State Of South Carolina

In The Supreme Court

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S.C. SUPREME COURT

Certiorari to Richland County
Ernest Kinard Jr., Circuit Court Judge

Leon Walker Petitioner

V

State Of South Carolina

Respondent

Appellate Case N0 2013-000519

Leon Walker
Petitioner
MacDougall Correctional Institution
1516 Old Gilliad Road
Ridgeville, South Carolina 29427

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Issue Presented

P. C. R. court did err in failing to find plea counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly? The Constitutional of 1868 had been, since its adoption the fundamental Law of this State and the act of assembly passed in pursuance thereof have as full force and validity as any law upon the status book. The Sixth Amendment to the United State Constitutional when counsel failed to Conduct proper pretrial investigation nd to object to improper prosecution trail conduct.

Statement of the Issues

I The petitioner received *ineffective assistance of counsel during trial in violation of* the sixth Amendment to the United States Constitution when counsel failed to conduct proper pre-trial investigation and to object to improper prosecutorial conduct.

II The petitioner received ineffective assistance of appellate counsel in violation of the sixth amendment to the United States constitution when counsel failed to agree that the petitioner received ineffective assistance of the trail

Statement Of Jurisdiction

South Carolina law provides *an avenue for these whose conviction has been obtained in* violation of the Constitution of the United States. The uniform Post-Conviction procedure acts' code 17-27-10,et seg., provide an avenue for redress of federal constitutional violations in South Carolina court.
A prisoner in custody under sentence of a South Carolina court may challenge his conviction and sentence if such were obtained "in violation of the Constitution of the United States or the Constitution or laws of South Carolina, S.C code 17-27-20(a)(1).The petitioner feels that his best

Argument

The P.C.R court ended in failing to find plead counsel ineffective for not insuring that petitioner's guilty plea was entered freely, voluntarily and knowingly. Point's, Leon Walker paid for a six dollar drink with a counterfeit one hundred dollar bill. Then he kept the change. This occurred three times before he was charged with forgeries. However it's a great difference in counterfeit and forgery. Counterfeit-to unlawfully forge, copy or imitate an item especially, money of a negotiable instrument such as security or promissory note of other officially issued item of value. Two thousand dollars or less a misdemeanor is a fine not more than one thousand dollars. Forgery-the act of fraudulently making a false document of altering a real one to be used as if genuine, 1-5 years.

As we look in the case the constitutional of 1868 has been since it's adoption the fundamental law of this state and the act of assembly passed in pursuance thereof have as full force and validity as any law upon the statue book. The Sixth Amendment to the United States Constitutional *when counsel fails the conduct proper pre-trail investigation* and to object to improper prosecutorial conduct.

The Sixth Amendment to the United States Constitutional guarantees that every criminal defendant is entitled to the assistance of counsel in presenting their defense. See also

S.C constitution article I & XIV. The Supreme Court has stated that the individual has the right to counsel is fundamental right of criminal defendant; it assures the fairness and this legitimacy of our adversary process *Kimmelman v Morrison*, 477 U. S. 365,374 (1986) Furthermore, the Supreme Court has recognized that "the right to counsel is right to the effective assistance of counsel. McMan v. Richardson 397 U. S. 759, 771 (1970) South Carolina has adopted the Stickiest standard. See especially Cherry v. State 300 S. C. 115, 386 S. E. 2d 629 (1989) I have the right to expect that my lawyer will used every skill, expend every energy and tap every legitimate resources in the exercise of the client and under taking representation of the client interests. Frazer v. United 18 F. 3d 778, 789 (9th Cir 1994), Walker v. State. 12 S. C. 200 Constitutional laws. This amendment must be given broad and liberal construction in favor of individual citizen in order to thwart illegal invasion of constitutional safeguard provided to end that this amendment, while it may at shield guilty, but shall always protect the innocent. U. S. valentine, D. C. , Tenn., 1962, 202 F Supp 677. Constitutional challenges to check point seizures turn on whether the initial stop at the checkpoint was reasonable is determined by balancing the gravity of the public interest sought to be advance that interest's against the extent of the resulting intrusion upon the liberty interest of those stopped. Temporary detention of individual's during the stop of an automobile by police officer even if only a brief period and for a limited purpose constitution a seizure of person within the meaning of the Fourth Amendment; an automobile stop is thus subject to the constitutional imperative that it not be unreasonable under the circumstance. Amendment VI searches and seizures. The right of the people to be secure in their person paper and effect against unreasonable search and seizure shall not be violated no warrants shall be issue, but upon probable cause supported by oath or affirmation and particularly describing the place to be searches and the person's or things to be seizure and amend defendant's State v. Groome 664 S E 2d 460, State v. William 571 S E 2d 703 U. S. V. Alexis Brugal *185 F 3d 205 Tant V. South Carolina Department of* Correction 395 S. C. 446, 718 S. E. 2d 753 Professional conduct a lawyer being a member of the legal professional is representative of client an officer of the legal system and a public citizen having special responsibility for the quality of Rule 407 of South Carolina code of law.

