

State of South Carolina
In the Supreme Court

Pro. Se Response on
Certiorari to Aiken County

Edge W. Dickson Circuit Court Judge

Braheim J. Hill, Petitioner

v

State of South Carolina, Respondent

S.C. SUPREME COURT

SEP 27 2013

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Issues to be raised and argued

The Per Court erred in failing to find trial Counsel Ineffective for not challenging the admission of the fingerprint evidence.

In trial of Petitioner Braheim J Hill before the honorable John C. few. Judge stated "... normally when you introduce the opinion of a fingerprint expert you have got to lay a foundation as to what it is that he is comparing the latent fingerprint to. In other words you got to prove that the card that he compared it to actually came from the defendant and you didn't do that..." Reference Appendix 116 II 20-25.

Further more was stated "... You can't bring a card in here and imply to the jury that this card was taken the last time that the defendant was arrested. That's exactly the impression that they get. It's an improper way to introduce fingerprint testimony..." reference appendix 117 II 12-16.

In State v Rich 359 S.C. 2d 281 (SC) it was held that "... admission of fingerprint comparison without proper authentication required reversal of conviction given crucial nature of evidence to state's case. Inked impressions of set of fingerprints allegedly on file in police department were improperly admitted into evidence, due to lack of proper foundation and thus, defendant was entitled to new trial on charge of burglary and Grand larceny. Given crucial nature of fingerprint evidence to state's case."

Petitioner was convicted of armed robbery and possession of a weapon in connection with a at Warrenville South Carolina Convenience store. The Judge sentenced petitioner to 30 years and 5 years respectively. The sentences to run concurrent.

Petitioner contends that the inked impressions of a set of fingerprints were erroneously admitted into evidence because the proper foundation was never laid. In State v Rich 359 S.C. 2d 281 the court's agreed.

At trial Martin Clay Adam Sergeant of forensic investigations for the Aiken County sheriff's office was qualified as an expert witness in the area of fingerprint comparisons. He explained to the jury about fingerprint analysis. The latent prints taken by officer Martin Clay Adam, himself were properly admitted into evidence. Petitioner contention is being directed to the inked impression that the officer compared to the latent prints.

Exception to the hearsay rule does not absolve the offering party from the usual requirements of authentication State v McFarlane 279 SC 327, 306 SE2d 611 (1983)
In State v Foster 284 NC 259, 200 SE2d 782 (1973) a police officer testified that he identified a latent print with one alleged to be the defendant's which was on a fingerprint card in the master file of the Police Department. As in the present case the State neither attempted to lay a foundation that the prints on the master file card were in fact those of the defendant nor sought to introduce the master file card. The North Carolina Supreme Court held that "the fingerprint card from the master file card was not introduced into evidence. Even so, introduced or not, the fingerprint card testimony concerning it without evidence as to when and by whom the card was made and that the prints on the card were in fact those of this defendant, violated hearsay rule and should have been excluded" Foster 284 NC @ 273, 200 SE2d @ 793.

The error cannot be considered harmless in this case. The witness should not have been allowed to testify about data contained in an authenticated document.

Petitioner also contends that trial counsel failure to object to admission of fingerprint evidence constituted ineffective assistance.

In order to show an unconstitutional denial of effective counsel, petitioner is required to demonstrate; first that his trial counsel failed to exercise the customary skill and diligence that a reasonably competent attorney would exercise under similar circumstances and second, that he was prejudiced by his counsel's incompetence. USCA Const. Amend 6.

Failure of petitioner's trial counsel to object to admission of fingerprint evidence because of trial strategy that "it would lead into too many pitfalls about them maybe having a prior fingerprint of him on record" Reference Appendix III II. 6-8.

Petitioner's pro se response on petition to Aiken Court is to establish merits showing ineffective assistance of counsel and prosecutorial misconduct where the 6th and 14th Constitutional amendments of his right to due process were denied. As counsel's tactical choice not to object to admission of fingerprint evidence is wholly without reason.

