THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Memorandom to Greenville County
Honorable Vernon F. Dunbar, Circuit Judge

ROBERT DAVIS SMITH, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002223

MEMORANDUM

ROBERT D. SMITH, JR
PROSE PETITIONER
TYGER River Correctional Inst
200 Prison Road
Enoree, SC 29335

PRO SE PETITIONER

The supreme court of south Carolina
POST OFFICE BOX 11330
Columbia, SC 29211

PRO SE FOR PETITIONER

OPINION

Robert Davis Smith, JR. was convicted of first-degree criminal sexual Conduct (CSC) with a adult female that was 23 years old at the time of the incident that occured at Regal Inn on Wade Hampton Blvd. I appeals my denial and doing a Petition of a Memoradum for Post-Conviction relief (PCR), arguing that PCR Court erred in finding his trial Counsel was not ineffective for failing to investigate and Present the testimony of a medical nurse expert witness. Trial Counsel failure to object to hearsay testimony of forensic interviewer, that victim told her that defendant had sexually assaulted her and that she found victim's statement believable, amounted to deficient performance, as element of ineffective assistance claim in Prosecution for Criminal sexual Conduct (CSC) with a adult, interviewer's testimony exceeded limitations of time and Place set forth in the rule allowing limited Corroborative testimony in Case U.S.C.A Const. Amend.6; Rules of Evid. Rule 801 (d) (2) (B)

Trial Counsel's deficient Performance in failing to object to improper hearsay and bolstering testimony of forensic interviewer Prejudiced defendant and, thus, amounted to ineffective assistance in Prosecution for Criminal sexual Conduct (CSC) with a older girl that was 23 years older; outcome of Case hinged on victim's victim's Credibility regarding identification of perpetration interviewer's hearsay impermissible Corroborated victim's identification of defendant as assailant and interviewer's

subsequent opinion testimony improperly bolstered victims evidence of defendant's guilt. U.S.C.A. Const. Amend. 6; Rules of Evid, Rule 801 (d)(1)(B).

Counsel was ineffective in failing to seek forensic testing of the defend Clothes for blood, thus Anti-terrorism and Effective Death Penalty Act (AEDPA) applied; State Court's rejection of Claim that Counsel was deficient in failing to seek forensic testing of items found in victim's hotel room was not unreasonable application of Strickland, and Counsel's Conversations with the defendant may be critical to a proper assessment of Counsel's investigation decisions. U.S.C.A. Const. Amend. 6. Applicant is only entitled to fees to pay for expert witnesses if the Applicant shows a need for the expert testimony, and mere possibility the applicant could find a witness somewhere to support an allegation is insufficient to warrant authorization of funds. Code 1976, § 17-3-50 (B).

Defendant's trial Counsel was deficient for failing to call a medical expert to Challenge the State's medical evidence presented at trial of defendant for Criminal sexual Conduct with a 23 year old girl, Counsel did not Consult with an expert prior to trial, even though he knew the State would attempt to admit evidence of a physical trauma, and Counsel did not provide a legitimate trial strategy for failing to Consult with an expert before trial or call a medical expert witness to testify at trial.

U.S.C.A. Const. Amend. 6.

Defendant was Prejudiced by his trial Counsel's deficiency in failing to call medical expert to Challenge the state's medical evidence in Prosecution of defendant for Criminal Sexual Conduct with a 23 year old adult; there were additional ways adult injury could have occurred, including self-infliction or by accident, and these additional theories were not presented during trial. U.S.C.A. Const. Amend. 6.

STANDARD OF REVIEW

An appellate Court must affirm the factal findings of the PCR Court if they are supported by any Probative evidence in the record. Hyman v. State, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012). However, reversal is appropriate where the PCR Court's decision is controlled by an error of law.

LAW/ANALYSIS

Smith argues his trial Counsel was ineffective in failing to investigate and Present the testimony of a Medical nurse expert witness.

Trial Counsel must Provide reasonably effective assistance under Prevailing Professional norms, Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). [Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable Professional Judgment. Id. at 690, 104 S.Ct. 2052.