Professional Conduct

Rule 1. 2) 4) 5) 6) 7) 8) 10) 11) 12) 13

Rule 1. 2 Scope of Representation and allocation of Authority Between Client and lawyer A, C and D

Rule 1. 3 Diligent lawyer act with reasonable- 1 and 3

Rule 8. 3 Reporting Professional Misconduct B, and C

Rule 8. 8 A, B, C, D, and G

Opportunity to obtain fair and substantial justice regarding his conviction is through this petition, as the procedural remedy utilized herein has historically served as a safety net for those who have their constitutional rights violated.

Statement

In June 2009, the Richland County Grand Jury indicted me, Leon Walker on the wrong charge three counts of forgery. It should had been counterfeit, that mean it to unlawfully forge, copy or imitate an item especially money of a negotiable instrument such as a security or promissory note or other officially issued item as genuine used in connection with the sale or offering for sale of good or services that are identical to, or substantially indistinguishable from the goods or service with which the registered or unregistered mark. A retail value of two thousand dollar or less the person is guilty of a misdemeanor and must be fined not more than a thousand dollar or imprisoned not more than one year. Forgery, the act of fraudulently making a false document or altering a real one to be used as if genuine. With your own word you said that I, Leon Walker paid for a six dollar drink with a counterfeit one hundred dollar bill.

On December 29, 2010 a checkpoint was set up in Olympic. As I approached it look like an accident I did not see any sign saying it was a checkpoint ahead. I was in the intersection I back up then turn I was on traffic behind me. The officer approached me and I was place in handcuff then my search then place in the officer car told to call a tow truck and a ride however, Officer Owens went back to the car and search a second time and that when he came back with the bag which he said that it was cocaine when he test it.

I Leon Walker waived presentment to the grand jury on the P W I D and plead guilty because my counsels misinform me that if I had plead guilty, waive my right to grand jury, he get me probation. I filed an appeal which was dismissed by the South Carolina Court of Appeal on June 22, 2011, you may not know I were lock in at R and E center at the South Carolina Department of Correction had no way to do any research to prepare for South Carolina Court of Appeal. On November 1, 2011 I Leon Walker filed an application for post – conviction relief (p. C. R.) the state filed return on November 10, 2011 an evidentiary hearing was held on September 10, 2012 before the Honorable J. Ernest Kinard Jr. I was represented by Rolland E. Greenbury and the state was represented by Robert D. Coaney on February 6, 2013, Judge Kinard file an order denying Walker's P. C. R. application and dismissing it with prejudice. My attorney filed a notice of appeal. This petition follows.

Argument

In order to succeed in a post – conviction on proceeding, the petitioner must show that the adjudication of a claim in South Carolina Court resulted in a conviction or sentence that was imposed in violation of the Constitution or law of the United States. South Carolina Code 17-27-20(a) (1). The Constitution as the framework from which all South Carolina law springs, must not be violated as applied to the Petitioner.

I The Petitioner Received Ineffective Assistance of counsel During Trail in violation The Sixth Amendment To The United States Constitution when Counsel Failed to Conduct Proper Pre- Trail Investigation and to object to Improper Prosecutorial Conduct.

The Petitioner submits that he received ineffective assistance of counsel prior to and during his trail. The Sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the assistance of counsel in presenting their defense. See also S. C. Constitution Articles Sixth Amendment right to effective assistance of counsel U. S. C. A Constitution Amend VI.

