

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Newberry County

Ray Johnson,

v.

Petitioner,

STATE OF South Carolina,

Respondent

Appellate Case No. 2013-001617

Johnson Petition FOR WRIT OF Certiorari

petitioned by pro se

Ray Johnson Jr. #355360

Lieber Correctional

P.O. box 205

Ridgeville, S.C. 29472

RECEIVED

MAY 19 2014

S.C. SUPREME COURT

2013-001617

On the following information included are arguments the Petitioner wishes to assert to the Courts as pro se. The arguments the petitioner brings to the Courts are true in fact that the petitioner states he was prejudiced by violation of his rights.

Included below the petitioner asserts the following:

1) Petitioner argues that his rights was violated when his trial lawyer allowed prosecutors to read his testimony to the Court, during his 2nd trial. Trial lawyer had in fact indicated to petitioner that the jury was not to know he had testified in a previous trial. Petitioner was in fact violated under the South Carolina Code Section 19-1150, in which was repealed 2012.

2) Petitioner argues that trial lawyer failed to be deficient in Petitioner's case by not subpoenaing his key witness Hasting Moore. Petitioner asserts to the Court trial lawyer was in fact ineffective when indicating to petitioner that key witness couldn't be located and he wouldn't make a difference if he (key witness) testified or not. Petitioner states he was prejudiced. - State v. Thomas 157 W. Va 640, 230 S.E. 2d 445 (1974).

3) Petitioner argues that trial Counsel was deficient by not giving him proper plea arrangements by entertaining the plea agreements with petitioner.

Trial Counsel provided erroneous sentencing advice, when in fact petitioner was agreeing to plea to a 15 year plea bargain in the range of Co-defendants. Trial Counsel advised Petitioner to withdraw 30 year plea & take chances of acquittal by trial strategy. Petitioner agreed with Trial being overwhelmed by sentencing advice. Petitioner asserts he was violated by Trial Counsel under his erroneous advice prejudiced him by Counsel overruling him. *Judge v. State*, 471 S.E.2d 146 S.C. (1986).

4) Petitioner asserts that he also was prejudiced when in fact he informed his trial Counsel of his condition being diagnosed with mrsa. Petitioner argues that trial Counsel erred by giving Petitioner several (injections) several different accusations, leaving Petitioner highly sedated and disoriented. Petitioner argues that he was prejudiced by the acts because he could not have possibly understood anything during that point and time, and trial Counsel should have asked the Courts for continuance. Records even proved in fact that Petitioner was in fact in distress due to trial being ended a day to give petitioner medical attention. (See application pg. 4, sect. 10)

5) Petitioner further argues that he is in fact entitled to a new trial based on the records of him being accused by trial Counsel of shooting at his house. Petitioner argues that it was in fact an conflict of interest -

based on the grounds of the trial Counsel being verbal suggestive or warning the petitioner that he owns a gun and he will use it by any means. Petitioner asserts to the courts that intent that verbal gesture from trial Counsel was in fact a threat and should have been brought to the Courts attention and moved to have the trial Counsel removed from case. Petitioner argues that jury may have overheard the commotion in the open courtroom during their deliberations. Petitioner argues that he was prejudiced by this act within the courtroom by trial Counsel not giving an proper representation to the Petitioner after this point of trial. Petitioner argue on the bases of conflict of interest by trial Counsel and is entitled to a new trial.

Cuyler v. Sullivan, Supra, 446 U.S., at 350, 348, 100 B.C.T

(c) Petitioner asserts to the Courts that it was in fact insufficiently of evidence to convict during trial. He relies upon the direct verdict presented at the closing of the State's case. The state in fact failed to produce any evidence that which was sufficient to convict the petitioner on each charge being presented. The State's evidence failed to meet its burden and failed to prove each and every element of each charge beyond a reasonable doubt. - "More presence at the scene of a crime is insufficient to convict one as a principal or a theory of aiding and abetting." -

State failed to prove Petitioner was in fact acting, participating, aiding or abetting in the perpetration of committing a crime of kidnapping, arm robbery, burglary, assault, using an unlawful firearm in possession. Therefore, when in fact co-defendants admits to rules of ineligibility which excludes Petitioner from committing any crime actual ineligibility. 1) Kidnapping requires proof of an unlawful act such as seizure, confinement, ineligibility, delay, abduction, or carrying away of a person. Code 1976 § 16-3-910, State v. Berster, 367 S.E. 2d 152, 295, S.E. 52

2) Arm Robbery state must prove robbery by establishing the commission of a robbery by either of the two additional elements. Petitioner must be armed with a deadly weapon for the Petitioner alleged the he was armed with a deadly weapon, either by actions or words, while using a representation of a deadly weapon or an object which a person presents during the crime committed. State v. Kelvin Jones 342 S.E. 248, 536 S.E. 2d 396 (App. 2000) reversed. 3) Assault and battery requires an unlawful act of violent injury accompanied by circumstances of aggravation. Such aggravation circumstances include the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, a great disparity between the ages and physical conditions of the parties involved and differences in sizes. State v. Sprouse 325 S.E. 275, 286, 72. 478 S.E. 2d 871, 877 72 (Ct. App. 1996). State v. Murphy, 322 S.E. 321, 324-25, 471 S.E. 2d 739, 740-41 (Ct. App. 1996)

Petitioner asserts that the failed to prove any of the accused charges by elements. Petitioner further asserts that to be a aider or abetter the petitioner must be chargeable with knowledge of the principal Criminal Conduct, mere presence at the scene is not sufficient to establish guilt as an aider or abetter. State v. Leonard 292, s.c. 133, 355 S.E. 2d 270 (1987). Based on the record of the trial by jury, jury being sure there was no evidence to convict petitioner and confusion of the law given invites the petitioner to be entitled to a fair and new trial.