To receive relief, the applicant must show (1) Counsel was deficient and (2) Counsel's deficiency caused Prejudice. Stalk State, 383 S.C. 559, 560-61, 681 S.E.2d 592, 593 (2009). Prejudice is defined as a reasonable probability that, but for Counsel's unprofessional errors, the result of the Proceeding would have been different. Strickland, 466 U.S. at 693, 104 S.Ct. 2052. A reasonable Probability is a Probability sufficient to undermine Confidence in the outcome. Id. Failure to make the requisite showing of either deficient Performance or sufficient Prejudice defeats the ineffectiveness claim. Id. at 700, 104 S.Ct. 2052. According to Dr. Alissa Manfredi, M.D. and Norse, Serena Brown, there are multiple ways a trauma may occur in the vaginal area. He and she stated, sex is certainly not - or sexual play is not the only away sic the vagina can be injured. He and she explained injuries can occur through accidental injury, self-mutilation, or a fall. Further, Dr. Manfredi and nurse Brown opined that adolto girls more than boys, are given to masturbation, and in the Course of masturbation, they could Potentially injure themselves. However, he and she admitted there was no way to document what Caused Victim's injury. He and she recalled both thought both expert described Victim's injuries as a minor laceration near the opening of the vaginal area.

Trial Counsel testied he recived Smith Case in 2013. He asserted the State made an offer of 10-15 years, which

smith declined be he was adamant he had not done anything wrong. Trial Counsel maintained he no longer had his notes or file for this case because the file was destroked, and he could not remember many details about the case. Trial Counsel admitted he did not consult with an expert prior to trial even though he know the State would attempt to admit evidence of a physical trauma. When asked if a medical expert would have been helpful to counteract the state's expert witnesses, trial Counsel explained. I do not remember — I remember - I think I saw smith me with him several times before we actually got ready for the trial. I had provided me with a witness list, along list of people who. You know, would have helped me out. He said out of his mouth that he do not remember whether he did that at my request or he just had it ready for me when I met with him. We decided to go that route. I know I never did talk to an expert, but whether smith and I talked about that, I cannot tell you.

The PCR Court found smith failed to prove trial Counsel was ineffective for failing to interview and present a medical expert at trial. The PCR Court noted trial Counsel testified he had not retained a medical expert because smith did not have the funds to do so. The PCR Court stated, A doctor or nurse could not state with certainty the exact cause of the injuries discovered and the determination of the cause of the injury was a question for the jury. Further, the PCR Court stated, Dr. Manfredi and nurse

testimony did not make it any less likely that Smith had committed the crime, in fact, the substance of his testimony at the PCR hearing only confirmed that the cause of the injuries was unclear. Accordingly, the PCR Court denied and dismissed the ineffective assistance of counsel claim.

The United States Supreme Court has held that the defendant must have a fair opportunity to present his defense, thereby requiring the State to provide the basic tools for an adequate defense to an indigent defendant. Butler v. State, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (1992) (quoting Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985)). ~~Therefore, although the State is not~~

In this case, we find trial counsel was deficient because he should have discussed hiring a medical expert with Smith to more thoroughly challenge the State's medical evidence presented at trial. See Strickland 466 U.S. at 691, 104 S.Ct. 2052

END PAGE

Memorandum

This matter comes before the Court on the Memorandum to raise some issue that i have being denied of:

I. Background

Applicant is presently incarcerated according to orders of Commitment of the Greenville County Clerk of Court. During its April of 2014 term, the Greenville County Grand Jury Indicted Applicant for first-degree Criminal sexual Conduct, Kidnapping, Kidnapping, Kidnapping, first-degree burglary, first-degree assault and battery, and the Possession of a Weapon during the commission of a violent Crime (2013-GS-23-7305). Applicant was represented by Randall Lee Chambers, Esquire (trial Counsel) and Kimberly Bean Howard and Kathryn Harper McCall Prosecuted the case on behalf of the State. On March 2, 2016, through March 4, 2016, Applicant Proceeded to a Jury trial with the Honorable Brian M. Gibbons (trial Court), Presiding, and was tried at that time only for first-degree Criminal Sexual Conduct, first-degree burglary, and Possession of a Weapon during the Commission of a violent Crime. At the Conclusion of trial, the Jury Convicted Applicant as indicted for first-degree Criminal sexual Conduct and acquitted him of first-degree burglary and the possession of a weapon during the Commission of a violent Crime. The trial Court Sentenced Applicant to imprisonment for a period of twenty-three years with Credit for time served. This is my third (PCR) and they is: 2013-CP-23-07305, 2017-CP-23-6567 2019-CP-23-04401.