As the Constitutional guarantee a promise contained in the United State Constitution that support or establishes an inalienable right such as the right to due process Amend VI. A defendant who unaware that he is under indictment cannot be held to have waived his right under this amendment to speedy trail. This amendment must be given broad and liberal construction in favor of individual citizen in order to thwart illegal invasion of constitutional safeguard provided to end that this amendment while it may at time shield guilty, but shall always protect innocence. U. S. Valentine, D. C. Tenn. 1962, 202 E Supp 677 Wilson v. Ozmint C. A. 4 (s. c.) 352 3d 847 352 F 3d 461 certiorari denied 124 s c 2829, 542 U. S. 923,159 L. E. D. 2d 783. Amend VI Taylor v. State 745 se 2d 97 Going v. State 397 s. c. 568, 726 s. E. 2d 1 sc. Holden v. State 393 sc 565, 713 s E2d 611, Terry v. State 383 s. c. 361, 680 s e 227, Berry v. State 381 s. c. 630, 675 s e 2d 425. Rolen v. State 683 s. e. 2d 471 McLeod V. State 723 s. e. 2d, 198 Strickland V. Washington 466 u. s. 668,104 s.c.f. 2052 and Butler v, State 397 s. e. 2d 87, Hill V. Lockhart 106 s. c. 366. Counsel has a duty to make reasonable investigation or make reasonable decision that performs a force particular investigation. Where counsel gave misled advice and defendant plea guilty, not getting what was promise to him that lead to my attorney ineffective assistance counsel Wilson V. Ozmint, Bell V. Miller 500 f 3d 149, 154-57 Marshall V. Cathel 428 f 3d 852 465-71 (7) Hering V. Poole 409 f 3d 48, 65-67, Glover V. U. S. 531 U. S. 198 204,. Steve V. Modes. e. 2d 2013 3722 549 s. c. Walker V. State 723 s. e. 2d 610, lee V. State 712 s. e. 2d 442.

But by the advice of my attorney I would have not plead guilty. I would insist on going

to trail. Frist I ask my attorney about Gant V. Arizona his reply was no because the officer came from the road block, he did not investigate the road block or the stopped U. S. Brugal 185 fsd 205 4h, U. S. V. DEavis, 270 f3d 977 10. C.)in 2001) If we would look back at the indicted report the roadblock was illegal as Michigan Dept. of State Polive V. sit2 and state v. William 571 5.2 703 terry v. Ohio, and when Justice Simeon R. Acobe Jr. explained Hawaii law the traffic stop. Gant V. Arizona came into place when the officer put handcuff on and search the vehicle for a traffic violation. Why was the vehicle search first time and then the second time search. The officer say for inventory, but he did not make a list of everything in the vehicle and place it in the property room and put the vehicle in the sheriff Department impound yard which they did not do.. U. S. v. Castro 129f 3d 782,758, 120 S. C. 1632- U. S. V. Best 135 f 3d 1223 U. S. V. Blaze 143 f 3d 585, 592, Thomas V. Hungerford 23 f 3d 145- 143 f 3d 920 (5th cir. 1998) State V. Brannon 697 s. e. 2d 593, State V. , State V. Tynes 740 s. e. 2d 512 State V. brown 698 s e- 2d 811 State V. Brown 736 s e 2d 263 U. S. V. Yousif cite as 308 f. 3d 820 We review the district court's conclusion of law de Novo and it's finding of fact for clear error. United States V. Booker 269 f. 3d 930 (8th cir 2001) In Edmond, a class action brought on behalf of all motorists stopped or subject to being stopped at the Indianapolis drug check point the Supreme Court held that the Indianapolis check point program violated the Fourth Amendment because it operated for the purpose of uncovering evidence of ordinary criminal wrong doing (drug trafficking) without individualized reasonable suspicion.

Once an officer effectuates a routine traffic stop the officer may request a driver's license and vehicle registration run a computer check and issue a citation. ID at 876 (quoting United States V. Guzman 864 F 2d 1512, 1519 (1a 1988. Once the driver produces a valid license and proof that he is entitled to operate the vehicle the driver must be permitted to precede see id. . "Any further detention for questing is beyond the scope of the terry stop and therefore illegal unless the officer has a reasonable suppicion of a serious crime." I dar 876- 77 Cobbs V. State 305 S. C. 299 408 S. E. Ld 223 failure to investigate possible defenses constitutes ineffective of assistance of counsel and Praylon V. Martin 761 F. 2d 179 (9th 1985) Vis V. Superintendent. Powhatan Correctional Center 643 F 2d. 167 (4th cir- defendants stated interest in pleading guilty does not release counsel of his duty to investigate possible defenses. Counsel failure to conduct even rudimentary independent review of the evidence before advising petitioner to accept the State plea offer was ineffective assistance of counsel. Because petitioner was constructively denial any assistance prejudice should be presumed Petitioner receive a new trail. My Public Defendant Attorney Mark Sawyer, he had given me bad advice or misleading advice that got me convict. By telling me if I would give my right to the grand jury he would get me probation that day otherwise I would had go to trail.

