

SUPREME COURT OF SOUTH CAROLINA

1. (7 Total)

Mr. Emory W. Roberts Jr. | Appellate Case No. : 2024-001521
Appellant, Pro se | Case No. : 2020-CP-08-01349

V.

State of South Carolina
PCR Court
Respondent.

Brief : "Abuse of Discretion or
Failure to Exercise Discretion"

Re : Abuse of Discretion or Failure To
Exercise Discretion.

: Due Process of Law.

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S.C. SUPREME COURT

Questions Presented To The Court

2.)

- 1.) Whether PCR Judge's ruling, finding that Mr. Roberts had not been denied "effective assistance of counsel" and his "Sixth Amendment right to Confrontation" and the "due process of law" when Agent Justin Wings read into the record at trial, "testimonial hearsay evidence" offered to prove the truth of the matter of what a substance was - was "an abuse of discretion or failure to exercise discretion" where his decision/or ruling was controlled by an error of law or, was grounded in factual conclusions, without evidentiary support...? ... or was guided by erroneous legal principles... or rested upon a clearly erroneous factual findings?; and waiver of Confrontation right was not "Knowingly" and "Voluntarily" made on record?
- 2.) Whether trial judge "abused her discretion or failed to exercise discretion" when she failed to engage in the proper colloquy regarding trial counsels "stipulation" that effectively waived fundamental rights, statutory and constitutional, that defendant had not "Knowingly" and "Intelligently" waived under the standard of Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)

— Relevant Facts —

3.)

At Mr. Roberts PCR Hearing, Mr. Roberts questions trial counsel, when he asked: "Mr. Griffith, did you infringe my Sixth Amendment right to confront witnesses against me by stipulating to the chain of custody?" (PCR Tr. Page 30, lines 13-15) Trial counsel says: "We did confront the witnesses against you. Yes" (PCR Tr. Page 30, line 16). Mr. Roberts says: "That's not what I asked you. I asked you did you infringe my Sixth Amendment right to confront witnesses against me by stipulating to the chain of custody?" (PCR Tr. Page 30, lines 17-19). Counsel says "No" (PCR Tr. Page 30, line 20). Mr. Roberts states: "Mr. Wingo (S.L.E.D. Agent) read the lab reports from lab technicians that wasn't present in court and, pursuant to the Sixth Amendment, evidence offered that is against the defendant to prove the truth of the matter asserted is categorically barred by the Sixth Amendment" (PCR Tr. Page 30, lines 21-25); Counsel responds: "No, I did not" (PCR Tr. Page 31, line 1); Mr. Roberts states: "Why hadn't you objected to the reading of these lab reports from unavailable witnesses" (PCR Tr. Page 31, lines 2-3); Counsel answers: "Some lab reports were read" (Strong Emphasis) (PCR Tr. Page 31, line 4). By trial counsel's own admission - he "did not object" and cite controlling precedent (Crawford V. Washington; quoting United States V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), and failed to protect Mr. Roberts [Federally Protected] right under the Sixth Amendment and to the Due Process of Law owed to Mr. Roberts. For this reason, it is Mr. Roberts

4.)

contention that PCR Judge "abused his discretion or failed to exercise discretion" when he had not found trial counsel to be "ineffective assistance of counsel".

Next, Mr. Roberts asks: "Was there a colloquy before the stipulation (regarding Chain of custody) (PCR Tr. Page 31, line 21); Counsel states: "We (He) discussed with the State their processes, they showed us (Him) the chain of command, and we (He) stipulated to the chain of custody" (PCR Tr. Page 31, lines 22-23); Again, Mr. Roberts asks: "Before this stipulation was there a colloquy?" (PCR Tr. Page 31, line 24); Counsel says: "Explain what you're talking about. Do you mean did we talk about it?" (PCR Tr. Page 31, line 25; Page 32, line 1); Mr. Roberts states: "Was there a colloquy by the trial judge to say, Do you understand that you're giving up your [constitutional] [right] by stipulating to the chain of custody? Supreme Court says it has to be in a colloquy -- If I'm giving up a [statutory] or [constitutional] right, Your Honor, there has to be a colloquy. I'm asking Counsel was there colloquy prior to the stipulation..." (PCR Tr. Page 32, lines 2-8); Also see (PCR Tr. Page 33, lines 3-14). As rooted in the record, there was no "on the record colloquy established", nor did Mr. Roberts consent to such. Trial counsel failed to defend my Federally protected right to [confront] the witnesses against me in order to "greatly truncate the prosecutions list of witnesses", thereby, infringing Mr. Roberts right to "effective assistance of counsel" and his right to a fair trial pursuant to the Sixth