Petitioner alleges he is entitled to Post-Conviction relief on the following grounds:

Groundone: Ineffective Assistance of Defense Counsel in failling to Investigate and Prepare for trial;

Groundtwo: Prosecutorial Misconduct,

Groundthree: Failure to Calla witness

Ground four: Failure to obtain experts to assist with the defense

Groundfive: Failure to obsed

Groundsix: Failure to Impeach the testimony of an eye-witness

Groundseven: Failure to obtain a ronning objection as to the admission of hearsay evidence

Groundeight: Failure to Call forensic expert to evaluate and adress DNA issue

Groundnine: Failure to Call Medical examiner to evaluate alleged abuse, assault, etc.

Groundten: Failure to suppress Evidence

BACKGROUND

Petitioner is Presently Confined in the south Carolina Department of Corrections at Tyger River Correctional Inst Pursuant to orders of Commitment of the Greenville County Clerk of Court. [Doc. 1]. In April 22, 2014, Petitioner was Indicted for Criminal sexual Conduct (Csc) first degree. [App. 406-407.] on March 24, 2016, represented by Randy Chambers (Chambers). Petitioner found guilty of CSC, first degree as indicted and recieved a sentence of 23 years

imprisonment by Judge Brian M. Gibbons. App. 312, 11.5-10.

III. Discussion

A. Had Counsel investigated to Prepare for a defense and Challenge the Sufficiency of the Chain of Custody and evidence against me and informed me of the essential elements of the Crime of 1st Criminal Sexual Conduct but insisted on going to trial, Counsel never went over the Chain of Custody with me nor did he inform me of the requirements of the individuals having Possession/Custody of the evidence that is required by South Carolina Criminal Rules of Court (Rule) (6)(B) nor did Counsel ever show/go over the Brady discovery documents of law and all of the alleged evidence that was against me, furthermore Counsel's failure to inform me of law of the applicable laws/rules of the State of South Carolina as well as any Chances I had at trial made me guilty unknowingly and unintelligently because of Counsel's Performance I was not fully aware nor did I have a full understanding of law or all of the evidence as well as Chances that I may have had if I would have gone to trial. Had Counsel Challenged the sufficiency of the Chain of Custody/evidence there is a reasonable Probability that I would not have found guilty but insisted on going to trial. Counsel failure to investigate and inform me of my due process right to have a pre-trial Conference to Challenge the evidence against me violated my 5th, 6th, and 14 amendments due Process rights of the S.C. Const. and the U.S. Const.

Counsel was Ineffective in Prosecution for first-degree Criminal Sexual Conduct (CSC) for failing to Call as defense witness triage nurse whose notes indicated that victim stated that her vagina was Penetrated, only evidence of sexual battery was victim's testimony, there was no Corroborating Physical evidence of penetration or any forensic evidence of sexual assault, and triage nurse's testimony as to victim statement shortly after assault would have been Crucial, both as substantive evidence that sexual battery did not occur, and as evidence to impeach victim's Credibility.

Petitioner filed this memorandum Petition on May 4, 2026. [Doc] 1. Trial Counsel did not recall a lot of detail about the nurse and her Potential testimony. He stated he recalled the doctor testied there was some indication of force that would not be consistent with Consensual sex. App. 373, ll. 3-9. Counsel testified that if he had thought she would have been of help he would have called her. App. 373, ll. 16-19. He later said that maybe he made a mistake in not Calling the nurse. App. 374, ll. 11-15.

Ineffective Assistance of Counsel:

A) Failed to Investigate
B) Failed to Review Discovery
C) Failed to Motion for a pre-trial Conference
D) Failed to Challenge Chain of Custody
E) Failed to Inform of the essential elements of the Crime

Subject matter Jurisdiction

indictment and information without valid indictment district Court is without Jurisdiction over Criminal Proceeding Fed Rules. Cr. Proc. Rule 7(a), 18 U.S.C.A. Const. Amend. 5 and under 55 S.C. Code of Law (17 title). Also see, 523 F.2d 193 (1975) In United States v. Maklin, Supra, were the term of the grand Jury had expired and the indictment returned by its was legally null and void, absent an indictment, also see 339 S.E. 2d 127, Requirment true billed. Also see where as in defendant case he was not indicted within 90 days time limit by law, where as here in Jein, 504, F. 2d at 1177. An in indictment returned by grand Jury sitting beyond its legally authorized time is a "nullity" and see U.S. v. Smith 462 F. Supp 182 I can show where the Court violated its own Rule 5) within itself sine I was not indicted within the 90 days. Roles Under Rule 3(c) Administrative Law and Court Procedure the law is the law and we most follow the law or evidence irrelevant to the issue or otherwise its not the law, in the words the defendant can not be guilty or legally convicted when the State has violated there own Rule 5). Rather its any law which simply makes the Chief Justice the administrative head of S.C. Courts with the power to make roles governing the Practice and Procedure in all such Courts. If the Chief Justice has the Power from S.C. Const. to make roles governing the practice and Procedure in all Courts it is the Court duty to make sure my rights / case is comforming with these roles and Procdures and law. So thereforth the defendant ask that his indictment be dismissed with prejudice. Since the State fail to follow the law.