Although my counsel denied me an chance of winning, when the evidence was seized

illegal on the ground that the officer claim it's a inventory search. However let Richland County Sheriff Department violate my Fourth, Sixth Amendments of Constitutional, among other thing. Not once, but twice my vehicle was search why in handcuff. See U. S. V. Rowland 341 F 3d. 774 ans U. S. V. Khoury 901 F 2d 948, 975 as the case stated it inventory mean a detailed list separate assets and liabilities a complete search of an arrestee person before that person is book into jail. All possession found are typically and held in police custody to protect the officer and the arrestee. Like seizure of person investigatory detention of personal property must be reasonable. In U. S. V. Place, the Supreme Court held that the detention of personal effects is governed by the same standard, as seizure of a person in possession of those goods. As with personal detentions, the reasonableness of a property detention depends upon police diligence in conducting the investigation quickly, the duration of the seizure and whether the object were transported by the police vehicle stop- Reasonable Suspicion –Apparent Avoidance of Sobriety Checkpoint.

A law enforcement officer's observation that a driver turned off a roadway in an apparent attempt to avoid a sobriety checkpoint does not by itself support the reasonable suspicion needed for a vehicle stop under Haw. 11 (State V. Heapy, Hav. No 7375, 1-11-07.

In a lead opinion by Justice Simeon R, Acob Jr., the court explained that, to justify a traffic stop under Hawaii law, an officer must have a reasonable articulable suspicion that criminal activity is afoot. In this case, an officer saw a car turn away from a roadblock, but he did not observe any other activity that would have led him to believe that the driver was impaired, the court noted, for example. The turn apparently was made without incident, the car was not weaving or being driven in an erratic manner, and the driver committed no traffic violation while under observation, As best the court said the only suspicion the officer had was that the defendant was attempting to avoid the roadblock. The court noted that a majority of jurisdiction have held based on similar facts that officers may not purse and stop drivers who appear to be avoiding sobriety checkpoints absent other indication of criminal activity. These courts have reason that avoiding confrontation as a roadblock cannot give rise to reasonable suspicion. See e. g., United Stated V. Yousif 308 F. 3d 820, 72 crl 44 (8th cir. 2002) But see State V. Mark, 66 S. W. 3d 706, 70 crl 443 (Mo. 2002) (Motorist's exiting of highway after passing a sign announcing drug checkpoint ahead provider reasonable suspicion needed for investigative stop). The court concluded that "It would violated by the Hawaii Constitution for this court to permit seizure to occur on the basis of a suspicion that a motorist was avoiding a police confrontation by making a lawful turn" In a concurring opinion, Justice Steve H. Levinson joined by Justice Paula A. Nakayama agreed that the circumstance here did not provide the officer with the requisite degree of suspicion for stop, to a different locationfrom where they were originally seized with proble cause the

police may detain property, but may not search it. State has authority under its power to impose reasonable regulation upon conduct of driver, however state cannot exercise its power by mean which needlessly chills exercise of basic constitutional right code 1976 56-52950 (d) U. S. C. A. Constitutional Amend 5, 6. Shumpert V. South Carolina Department of Highway and Public Transportation 409 S. E. 2d 369. My attorney file a motion of discovery January and got it back be going to court, my attorney never follow: Rule 6 Chemical Analysis and Chain of Custody. Pursunt to Chissolm V. William 355 SC. 175, 5844 2d 401 State V. William 297 SC. 290, 376 S E- 2d 773 and Johnson 318 S. C. at 196, 456 S E 2d 443. However there is no chain of custody because I has write tto Richland County Sheriff Department to SLED twice and had the letter notarized and never receive any kind of response R. C. S. D. or SLED. Purouent To Chisolm V. State : 355 S. C. 175 584 2d 401 (s. c. App 2003)

Criminal Law 404. 30 (9)- Party offering into evidence tangible item such as drugs or blood samples must establish chain of custody as far as practicable sec eg State V. CCribb 310 S. C. 518 426 S. E. 2d 306 (1992)! Benton V. Pellm 332, S. C. 100 S. E. 2d 534; State V. Johnson 318 S. C. 194 456 S. E. 2d 442 (cf App 1995) cert denial (December 8, 1995 where the analyzed substance has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and analysis while the proof of chain of custody need not negate all possibilities to tampering it must establish complete chain of evidence as far as practicable. State V. Williams 297 S. C. 290, 3716 S. E. 773 (1981) Johnson 318 S. C. at 196,, 456 S. E. 2d 9 443.

