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S.C. SUPREME COURT

State of South Carolina

IN The Supreme Court

Certiorari to Hampton County

Shawn Davis

Deadra L. Jefferson, Circuit Court Judge

Petitioner

V.

State of South Carolina

Respondent

2013 - 002560

Notice of Intent TO Appeal For Certiorari

Shawn Davis #342092

Shawn Davis #342092

LEE-C-I-Smu-N-#80

990 Wisacky H.W.V

Bishopville, SC, 29010

Pro-se Petitioner

Certificate of Service

Petitioner did on: 11/2014, deposited into
the Post box at LEE-C-I mail room, one copy
to the Supreme Court and one to the Attorney
General for review.

Respect fully
Submitted

Dated: 4/13/14 2014

Shawn Davis #342092
Shawn Davis #342092

Index opening

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ISSUE Presented

Did Petitioner Trial Counsel, Dudley B. Buffalo Esquire error in his failure to Appeal Petitioner Conviction before the Courts of Direct Appeal for review?

2

Statement

Petitioner was convicted before the Honorable D. Craig Brown, of Armed robbery rendering ~~found~~ Guilty by Jury on: August-2nd through August-4th of 2010, in the Courts of Hampton County, of (30) thirty years.

Petitioner did make appeal by and Through an Post Conviction Relief Application, This Application was addressed and heard by the Honorable Judge Deadra L Jefferson.

Petitioner application was filed on August-8th 2011. Petitioner did make an Amended application on: March-26th-2012. Respondent did make an filing of return on: December-14th 2012. Petitioner was granted an Evidentiary Hearing on: August-28th 2013, Around November-7th 2013, The Honorable Deadra L. Jefferson. Denied Petitioner application

This Petition for redress follows:

Argument

Petitioner counsel Dudley B. Buffalo, did render
Ineffective Assistance of Counsel for his Failure
to make an Appeal as an right for review at
Direct Appeal

Petitioner ~~asserts~~ to this court, that his trial Counsel
Failed to appeal his conviction to the Direct Appeal court, under
the Appendix 2. Criminal Justice ACT Plan. V. 1"

"If there is a judgment of conviction or an order revoking
Probation, Counsel shall inform the defendant of his Right
to appeal and of his right to have counsel appointed on
appeal....."

-With in this said case, was Ineffective for violating
Petitioner right to Appeal his conviction, as Such Rule above

-Placed an mandated command, as ["Counsel ~~is~~ shall"] inform
the defendant of his Right to appeal....."

Petitioner to: Norman J. Singer, 1A. "Suther Land
Statutory construction, § 25.04 (5th ed. 1992, See
also Association of Cillilian Technicians V Federal
Labor Relations Auth 22 F. 3d. 1150 (DC Cir. 1994)
noting that the word "SHALL" is a Statute
generally indicates a command that admits
of no discretion on the part of the person
instructed to carry out the directive."....."

Petitioner do assert his trial counsel did violate not only the Criminal Justice Act Plan V.1, but also violated Rule 407. Professional conduct Rule 1.1. competence, Rule 1.3. Diligence, Rule 1.4. communication (a) (1)(2)(3)(4) and (b). Which resulted in counsel Ineffectiveness.....

Petitioner would establish the proper law to be governed by Ineffective Assistance of Counsel: Strickland V. Washington, "466 us 668, 104 S. Ct. 2052 1984

The First question would be 1) Did Counsel so undermine the proper functioning of the Adversarial Process that the failure to file Petitioner direct appeal, can not be relied on as having produced a just result, and, (2) Did Counsel Performance Prejudiced Petitioner for failing to make appealable for review too the Direct Appeals Court.....

Petitioner will scope the First Prong of Strickland.

Which will note. 1) Petitioner counsel Performance was so deficient as showing that Counsel made an error that is so serious, that Counsel was not functioning as the Counsel was guaranteed to the Petitioner by the (6) Sixth Amendment, by not filing his Direct Appeal.

Petitioner would show this court as fixed by Petitioner

Appendix for Appellant Case Number: 2013-002560.....
(Davis V. State (P.C.R.) hearing Dated: August-28th 2013)....

Let the record reflect that Petitioner trial

Counsel was placed under oath. see: APP. P. # 313 (10-21).....

as located at: APP. P. # 325 (6-25) and APP. P. # 326 (1-3)

Counsel asserted that Petitioner made a request not to appeal his conviction.... This would furtherly be addressed by

APP. P. # 326 (4-25) and APP. P. # 327 (1-25) and APP. P. # 328 (1-25)

also, APP. P. #329(1-25) following APP. P. #330(1)..... At this point, Petitioner then takes the stand and advise The Courts. That his trial counsel did not advised him of an appeal as he made request by the Clerks office ~~and~~ were there an appeal made by his counsel see APP. P. 341(1-22)..... AS Petitioner Placed his disposition on record, Petitione Counsel was then Cross Examined".... AS scored at: APP. P. # 345(13-25) through APP. P. # 346(1-25), Counsel during Cross-Examination, did made admission that he did not advise Petitioner of his right to appeal, due to his (Counsel) opinion was a useless exercise"..... Here to: the State failed to make any Rebuttal testimony" in relations to Counsel failure to advise Petitioner appeal see APP. P. # 347(1-11).....

Counsel did render Ineffective Assistance of Counsel due to his opinion not to file the direct appeal was no other than his thought, it was Frivolous.....

Petitioner asserts, this failure in adjudication did deprive Petitioner as full bite at the apple." See, Austin v. State," 409 S.E.2d. 395. (SC.1991)... Petitioner was denied by trial Counsel to an expressly determining by the Direct Appeals Court to rende rather his case was frivolous in full. see Anders v. California" 386 US. 738, 87 S.Ct. 1396, 18 LEd.2d. 493 (1967).