First PCR Application
Petitioner raised the following grounds for relief, quoted substantially verbatim.
(a) Counsel failed to adequately investigate my case
(b) Counsel failed to motion for a pre-trial conference
(c) Subject matter jurisdiction on indictments failure to petune on notice

In support of his grounds for relief, Petitioner provide the following facts, quoted substantially verbatim:

Second PCR Application
(a) Newly discovered evidence
(b) Ineffective Assistance of Counsel
(c) Insufficient evidence

In his memorandum of law in support of the Petition, Petitioner asserts the following supporting facts, quoted substantially verbatim:
1. Ineffective Assistance of Defense Counsel
A. Failure To Investigate And Prepare for Trial
Counsel has an affirmative duty to investigate a case assigned to him regardless of any admissions of guilt by his client. Petitioner never stated to Counsel at any time he was guilty of the Charged offense before the trial. Defense Counsel in this case avoided any skilled effort to investigate this and/or prepare for trial. His only intentions were to have Petitioner go to trial.

It is quite obvious Counsel failed to review the state's evidence and the Charges with Petitioner. If Counsel had reviewed the evidence and Charges he would have noticed there was no evidence anywhere Proving the allegations of sexual battery as Charged within both indictments.

The Police report and the alleged victim's statements were void of the essential element of a sexual battery in the first instance.

See, (Exhibits 1, 2, 3, and 4).

Counsel failed to follow up on any of the available information or visit the hotel to determine the layout of the living quarters or to determine the reliability of the alleged victims testimonies.

The government's obligation to make disclosures of favorable material under Brady v. Maryland is pertinent not only to an accused's preparation for trial but also to his determination of whether the trial, the defendant is entitled to make the decision with full awareness of favorable material evidence known to the government. Gibson v. State, 314 S.C. 515, 514 S.E. 2d 320 (1994). Counsel should be found ineffective in failing to procure relevant discovery materials, and he should be. Kelle v. State,

The lack of common behavioral Characteristic of the alleged victims could have been used in trial to reinforce the defense's position that no sexual assault occurred. Where the only evidence of a crime was inconsistent statements and no corroborating Physical forensic evidence at all, Counsel provided ineffective assistance in failing to obtain any experts to relate that Petitioner was the perpetrator of an assault. Pauling v. State, 331 S.C. 606, 503 S.E. 2d 468 (S.C. 1998).

Without Counsel's error here, the result of the proceedings would have been different. Judge v. State, 321 S.C. 551, 471 S.E. 2d 146 (1994). Counsel's representation was below the standard of reasonableness and, but for Counsel's errors, there is a reasonableness Probability that Petitioner would not have plea guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E. 2d 484, 485 (1991). Defense Counsel should always Challenge an indictment if time of the occurance of the alleged crime is in any way uncertain, State v. Wilson, 315 S.C. 289, 433 S.E. 2d 821 (1993). Counsel had plenty of time and opportunity before a Juror would be sworn to Challenge the sufficiency of these indictments. Here, Defense Counsel made no effort to move to dismiss or quash the indictments or argue against them as a defensive strategy which Constituted ineffective assistance. Sosebee v. Leeke, 293 S.C. 531, 362 S.E. 2d 22 (1987). The existed many defenses to go to trial that would have put the State's Case to a meaningful adversarial test. And Petitioner Proceeded to trial, he may not have been found guilty by a Jury at all. Counsel had a duty to investigate, make Challenges against the indictments, and prepare for trial, specifically where the State lacked any Credible evidence to a sexually abused victim or Sexual battery being Committed and to litigate these stated defenses as previously argued within grounds (1) And (2)(A) of this Memorandum. An attorney Competency is measured according to what an objectively reasonable Counsel would have done under the Circumstances existing at the time of their representation. An objectively reasonable Counsel would not advise Petitioner to Plead guilty when there were so many reasons and defenses under the Circumstances existing during the time of plea Counsel's representation in this Case. Savino v. 82 F. 3d 593, 599 (4th Cir. 1996). Defense Counsel was indeed ineffective. Petitioner was Prejudiced by Counsel's ineffectiveness, and he Certainly would have Proceeded to trial and he known Counsel's representation

Would have been so unreasonable. Hill v. Lockhard, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); U.S. v. Bowman, 540 U.S. 1226, 124 S.Ct. 1523, 158 L.Ed.2d 166 (C.A.4, S.C.-2003); Ostrander v. Green, 46 F.3d 347 (4th Cir. 1995).