Rule 6 (d) S C R Crim P provides (d) waive of Rights Nothing in this Rule "Shall" preclude the right of any defendant to obtain an expert chemist or analysis to test substance in his behalf provided it is tested under the supervision of the authority having custody of the subance or SLED. *Nothing in this Rule "Shall" preclude the right of any* party to introduce any evidence supporting contradicting report or paper enters into evidence this rule I 14. The Supreme Court has stated, "{t} the right to counsel is a fundamental right of criminal defendant; it assures the fairness, and thus the legitimacy, of our adversary process. Kimmelman V. Morrison, 477 U. S. 365, 374 (1986). Furthermore, the Supreme Court has recognized that the rights to counsel are right to the effective assistance of counsel. Meman V. Richardson 397 U. S. 759, 771 (1970). To see whether counsel has fallen below the mimums standard needed for effective assistance of counsel under the Sixth Amendment to the Constitution, a two prong test must be met. In Strickland V. Washington, 466 U. S. 668, 688, -694 (1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

(1) Counsel's performance must have fallen below an objective standard of reasonableness; and

(2) There must be a reasonable probity that, but for counsel's errors, the results of the proceeding would probably have been different.

South Carolina has adopted the Strickland standard. See e.g. Cherry V. State 300 S. C. 115, 386 S. F. 2d 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray V. Carrier, 477 U. S. 478 (1986).

"It is the client right to expect that his lawyer will use every skill, expends every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest, Frazer V. United States. 18 F. 3d 778, 785 (9t6 (1-. 1994)." Defense counsel must do his utmost to bring to his utmost to bring his legal acumen to bear on behalf of development in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre- trail investigation, which should include contacting potential witnesses; prepare adequately and professionally for trail; conduct the trail to the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause" United States Ex. Rel. Partee V. Lane 926 F 2d 694, 702 (7th) cir 1991)

A. Counsel was Ineffective for failing in conduct an adequate Pre-trail Investigation As the Supreme Court also recognized in Strickland. "Counsel bears a duty to make a reasonable investigation the law and fact in his client case" Strickland. 468 U. S. at 691. Additionally the A B A standard relating to the Administration of Criminals justice provide.

It is the duty of the lawyer to conduct a prompt investigation of the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statement to the lawyer of fact constricting guilty or the accused's stated desire to plead guilty. Standard 4-4. 1.

A defendant's right to effective assistance of counsel confers a duty on consent to conduct an adequate pre- trail investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible line of defense the lawyer has failed to render effective assistance of counsel Cobb V. State 3605 S. C. 299, 408 S. E. 2d 223 (1991). Pre- Trail preparation, principally because it provide a basis upon which most of the defense case must rest, is perhaps the most critical stage of a lawyer's preparation. Id failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id. In the intent case, defense counsel failed to investigate whether the petitioner's Fourth Amendment right against unreasonable searches and seizures was violated when he was stopped and searched at a "License" checkpoint. The Amendment evidence obtained as a result of such search will be barred from admission at a defendant's trail. The Supreme Court has held that even evidence indirectly obtained through an illegal search or an illegal arrest may be excludable "as fruit of the poisonous tree." Wong Sun V. United States. 371 U. S. 471, 484-87, 83 S. (t. 407, 415-17,, 1 L. Ed. 2d 441 (1963). The court stated.

We need not hold that all evidence is fruit of the poisonous tree simply because it would njot have come to light but for the illegal action of police. Rather, the most apt question in such case is whether granting establishment of the primary alleging the evidence to which instance objection is made has come at by exploitation of that primary alleging or instead by means sufficiently distinguishable to be purged or primary taint. Id. At 487-88, 83 S. C. at 417-18

While the law regarding searches and seizures regarding routine traffic stop is well known, the same cannot be said of stop made at a checkpoint. Stops at a checkpoint constitute seizures for Fourth

Amendment purposes, thus requiring that the stop be supported bt reasonableness, i. e. legitimate government objective. Michigan Department of State Police V. Sitz 496 U. S. 444, 450, 110 L. Ed 2d. 412 (1990) The United States Constitution provides that:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall be issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searches and the persons or things to be seized.
U. S. Constitution Amendmemnt IV "The basic purpose of Fourth Amendment to safeguard the privacy and security of individuals against arbitrary invasion by government officials." *Michigan V. Tyler 436* U. S. 492, 504; 98. S. C. Ct 1942, 1947 (1978) The reach of this Amendment "extends beyond the paradigmatic entry into a dwelling by a law enforcement officer in search of fruits or instrumentalities of crime." Id The Fourth Amendment:
Protects two types of expectation, one involving searches, the other "seizure", A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property. United States V. Jacobsen, 466 U. S. 109, 113; 108 S. Ct. 1652, 1660 (1984). If evidence is seizure illegally by the police, the exclusionary rule will generally apply and any Supreme Court has made it clear that permanent checkpoint at or near the border in order to search for aliens do not violate the Fourth Amendment. United States V. V. llamonte-Marquez 462 U. SS. 579, 587, 103 S. ct. 2573, 77 LED. 2d (1983). The Supreme Court also stated that temporary sobriety checkpoint were also constitutionally sound, when instituted pursuant to a detailed committee plan. Michigan Department of State Police V. Sitz 496 U. S. 444, 447, 455, 110 S Ct 2481, 110 E-d 2d 412 (1990). In determining the validity of a checkpoint pursuant to the Fourth Amendment of the United States Constitution, a reviewing court must balance the state's interest, the extent to which the checkpoint can advance said interest, and the degree of intrusion upon individual motorist, United Stated V. Ramirez- Gonzales, 87 F 3d 712, 714 (5th Cir 1996) The United States Court of Appeal for the Tenth Circuit has gone so far too state that fixed checkpoints checking for drivers licenses, registration, and proof of insurance are constitutionally sound as long as individual officers are not given discretion regarding whom to stop and the intrusion is minimal. United States V. Galindo- Gonzalez 142 F. 3d 1217, 1221 (10th Cir. 1998). However, in utilizing such a program, drivers had to have the option to turn around and leave the line before reaching the checkpoint. Otherwise an unreasonable seizures would occur. Merrett V. Moore, 58 F. 3d 1547, 1553 (11th Cir. 1995). In the instant case, the petitioner submits that the checkpoint at which he was stopped constituted an unreasonable seizure.