And as an right to Counsel on Direct Appeal; see: Evitts v. Lucey," 469 US. 387, 105 S.Ct. 830, 83 LEd.2d. 821 (1985). trial Counsel denial to file such appeal denied Petitioner of an right to have an new Counsel to litigate any issues discoverable for relief. U.S.C.A. Const. Amend.

6th and 14th

Even as Scoped through his Counsel Ineffectiveness, We
Would turn to the Second Prong of Strickland.....

by Petitioner do Show that trial Counsel did
Prejudice him by his deficient performance, which did Prejudiced
the defense by Counsel error of not filing an Appeal
as an last remaining conviction after relief was granted
from an murder not guilty verdict. This error were so
Serious as to derive Petitioner of an fair right to
appeal his Last Armed Robbery Conviction, that if done,
the out come would have been different.

Petitioner asserts by the Fourteenth § 1.
Amendment that: "All Persons born or naturalized in the
United States and subject to the Jurisdiction thereof,
are Citizens of the United States and of the States
wherein they reside. No States shall make or enforce any
law which shall abridge the Privileges or Immunities of
citizens of the United States, nor shall any State deprive
any Person of life Liberty or Property, without due process
of law, nor deny to any Person within its Jurisdiction
the equal Protection of the law.

Petitioner do assert that his trial counsel did
abridge his right to a direct appeal for redress.....

Petitioner assert the First Amendment
: Congress shall make no law respecting an
establishment of religion, or Prohibiting the
free exercise thereof, or abridging the freedom
of Speech, or of the Press, or the right of the

People Peaceably to assemble, and to
Petition the Government for a redress
of Grievance.....

Petitioner asserts that his trial counsel failed to
continue an defense as Guaranteed by the Sixth (6)
amendment.....

Petitioner asserts in Short, Sixth
Amendment: "And to have the assi-
stance of counsel for his defense:.....

Petitioner asserts, even citing "United States v. Cronie," 466
U.S. 648, 104 S. Ct. 2039, 2047 n. 25, 80 LEd. 2d. 657 ("in deciding
ineffective assistance of counsel case, court stated that
there will be a constitutional error with-out an/ showing
of Prejudice when counsel was... Totally absence.....
during a critical stage of the proceeding..

Even though Prejudice is remaining, Petitioner with
out counsel would by an layman to litigate his claim on
Appeal, if Counsel fails to aid..... In this case, Counsel was
absence at an critical stage, where Petitioner life and liberty
is at hand. Petitioner was not granted Due Process and
equal Protection of law to an direct appeal.

Petitioner cites: Powell v. Alabama" 287 U.S. 45, 68-69, 53
S.Ct. 55, 77 LEd. 158 (1932) ("The defendant] requires the guiding
hand of counsel every step in the proceedings against
him without it, though he be not guilty he faces the
danger of conviction because he does not know how to

establish his innocence").

With this deficient performance; Prejudicing the Petitioner of a bite at an full apple during direct appeal. Counsel failed to properly articulate a valid reason for employing a certain strategy to avoid a finding of ineffective." See "Roseboro v. State", 317 S.C. 292, 454 S.E.2d. 312 (1995).

Petitioner asserts that even by hopes, and even understanding the -accomplice liability"- that an issue could have been raised under: §16-11-330(B), of attempted robbery, by direct appeal, that this act was an attempted robbery. See: APP.P.# 319(C20-24), following APP.P.# 320(C10-25); and following such an attempt that was not at all successful, ~~that~~ The Solicitor Mr. Stone, even addressed to the jury that it was an robbery for -money-or-Death"-!! See: APP.P.# 322(C20-25), also: APP.P.# 323(C1-25), also APP.P.# 324(C1-25) and APP.P.# 325(C1-5).....

Petitioner do assert that Counsel Performance Under Strickland v Washington 466 U.S. 668, 104 S.Ct. 2052 (1984) was ineffective and did prejudice Petitioner to an direct appeal to challenge The elements of armed robbery. Verses attempted armed robbery. This act was during Counsel Performance as which He could have requested the Judge for an charging the jury of ~~to~~ attempted robbery. This did ~~prejudice~~ Prejudice Petitioner of an direct Appeal to charge his trial Counsel under Ineffective Assistance of Counsel for his failure to request jury instructions.

Lastly Petitioner would assert that, (1) He has been pursuing his rights diligently and (2) that some extraordinary circumstance stood in his way and prevented timely filing. "Holland v. Florida" 130 S.Ct. 2549 (2010).....

Petitioner do assert that by record, he did correspond with the Clerk of court on request as to did his Counsel make an appeal for direct appeal See: APP.P.# 341 (5,20).

Petitioner secondly assert, that his Counsel failure to make such direct appeal request, was an extraordinary circumstance, which stood in his way as Counsel asserted that it was useless to write Petitioner of how or what to file. See APP.P.# 326 (21-25) Following, APP.P.# 328 (1-15).....

This as Counsel asserted, was highly deficient. Counsel could have over-night such addressing with an self same stamped envelope enclosing the address to the Courts of appeals, for Direct appeal review. It is clearly shown that Petitioner Counsel was ineffective for not appealing the issues, and did render prejudice. Causing Petitioner a loss at an full bite of the apple for appeals review.....

For this cause. the (PCR) Judge order should not have been upheld. Holland v. State," 322 SC. 111, 470 SE.2d. 378 (1996), Citing Pierce v. State," 338 SC. 139, 526 SE2d. 222 (2000).

Conclusion

Petitioner should be granted an Direct Appeal
Review, or an new trial as with-in this courts
actions.

Respect fully
Submitted.

Shawn Davis #342092

Shawn Davis #342092

LEE-C-I-Smu-North, #80

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Dated: 4/28/2014