Prosecutorial Misconduct Vindictiveness

- Courtroom misconduct (making inappropriate or inflammatory comments in the presence of the Jury; introducing or attempting to introduce inadmissible, inappropriate or inflammatory evidence; mischaracterizing the evidence or the facts of the case to the court or Jury; committing violations pertaining to the selection of the Jury; or making improper closing arguments);
- Misleading of Physical evidence (hiding, destroying or tampering with evidence, case files or court records);
- Failing to disclose exculpatory evidence;
- Threatening, badgering or tampering with witnesses;
- Using false or misleading evidence.
- Harassing, displaying bias towards or having a vendetta against the defendant or defendant's Counsel (including selective or vindictive prosecution, which includes instances of denial of a speedy trial); and
- Improper behavior during grand Jury proceedings.

The Prosecutor indicted Petitioner to be tried for Criminal sexual Conduct in the first degree which requires Proof beyond a reasonable doubt that a sexual battery occurred in that Charge. However, there was no and never has been any evidence of a sexual battery being Committed by the Petitioner. The very limited Rule 5/Discovery material Produced by the state was void of a sexual battery. The government's obligation to make disclosures of favorable material under Brady v. Maryland is pertinent not only to the accused's Preparation for trial but also to his determination of whether to Plead guilty. The defendant is entitled to make

that decision with full awareness of favorable material evidence (tending to prove guilt or innocence) known to the government. Gibson v. State, 314 S.C. 515, 514 S.E.2d 328 (1999).
The interviews had to be material evidence that could have made a serious impact in this case and the State Prosecutors are still obligated to disclose this material and this Honorable Court can and should order the Respondent to disclose this material to the Petitioner as soon as possible because his actual innocence lurks to be proven.

The Prosecutor in a Criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by Probable cause. A prosecutor, also, shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information. ABA Rules of Professional Conduct, Rule 3.8(a)-(f). Rules 3.8(d) requires a Prosecutor to disclose any new evidence that may exonerate a Convicted defendant, whereas Rule 3.8(h) requires a prosecutor to try to overturn a conviction when he or she receives clear and Convincing evidence that the Convicted defendant did not commit the offense. The (ABA) believed that the Problem of wrongful convictions was serious enough that it need to enact Rule 3.8.(g) and (h). Furthermore, State Agencies are Committing further injustice against defendants who are convicted because of misconduct, regardless of the defendants guilt or innocense.

The evil-lurking from the state's actions is the possibility that Petitioner was convicted for reasons wholly irrelevant to his guilt or innocence. State v. Liberte & Sims, 336 S.C. 648, 521 S.E.2d 744 (1999).

It is fundamentally unfair the state proceeds against a defendant without making certain that he has access to materials integral to building an evidence. Mason v. Mitchell, 320 F. 3d 604 (6th Cir. 2003).
Prosecutor's obligation of fairness to defendant includes duty to refrain from improper methods calculated to produce a wrongful conviction. U.S. v. Campa, 419 F. 3d 1219 (11th Cir. 2005). This Conviction should be overturned due to the Prosecutor's actions here in this case.

ISSUES

I. Did the PCR Judge err by finding defense counsel was ineffective for failing to subpoena witness Serena Brown.

Discussion

Trial Counsel was ineffective for failing to call a witness that would support Petitioner's claim that he and the alleged victim had Consensual sex. Petitioner was Prejudiced where the only evidence presented of his version of the incident was through the recording his interview with Police. The Jury was shown no corroborating evidence or testimony and had only the states witness' accounts of the incident to consider during its deliberation. Trial Counsel's deficiency prejudiced Petitioner where the Jury did not have any evidence to consider that supported his claim of Consensual sex.

Conclusion

If my trial Counsel actually followed through with his written note to have the evidence test and investigated for DNA, I would have been proven innocent, and wouldn't be sitting in Prison right now trying to over come this burden for relief.