5.)
Amendment. By examining Exhibits D-3, and D-4 (Enclosed), the record reflects that Counsel infringed Mr. Roberts procedural due process of law and substantive due process of law when he infringed [statutory] (Rule 6, SCRCrimP.), and [constitutional] (Sixth Amend. Confrontation) rights in order to accommodate "prosecutions alleged long witness list" (Emphasis).

Accordingly, PCR Judge / Court's findings that trial counsel was not "ineffective assistance of counsel," when he infringed Mr. Roberts his Sixth Amendment right to "effective assistance of counsel"; his "Sixth Amendment right to Confrontation"; his "Fourteenth Amendment to due process of law"; his "Sixth Amendment right to a fair trial"; and his statutory right of procedural due process pursuant to Rule 6, SCRCrimP., was "an abuse of discretion or failure to exercise discretion" where his decision/or ruling was guided by erroneous legal principles... or rested upon a clearly erroneous factual finding. Mr. Roberts contends that he did not make a knowing and voluntary waiver of statutory or constitutional rights; record is devoid of colloquy between trial court and trial counsel or defendant regarding a waiver (see Exhibits D-3, and D-4); nor would have Mr. Roberts ever consented to such. Mr. Roberts contends that "A defendant's knowing and voluntary waiver of statutory or constitutional rights [must] be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant's counsel, or both. Neither occurred in this case resulting in Unfair trial.

6)

Argument: An "abuse of discretion" occurs when the PCR Court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. State v. Oates, 421 S.C. 1, 803 S.E. 2d 911.

Accordingly, PCR Judge "abused his discretion or failed to exercise his discretion" when he found that Mr. Roberts was not denied "effective assistance of counsel" when his "Sixth Amendment right to Confrontation" was violated when Agent Justin Wingo read into the record "testimonial hearsay evidence" offered to prove the truth of the matter asserted of what a substance is, regarding lab reports from unavailable lab technicians; which rendered Mr. Roberts trial fundamentally unfair. Trial counsel's "stipulation" affected fundamental rights that prejudiced Mr. Roberts Sixth Amendment right to a fair trial, and his Sixth Amendment right to Confrontation. Mr. Roberts did not, and would not make a waiver of any [statutory] or [constitutional] right, ever, inasmuch, "A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant's counsel, or both. Reddy v. State, 339 S.C. 29, 34, 528 S.E. 2d 418, 421 (2000). The record reflects that there was no colloquy between the court and Petitioner's trial counsel or Petitioner regarding the waiver. There's absolutely no presence of a record supporting the validity of the waiver, it was unknowingly and involuntary.

Conclusion

7.)

PCR Court "abused its discretion or failed to exercise its discretion" when PCR Judges finding that Mr. Roberts had not been denied "effective assistance of counsel"; his right to Confrontation under the 6th Amendment, and due process of law when counsel failed to object and cite controlling precedent pursuant to Crawford, regarding "testimonial hearsay evidence" offered to prove the truth of the matter asserted. Trial court had failed to engage in the proper colloquy regarding Counsel's "stipulation" that had the effect of a waiver of statutory and constitutional rights unknowingly and involuntary that violated Mr. Roberts right under the Sixth Amendment to a fair trial. There was no on-the-record colloquy that supports that kind of waiver, and the Court should hold that Mr. Roberts was denied due process of law?