7) Petitioner asserts that (3) request to charge all of which were made a court exhibit for the record. Petitioner's request to (charge no.1) is an accurate and proper statement of the law and should have been charged to the jury in this matter. therefore, this matter was a problem compounded by the jury's obvious confusion with the hand-of-one, hand-of-all theory as evidence by several notes in which was presented to the court by foreman a large during deliberations. Petitioner asserts he was prejudiced by the courts by not charging the jury with proper charges to eliminate the confusion of the law. Trial Court assisted to pressure jury into deliberations without any aid to arrive with a fair verdict.

Purpose of instructions is to enlighten jury and to aid jury into arriving at a correct verdict. -

It's error upon the Court to give instructions which are calculated to confuse or mislead the jury. Petitioner argues he's entitled to a new and fair trial based on these grounds. "State v. Elmore 308 S.E. 2d 781 The law to be charged is determined by the evidence presented at trial, if the evidence supports a particular requested charge, the trial Court commits reversible error by refusing to use or issue it. State v. Gaudinje, 322 S.C. 396, 472 S.E. 2d 241 (1996), State v. Bumpass 334 S.C. 256, 513 S.E. 2d 104 (1999). If reasonable jury would doubt whether evidence proves essential elements of crime, Court of appeals must reverse conviction. Petitioner is entitled to instructions on his theory of defense if 1) The purpose of a correct statement of law, 2) Theory is supported by evidence, 3) Theory is not otherwise part of charge and 4) Failure to include an instruction on defendant's theory of defense would deny him a fair trial. State v. Neville, 82 F.3d 750, 761 (7th Cir. 1996), State v. Edwards, 36 F.3d 639, 645-46 (7th Cir. 1994).

8) Petitioner argues as he asserts that he was in fact prejudiced and was not granted a fair and lawful trial by jury. Petitioner argues that he was entitled to an impartial during the course of jury deliberations as trial lawyer failed to direct process, as jury foreman was comparing notes with trial Court without the entire jury.

Petitioner asserts in his argument that he was prejudiced and his Constitutional rights was in fact violated by jury foreman being able to correspond with the trial courts without jury presence, and being given instructions on the law or what action of course by deciding to take alone leaving the foreman in discretion to relay any information to jury during the course of deliberations. Petitioner argues that by doing so his rights was in fact violated when jury foreman could have given misleading explanations, during their course of confusion of the law and charge being given. *State v. Nelson* 442 S.E.2d 333 (app. 1994)

Failure to bring all jurors back into courtroom to hear jury foreman's explanation of jury's note to trial judge during deliberations, and trial courts response was reversible error, jury foreman may have relayed jury's request inaccurately or judge's response. Petitioner argues that his Constitutional rights depends upon the way in which a reasonable jury could have interpreted the instructions, and that determination requires careful attention to the words actually spoken to jury. In this case the jury was not present and was in fact locked in confusion.

Petitioner further asserts that his rights was in fact violated and that petitioner should be granted anew and fair trial.

9) Petitioner argues that co-defendant was offered a sentencing plea reduction if he would testify during Petitioner's trial. Petitioner argues that he was prejudiced by the Courts prosecution in danger by conducting private dealings of plea bargains to co-defendants for lesser sentences. In fact Petitioner argues that co-defendants credibility was not sufficient and in fact shouldn't have been permissible to the Courts. However, Petitioner argues that co-defendant had been held in contempt during the previous trial and serving additional months upon his sentence. Petitioner further asserts that co-defendant's credibility should have indicated that he in fact was a possible aggressor by relying on his previous record showing he was released twenty-seven days before with murder charges existing from the same nature of crimes being sentenced to 11 years imprisonment. Petitioner argues that he was prejudiced by the states prosecution by negotiating a sentencing deal with the co-defendants.

Petitioner hereby implies that he be granted a fair and open trial without prejudice.

Petitioner hereby has asserted amended grounds of arguments relying prejudiced upon him and his conviction. Petitioner respectfully submit this grounds to the Honorable Courts in hopes of reversal and intent of a new trial. Therefore, Petitioner respectfully submit to the Courts a Petition For writ OF Certiorari of an Pro se response ^{to be} filed.

Appellate Case No. 2013-001617

Pro se,

Respectfully Submitted,
Roy Johnson Jr.
Roy Johnson Jr.

Roy Johnson Jr # 335360

Libert Correctional

P.O. box 205

Ridgerville, S.C. 29472

Sworn To Before Me This _____ day
of May _____, 2014.

(U.S.)

Notary Public for South Carolina

My Commission Expires: _____

Ray Johnson #335360
Lieber Coll.
PO box 205
Edgewick, S.C. 29472

RECEIVED

MAY 15 2014

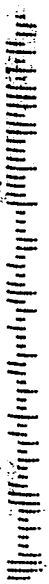
MAILROOM
LIEBER CI

Supreme Court of South Carolina
Chief of Court

David E. Spawfuss
PO box 11350
Edgewick, S.C. 29472

FOR LEGAL USE ONLY

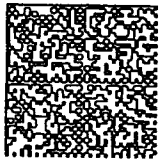
521181300



LIEBER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

FIRST CLASS



UNITED STATES POSTAGE
PRIME LOWES
\$ 00.690
02 1M
0004238017
MAY 15 2014
MAILED FROM ZIP CODE 29472