The checkpoint at issue involved for checks for licenses, registrations, and to insure seatbelt were being worn. The checkpoint was being operated in conjunction with the Labor Day holiday, helping to insure public safety during the holiday. The initial plan for the checkpoint called for every car to be stopped, but should congestion occur, every third car were to be stopped. The Petitioner was stopped pursuant to the every car being stopped methodology. While the Petitioner was stopped pursuant to the every car methology, the Petitioner submits that officer working the checkpoint had the discretion to stop every third car. Just as quickly, officer could decide to switch back to a check of every car should a suspicious vehicle be observed? Such procedure place great discretion in the hands of officers regarding whom to stop, thereby *damages the constitutionality of the stop. Furthermore, the* checkpoint was not a fixed checkpoint, but a temporary checkpoint Added to this the fact that, once in line, it does not appear that the Petitioner would have been able to turn around to avoid the check. As such, the Petitioner received no warning that he was going to be seized and was not given an opportunity to avoid such unreasonable seizure. Also arguing against the constitutionality of the checkpoint at issue is the unfavorable balancing test regarding the State's interest in operating the

checkpoint. Unlike similar cases involving drunk driving check points where statistics proving the damage caused by drunk driving can be produced, no evidence was presented regarding the reasoning behind the instant checkpoint.

In fact the documentation of the Richland County Sheriff Department issued in support of the stop does not mention a single objective fact supporting the need for such a checkpoint. (See Richland County Sheriff Department Documents). Without a legitimate state interest in operating the checkpoint, any intrusion upon individual motorist is too intrusive, thus rendering the checkpoint unconstitutional according to the Frourth Amendment. However, trail counsel chose not properly investigate the constitutionality of the license checkpoint. In fact, it does not appear as if counsel undertook any significant pre- trail motion work. Interest, defense counsel failed significantly challenge any *of the witnesses or evidence produced by the state, instead* simply raising a single motion for directed verdict. Defense counsel offered no witnesses. Such poor pre- trail planning and investigation by defense counsel renders council's conduct below any objective standard of reasonableness. After all, how can a defense be mounted if no investigation is made? Counsel's poor performance clearly prejudiced the Petitioner. Had counsel successfully challenged the legality of the license checkpoint, all evidence obtained flowing from the stop of the Petitioner, namely the cocaine or issue, would have been in admissible as "fruit of the poisonous tree." Without such evidence, no charge could have been brought against the Petitioners. Clearly, Counsel was ineffective for failing to conduct proper pre- trail investigation. Unfortunately, as poor as counsel's pre-trail performance was, counsel's performance did not improve during the trail.

B Counsel was ineffective for failing to object to prejudicial misconduct by the Prosecution during Closing Argument.

Not as in the instant case, the Petitioner's due process right was violated when the prosecution engaged in misconduct during closing argument, a violation to which defense counsel failed to raise an objection. The rule is well established that the government may prosecute with earnest and vigor. Berger V. United States 295 U. S. 78, 88 (1935). But, the Supreme Court has held that "...while {the prosecutor} may strike hard blows, he is not at liberty to strike foul ones." Id. "It is as much {the prosecutors } duty to refrain from improper methods calculated to produce aa wrongful convictions as it is to use every legitimate mean to bring about a just one. Id. It is important that prosecutors in our system exercise restrain because what they say in front of a jury carries great weight. "Argument delivered while wrapped in the cloak of state authority have heightened impact on the jury. For this reason misconduct by the prosecutor normally an elected official, must be scrutinized carefully. Berger V. United States, 295 U. S. 78 (1934). The United States Supreme Court has stated that a defendant's due process right are violated when the prosecutor's misconduct renders a trail

"fundamentally unfair." Darden V. Wainwright, 477 U. S. 168, 181 (1986) Smith V. Phelps, 455 U. S. 209, 210 (1982.

