

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Greenville County

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2012-212869

Jose M. Maldonado,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITIONER'S PRO SE
JOHNSON PETITION

RECEIVED

MAY 28 2013

S.C. SUPREME COURT

Jose' M. Maldonado
MacDougall Corr. Inst.
1516 Old Gilliard Road
Ridgeville, SC 29472

INTRODUCTION

Pursuant to this Court's directive dated April 9, 2013, which instructed the Petitioner to submit a Pro Se Petition in support of Counsel's Petition For Writ of Certiorari, the Petitioner requests the Court's consideration and review of the below facts and information.

STATEMENT OF FACTS

On March 10, 2008, the Petitioner was arrested and charged by Greenville County Police for trafficking in cocaine. Petitioner's arrest was based on the activities of, and information provided by, a confidential informant. The cocaine discovered in the possession of the Petitioner was provided to the Petitioner by the confidential informant. (Apx. p.46, LL.6-11).

After Petitioner's arrest, counsel John P. Abdalla was assigned to represent the Petitioner. Counsel Abdalla visited the Petitioner only once during the Petitioner's 26-months in the county jail, and then for only thirty minutes. The Petitioner's final meeting occurred at the Greenville County Courthouse, only minutes prior to Petitioner's guilty plea. (Apx. p.47, LL.3-23).

On May 19, 2010, the Petitioner pled guilty to trafficking in cocaine, 28-100 grams, and distribution of cocaine. The court sentenced the Petitioner to two (2) concurrent twelve year terms of imprisonment. Petitioner's application for post-conviction relief was denied on August 9, 2012. This appeal follows the post-conviction court's dismissal order.

The PCR court erred to find counsel's testimony more reliable on this issue than that of the Petitioner. Counsel could not verify his visits, nor accurately recall the number of times he interviewed his client.

II. COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN THAT COUNSEL MISLEAD THE PETITIONER TO BELIEVE THAT HE WOULD RECEIVE A SEVEN YEAR PRISON SENTENCE

The Petitioner testified at the PCR hearing that counsel promise him a seven (7) year sentence if he pled guilty. (Apx. p.44, LL.8-15). However, when the Petitioner appeared before the court, the State made a recommendation for a twenty (20) year sentence. (Apx. 44, LL.16-17). The Petitioner did not object to the State's recommendation because counsel instructed the Petitioner not to say anything in court which would disrupt the guilty plea, thereby quashing the 7-year promised sentence. (Apx. p.44, LL.19-22; p.48, LL.4-19). It must be noted that Petitioner speaks very little English, and that no interpreter was present at Petitioner's initial interview with counsel Abdalla. (Apx. p.45, LL.7-9).

Though an interpreter was present at Petitioner's plea hearing, Mr. Abdalla admitted that he did not remember whether an interpreter was present during his interview with the Petitioner at the county jail. (Apx. p.53, LL.13-23). Petitioner faced a potential sentence from 7-25 years, what should be considered a most serious circumstance. Therefore, it was critical that his client understand the possible consequences of his guilty plea.

The Petitioner believed he was to receive a seven year prison terms in exchange for his guilty plea. That promise, combined with counsel's instructions to the Petitioner to remain quiet during the plea hearing, constitutes the ineffective assistance of counsel.

CONCLUSION

The Petitioner was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. The Petitioner was prejudiced by counsel actions or omissions, and it is reasonably probable that the outcome would have been different, absent counsel's deficient performance, as evaluated under the tenets of Strickland v. Washington, 466 U.S. 668 91984).

WHEREFORE, having shown good and just cause, the Petitioner respectfully moves this Court to grant his Petition For Writ of Certiorari.

Respectfully submitted,

Dated: 5-20-13.

Ridgeville, South Carolina

/s/ Jose Maldonado

Jose M. Maldonado

Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that I have this dated served upon the Respondent a true copy of Petitioner's PRO SE JOHNSON PETITION, by placing same into the United States Mail, first class postage affixed, and addressed as follows:

Mr. Daniel E. Shearouse
Clerk of the Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dated: 5-20-13
Ridgeville, South Carolina

/s/ Jose Maldonado
Jose M. Maldonado
MacDougall Corr. Inst.
1516 Old Gilliard Road
Ridgeville, SC 29472