collier, 421 S.C. 426 (2019). The per curiam ruled that the Collier case was published after Petitioner trial and that Petitioner trial counsel could not have relied on Collier to challenge the state's pre-trial in-court identification of Applicant. Counsel memorandum did not research the Collier case to determine if that case would have supported Petitioner's claim.

Page 3(K) Trial Counsel did not object to admitting the state's DNA witness as an expert. — There was no reason for this issue to be raised whereas Counsel memorandum never explained why the qualification of the state DNA expert was erroneous.

(N). Failed to argue at closing that it was unbelievable that the victim could identify the Applicant after more than three years. Petitioner's trial counsel argued this in closing, see trial transcript page 1032, lines 2-4; pages 1032, line 22- page 1033, line 4 and page 1033, lines 16-18.

ONCE AGAIN, COUNSEL MEMORANDUM FAILED TO READ PETITIONER'S TRIAL TRANSCRIPT WHICH RESULTED IN PETITIONER BEING DECEIVED ON THIS CLAIM AS WELL.

(O). Failed to argue in closing that there could be multiple guns that could match, not just the ones in evidence.

This argument was also frivolous based upon the fact Petitioner's trial counsel did make the argument that multiple guns could match, see trial transcript page 1051, lines 11-19, ~~thereby~~, counsel memorandum failed to research and properly investigate the record.

(P). Failed to object to the trial court's instruction that stated "inferred malice may also arise when the deed is done with a deadly weapon, the case law counsel memorandum relied on was State v. Belcher, 385 S.C. 597 (2009) AND State v. Burdette, 427 S.C. 490 (2019) for this issue, however the holding in both of those cases clearly states that inferred malice CANNOT BE CHALLENGED IN POST-CONVICTION RELIEF PROCEEDINGS.

Petitioner did not receive his amended PCR application until the morning of the PCR hearing when he arrived at the courthouse. The fact that Petitioner received his amended PCR application so late was highly prejudicial because Petitioner did not have time to go over his amended PCR application with counsel memmahm to ensure the case law was supportive, the issues were non-frivolous and that the issues were not refuted by the record.

Counsel memmahm's Failure to submit a brief to the PCR court violated Petitioner's Fifth amendment Right to a Fair PCR proceeding and Petitioner's Fourteenth amendment Right to Due Process.

If counsel memmahm would have filed a pre-evidentiary hearing brief Petitioner would have discovered that she didn't raise viable meritorious claims that Petitioner requested her to raise, Petitioner would have discovered she reworded some claims and raised frivolous claims as previously mentioned on this motion. Petitioner was highly prejudiced because the PCR court ultimately dismissed Petitioner's PCR application on each claim that was raised at the evidentiary hearing.

Had Petitioner been given a brief prior to the evidentiary hearing and brought the claims to counsel memmahm's attention, Petitioner would have had the opportunity to amend his PCR application to correct the claims and that would have gave Petitioner a better chance of success in his PCR proceedings.

The claims that were not raised were very meritorious, and need to be raised and ruled upon by the PER court and Petitioner doesn't want to be procedurally barred by the higher court's for failing to raise them in the lower courts.

I beg this court's indulgence and I respectfully request this court to grant Petitioner's motion to relieve counsel and appoint new counsel due to attorney Ashley A. McMahon's incompetent and inadequate representation of Petitioner in his Post-conviction - Relief proceedings.