Delaware V. Prouse 440 U. S. 94 663 & n. 26,99 S. ct 1391; Edmond 531 U. S. at 39 121 sct 447. Concerned that it's exception would swallow the principle of individualized suspicion, 531 U. S. 46-47 121 S. ct. 447 the court Edmond laid down a line: "When law enforcement authorities pursue primarily general crime control purpose at checkpoint....stop can only be justified by some quantum of individualized suspicion." Id at 47, 121 S Cr. 447 Even if the police check licenses at the roadblock, their stopping of vehicles would violate the Fourth Amendment when the "primary purpose of the checkpoint program" is the "discovery and interdiction of illegal narcotics." Id at 46 34, 121 S. Ct. 447. To the statement from Edmond just quoted, the court added this qualifier in a footnote: "Because petitioners concede that the primary purpose of the Indianapolis checkpoint is narcotics detection, we need not decide whether the state may establish a checkpoint program with the primary purpose of checking licenses or drivers sobriety and secondary purpose of interdicting narcotic" Id at 47 a 2, 121 S. C. 447. The footnote seems divorced from the rest of the opinion. Throughout the text the Court states again and again that *when the "primary purpose" of a roadblock is general crime* control it is unconstitutional. Id at 38, 41 42, 44, 46, 47, 48, 121S ct. 447. This more than suggests that the "primary purpose" had point in this case, the district court made no finding, about the Summer Mobile Force. According to a police manual, the Summer Mobile Force initiative has as its overall objective "to restore the public confidence in the Metropolitan Police Department through the reduction and prevention of crime and violence by utilizing short- term pro- active high visibility enforcement technique." Perhaps inspired by the experience of New York City, see George L. Killing & Catherine M. Coles, Fixing Broken Windows 108-56 (1996). The department states that it- "is committed to building safe orderly and healthy neighborhoods throughout the District of Columbia in partnership with our community." Among the tactical approaches mentioned 981 halfway is a "highly trained and supervised approach to proactive traffic enforcement," using among other things roadblocks, with the goal of reducing "the number of traffic violations, accidents, and instances of aggre3ssive driving on our city streets. Remove the automobile as the conveyance of choice by narcotics trafficking and individuals secreting guns and stolen property in the District of Columbia." Since rhe district court bound as it was by Mcfayden does not appear to have taken these "programmatic purpose" into account, we must send the case back for further proceeding in light of Edmond 531 U. S. at 48, 121 S ct 447, and the court's later opinion in Ferguson V. City of Charleston 121 S cr. 9t 1291 holiday that all evidence over on must be considered. We do not agree with defense other side counsel that after Edmond the only thing the district all program count may consider or remain is the general purpose of the Court had already endorsed- such as detecting drunk drivers, or checking licenses- the roadblock would be constitutional.

The record in Edmond suggested that enforcement of the drug laws was not simply Indianapolis's primary reason for establishing the checkpoint program, but its only reason. A sign near each of the checkpoints announced: "Narcotics Checkpoint – Miles Ahead Narcotics k 9 In use Be prepared to stop Id. 9x 35-36, 121 S. ct. 447. If the city only purpose was narcotics enforcement, it is hard to explain why the Court framed the inquiry in term of its "primary" purpose unless the Court be believed that it would be constitutional for state to "establish a checkpoint program with the primary purpose of checking license or drivers sobriety and secondary purpose of interdicting naecotics. Id. At 47 n. 2, 121 s ct 447

{5} regardless whether this evidence would have been sufficient under McFayden – an exceedingly close question- it is not sufficient under the Supreme Court intervening decision in Edmond McFayden treated the overall program under which the roadblock had been established as "immaterial." 865 F. 2d at 1312, But Edmond held that "programmatic purpose may be relevant to the validity of Fourth Amendment intrusions untaken pursuant to a general scheme without individualized suspicion" 531 U. S. at 121 S ct. 447. In determining the principal purpose of the safety check point.