In Riley v Wyrick 712 F.2d 352 (1983) the Judge granted a new trial on the ground of prosecutorial misconduct.

Petitioner with the benefit of transcript offers additional factor to be considered in determining the ineffective assistance of counsel issue to which he now turns.

Ineffective assistance of counsel. Petitioner asserts that he was denied effective assistance of counsel. In order to show an unconstitutional denial of effective counsel, the petitioner must demonstrate first, that his attorney failed to exercise the customary skill and diligence that a reasonably competent attorney would exercise under similar circumstances and second that he was prejudiced by his attorney's incompetence. Harris v Housewright 697 F.2d 202 Walker v Solem 687 F.2d 1235. Petitioner bears a heavy burden in proving his ineffective assistance of counsel claim.

1. Attorney's Incompetence

The first issue is whether Petitioner attorney performed reasonably competently under the circumstances when he failed to object to admission of the fingerprint evidence at trial. Trial attorney for the defendant, David M. Mauldin, ESQ testified that he did not object to the admission of the fingerprint evidence because to do so would "lead into too many pitfalls about them [state] maybe having a prior fingerprint of the defendant Brahem J. Hill on record" reference Appendix 117 ¶ 6-8 Basically saying that it was inconsistent with his trial strategy. Petitioner define was that he touched the gun when someone tried to sell it to him. Trial Counsel Mauldin's strategic reason for failing to object was without reason and so derelict that the claim of ineffective assistance must be sustained. See Pinnell v Cawthron 540 F.2d 938 942-943 (8th Cir 1976)

Petitioner contends that there lies no reasonable basis for trial Counsel Mauldin's tactical decision not to object to the admission of the fingerprint evidence. Prejudicing Petitioner from challenging Constitutionality of evidence admitted against him simply because trial Counsel Mauldin chose not to contest the merits of the Government case. Trial Counsel Mauldin could have alleviated danger that the jury might perceive that the admission of the fingerprint evidence without establishing under a proper foundation was justifiable. The tactical choice was unreasonable under the circumstances and should be held in the courts to satisfy the first part of the ineffective assistance of counsel claim.

2. Prejudice

Petitioner also shows that trial Counsel Mauldin's mis handling of his defense prejudiced him by failing to object to the introduction of the questionable evidence at trial. In US v Johnson 707 F.2d 317 (8th Cir. 1983) the court held that "in determining whether there was prejudice to an appellant from the asserted lack of diligence.

Attorney Mauldin's misguided trial strategy denied Petitioner the 6th amendment right to effective assistance of counsel as fingerprint evidence without a proper foundation is inadmissible. Per the court "... You cannot bring a [fingerprint] card in here and imply to the jury that this card was taken the last time that defendant was arrested. That's exactly the impression they get. It's an improper way to introduce fingerprint testimony." Reference Appendix 117 ¶ 6-8

As mentioned above Petitioner also raises issue of Prosecutorial misconduct where as assistant Solicitor attorney. Lauren Willis stated "... Maybe we did it wrong, but we did discuss to try to make sure it didn't come out that it was from a prior arrest" Reference Appendix 118 II 8-10. Assistant Solicitor attorney Willis was speaking upon the cover up in the Court the fact that the fingerprint card was the subject of a prior arrest rather than the evidence of the present case which is relatively inadmissible.

To secure this appropriate appellate review where not only appellate defender Lanette Cantel-Durant argues certiorari should be granted and the order of the PCR court reversed and remanded. Petitioner submit this prose response to the petition filed by counsel. This matter is submitted to the court for its consideration

Respectfully Submitted

Braheim J. Hill

Braheim J. Hill # 316768
Meck SW # 35
386 Redemption way
McMormick S.C 29899

Sworn or affirmed to and Subscribed me this

23 day of Sept, 2013

Perry L. Maton

Notary Public

My Commission Expires Feb. 25 2014