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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable Frank R. Addy, Circuit Court Judge

LAWTON LEROY HOLLOWAY,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CASE No. 2023-001372

PETITIONER'S AMENDED BRIEF

Respectfully,

s/ Lawton L. Holloway 10/9/2024

Lawton Leroy Holloway

P.C.I-Q1B-115

430 Oaklawn Rd

Pelzer SC 29669-9363

Petitioner fully incorporated herein the facts stated in his initial brief, to include the procedural history stated therein. Petitioner now amends his brief and will show the court:

Was the PCR court's decision an unreasonable determination of the facts in light of the evidence submitted when the PCR court allowed testimony to be submitted on behalf of a missing attorney who was deceased at the time of the PCR hearing.

Error of law occurred when the PCR court ruled that the petitioner's counsel, James H. Price III, was not ineffective in his assistance. Everything the petitioner testified to during the PCR hearing was true and was not disputed by lead counsel because he was deceased and did not testify at the PCR hearing held June 2023.(PCR Tr. 635 ln. 5-6). Co-counsel, James Price IV, lead counsel's son, could not articulate lead counsel's trial strategy for failing to preserve a defense of habitation (PCR Tr. 673 ln. 2-17), or why lead counsel failed to request a jury instruction of defense of habitation, nor could co-counsel articulate lead counsel's reason for abandoning the defense of habitation at trial.(PCR Tr. 677 ln. 12-23). Further, co-counsel, James Price IV, could not give a reason why lead counsel failed to object to the bias burden shifting jury instructions.(PCR Tr. 516-517).

Lead counsel, James H. Price III, failed to object to any portion of the jury instructions. In *Marin V. Warden of Lieber Corr. Inst.* 2023 WL 5807301, James Price III represented Marin at his PCR hearing that was held Feb. 1, 2018. Issue (h) of Marin's PCR application:

"Appellate Robert M. Dudek was ineffective in failing to raise *State V. Belcher* 385 S.C. 597 685 S.E. 2d 802 to the court of appeals for the prosecutor's charge to the jury that the jury could infer malice..." James Price III was also representing the current petitioner, Lawton L. Holloway at the same time.

Clearly, trial counsel was aware of the ruling in State V. Belcher: jury charge instructing that malice may be inferred from the use of a weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. This case was one year prior to Holloway's trial which began March 2019; James H. Price the III failed to object to the trial courts burden shifting jury instructions that malice may be implied, despite the judge giving a defense of habitation jury instructions. This error of law.

At the PCR hearing the petitioner testified that attorney Price had not done anything to properly represent him in the trial. The petitioner raised the issues of attorney James H. Price III's health issues in the PCR hearing. Anything that co-counsel testified to in regards to a strategy was hearsay with no evidence to support said findings.

The petitioner is requesting this court to take judicial notice (SCRE201). The petitioner's case is identical to the Supreme Courts opinion in Lounds V. State, 380 S.C. 454, 670 S.E.2d 646

In Lounds V. State 380 S.C. 454, 670 S.E.2d 646 The Supreme Court, Waller, J., held that defendant's counsel was ineffective for failing to adequately prepare for trial, "Newell, the petitioner's PCR counsel, Newell, did not articulate a strategy, he did not testify at the PCR hearing. The court held "we find the PCR court erred in finding that Newell offered an objective valid strategic reason not to call witnesses."

Further the court held: we have recognized that when counsel articulate a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. Ingle V. State, 348 S.C. 467, 560 S.E.2d 401 (2002); Stokes V. State, 308 S.C. 546, 419 S.E.2d, 778 (1992).

The validity of counsel's strategy is to be reviewed under "an objective standard of reasonableness." Ingle, 348 S.C. at 470, 560 S.E.2d at 402.

Petitioner clearly was prejudiced by lead counsel's failure to preserve defense of habitation, and failing to object to the bias jury instructions, as well as no strategy articulated at the PCR hearing due to lead counsel's death. Petitioner was denied a fair trial. The PCR court violated clearly established federal and state law by allowing testimony that was hearsay.

RELIEF

Conviction be reversed, sentence vacated and case remanded to the lower court.

Respectfully

S/ Lawton L. Holloway 10/9/2024

Lawton Leroy Holloway

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I, Lawton Holloway # 2023-001372
certify that I have served the S.C. Court of
Appeals with a copy of my supplemental brief
by placing a copy in the Perry mailroom for
mailing, postage prepaid, addressed as follows:

Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29111

I, Lawton Holloway # 2023-001372 certify and
verify under the penalty of perjury that the
foregoing is true and correct.

Lawton Holloway
10/9/2024

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RE: supplemental brief

Dear Clerk ,

Enclosed you will find a copy of my supplemental brief that I have prepared to add to my brief that I have already sent to the court.. Your help in filing my brief will surely be appreciated.

 10/9/24
Lawton L. Holloway

Lawton L. Holloway #379523

P.C.I

Q1B #115

430 Oaklawn Rd

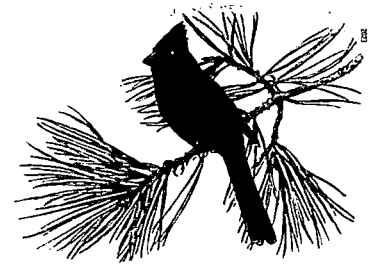
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Attn: Clerk

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