Ineffective Assistance Of Counsel

1. Criminal law 641. 13 (7) Even when defendant plea guilty in determining whether counsel had constitutionally imposed duty to consult with defendant about appeals, court must consider such factors as whether defendant received sentence bargained for as part of plea and whether plea expressly reserved or waived some or all appeal; rights. *U S C A Court Amend VI*
2. Criminal Law 641.12 (1) Denial of assistance of counsel altogether either after or constructively, is presumably prejudicial U S S C A Constitutional Amend VI
3. Criminal Law 641.13 (7) When counsel constitutionally deficient performance deprive defendant of appeal that he otherwise would have taken defendant out successful if counsel ineffective assistance counsel claim entitling him to an appeal. U S C A Constitutional Amend XI

Also Wilson V. State 559 S. E. 2d 581 (sc2000) s ct After defendant was conviction relief. The Circuit Georgetown County Paula H Thomas J. dismissed the petition. Defendant appeal. The Supreme Court Tool C. J. held that that (1) defendant was entitled to an evidentiary hearing on the whether he voluntarily waived his right to a direct appeal and (2) one year limitation period in which to file a petition for pose conviction Relief did denial the assistance of counsel however prejudice is presumed McKnight V. State 320 S. C. 356, 358-359, 465 S. E 2d 352, 353, citing Strickland 466 U. S. 94692 104 S ct 2067. When take a oath of office a person about to enter into the duties of public office by which person promise to perform the duties of that office in good faith. When I place my trust and faith in Mark Sawyer as my attorney and he sold me out for what reason, how can we depend on our legal system if that person can't follow professional conduct a member of the bar representing clients. *The Constitution and Amendment of the United States will not have effectual force in the government.*

Conclusion

Base on the above certiorari should be granted and sentence vacate by the Constitution and the Professional Conduct of my attorney.

Respectfully Submitter

Leon Walker

Leon Walker 92708

This 25th day of September 2013

Notary Public for South Carolina

My Commission Expire March 9, 2014

TAMMY C WAY NOTARY PUBLIC SOUTH CAROLINA

State of South Carolina
In The Supreme Court

Certiorari to Richland County

J. Ernest Kinard Jr., Circuit Court Judge

Leon Walker — Petitioner

V.

State of South Carolina — Responder

Certificate of Service

I certify that a true copy of petition for
Write of certiorari and a copy of the appendix
In this case have been served on

This 25th day of September 2013

Tammy Conway

Notary Public for South Carolina

NOTARY PUBLIC SOUTH CAROLINA

My Commission Expires March 9, 2014

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

August 30, 2013

Leon Walker, #92708
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29427

RE: FOIA 2013-600

Dear Mr. Walker:

We received your letter on August 28, 2013. A thorough search of our database with the information you provided reveals that no evidence from this case was submitted to the SLED Forensic Laboratory for analysis. You may wish to contact the arresting agency for any information they have concerning this matter.

Sincerely,

FOIA Coordinator

FOIA 2013-600

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

DISCOVERY CHECKLIST ASOL: ANNE SPEARS #72

WARRANT # M721819

TICKET # _____

CASE MASTER REPORT _____

INITIATING CASE REPORT _____

CLOSED CASE REPORT _____

CASE SUMMARY _____

INCIDENT REPORT ✓ (2pgs)

INVESTIGATIVE REPORT _____

SUPPLEMENTAL REPORT _____

SEARCH WARRANT _____

ARREST/BOOKING REPORT _____

BACKGROUND INFORMATION _____

DRUG ANALYSIS FORM _____

DNA REQUEST _____

DNA RESULTS _____

CHAIN OF CUSTODY _____

PROPERTY REPORT _____

CONSENT TO SEARCH _____

PHOTO LINE-UP _____

RAP SHEET ✓

ADVISE OF RIGHTS FORM _____

DEFENDANT'S STATEMENT _____

CO-Δ'S ADVICE OF RIGHTS _____

CO-Δ'S STATEMENT _____

MEDICAL RECORDS _____

PHOTOGRAPHS _____

VEHICLE TOW RECEIPT _____

AFFIDAVIT _____

MUGSHOT _____

WARRANT AUTHORIZATION FORM _____

WARRANT WORKSHEET _____

VICTIM STATEMENT _____

WITNESS STATEMENT _____

WITNESS STATEMENT _____

WITNESS STATEMENT _____

WITNESS STATEMENT _____

CSI COVERSHEET _____

CSI ANALYSIS REPORT _____

CSI BENCH NOTES _____

FORENSIC DIVISION REQ FORM _____

EVIDENCE/PROPERTY BAG _____

CD _____

DVD _____

DRIVING RECORD _____

OTHER _____

OTHER _____

OTHER _____

OTHER _____

DEFENDANT Leon Walker

PREPARED BY SHARON L. WILSON, PARALEGAL DATE: 3/1/11

RECEIVING ATTORNEY Renee Lipson

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