

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO MARLBORO COUNTY

THOMAS A. RUSSO, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

V.

GLENN QUANTA PERNELL,

APPELLANT,

PETITION FOR WRIT OF CERTIORARI

GLENN Q. PERNELL #268271
(PRO SE)

LIEBER CORR. INST.
P.O. BOX 205
RIDGEVILLE S.C 29472



RECEIVED

SEP 30 2011

S.C. SUPREME COURT

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WHETHER PETITIONER'S DECISION PLEAD GUILTY WAS KNOWINGLY AND VOLUNTARILY MADE WHERE PLEA COUNSEL FAILED TO REVIEW THE ~~DISCOVERY~~ DISCOVERY WITH PETITIONER AND ADVISE HIM OF THE POSSIBILITIES FOR CHALLENGING EVIDENCE BEFORE ADVISING HIM TO PLEAD GUILTY IN THE MIDDLE OF HIS TRIAL

STATEMENT

THE PETITIONER INCORPORATES THE FOLLOWING STATEMENT WITH THE JOHNSON PETITION FOR WRIT OF CERTIORARI

GLENN Q. PERNELL WAS INDICTED FOR SEVERAL OFFENSES STEMMING FROM AN INCIDENT IN MARLBORO COUNTY THAT OCCURRED ON JUNE 9, 2006. THE MARLBORO COUNTY GRAND JURY INDICTED PERNELL FOR THE FOLLOWING OFFENSES: POSSESSION WITH INTENT TO DISTRIBUTE (PWID) MARIJUANA; FAILURE TO STOP FOR A BLUE LIGHT; TRAFFICKING IN COCAINE IN THE AMOUNT OF 28 TO 100 GRAMS, SECOND OFFENSE; TRAFFICKING CRACK COCAINE IN AN AMOUNT OF 28 TO 100 GRAMS, SECOND OFFENSE; PERNELL'S CASE WAS CALLED TO TRIAL FOR FEBRUARY 11 THROUGH 13, 2008, BEFORE THE HONORABLE JAMES E. LOCKEMY AND A JURY. PERNELL COUNSEL WAS J.M. LONG. THE STATE COUNSEL WAS ELIZABETH MUNNERLYN AND ROSALIND SELLERS. FEBRUARY 13, 2008 PERNELL PLEAD GUILTY. ~~THE~~ UNDER THE NEGOTIATED TERMS SENTENCE PERNELL TO A TOTAL OF 13 YEARS TO RUN CONCURRENT WITH A FIFTY YEAR SENTENCE HE WAS ALREADY SERVING.

PERNELL FILED FOR POST CONVICTION RELIEF ON FEBRUARY 13, 2009, CLAIMING INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HE FAIL TO GO OVER DISCOVERY AND TELL PERNELL THE DEFENSE OPTIONS SUCH AS A SUPPRESSION HEARING TO SEE IF THE DRUG EVIDENCE COULD BE SUPPRESSED. AN EVIDENTIARY HEARING WAS HELD ON SEPTEMBER 14, 2010 BEFORE JUDGE THOMAS A. RUSSO. PERNELL WAS REPRESENTED BY TYNIKA A. CLAXTON. THE STATE WAS REPRESENTED BY KAREN C. RATIGAN AT THE DARLINGTON COUNTY COURTHOUSE. THE CASE WAS DISMISSED ON NOVEMBER 5, 2010, BY AN ORDER TO DISMISS.

PERNELL APPEALED TO THE SOUTH CAROLINA SUPREME COURT. HE WAS REPRESENTED BY BREEN R. STEVENS OF THE APPELLANT DEFENSE. ON SEPTEMBER 8, 2011 APPELLANT COUNSEL FILED A JOHNSON PETITION AND PETITION TO BE RELIEVED AS COUNSEL.

ARGUMENT

PETITIONER'S DECISION TO PLEAD GUILTY WAS NOT KNOWING AND VOLUNTARILY MADE BECAUSE COUNSEL FAILED TO REVIEW THE DISCOVERY WITH PETITIONER AND ADVISE HIM OF THE POSSIBILITIES FOR CHALLENGING EVIDENCE BEFORE ADVISING HIM TO PLEAD GUILTY IN THE MIDDLE OF HIS TRIAL.

THE PETITIONER INCORPORATES THE FOLLOWING ARGUMENT WITH THE JOHNSON PETITION FOR WRIT OF CERTIORARI

PETITIONER HALTED HIS TRIAL TO PLED GUILTY TO WHAT WAS CONSIDERED BY THE STATE AS LESSER CHARGES WITHOUT COUNSEL ADVISING ON FAVORABLE LEGAL DEFENSE OPTIONS SUCH AS SUPPRESSION OF THE DRUG EVIDENCE. FURTHER COUNSEL FAILED TO GO OVER DISCLOSURES FROM THE STATE IN THE DISCOVERY WITH THE PETITIONER.

A "DEFENDANT'S DECISION WHETHER OR NOT TO PLEAD GUILTY IS OFTEN HEAVILY INFLUENCED BY THE APPRAISAL OF THE PROSECUTION'S CASE" SANCHEZ V. UNITED STATES, 50 F.3D 1448, 1453 (9TH CIR. 1995); ACCORD GUSTINE V. STATE, 325 S.C 123, 127-28, 480 S.E.2D 444, 446 (1997) "WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY BUT MUST BE KNOWING , INTELLIGENT ACTS DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES". WHEN THERE HAS BEEN A GUILTY PLEA, THE PETITIONER MUST PROVE THAT COUNSEL'S REPRESENTATION WAS BELOW THE STANDARD OF REASONABLENESS AND THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THERE IS A REASONABLE PROBABILITY THAT HE WOULD NOT HAVE PLEAD GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL. HILL V. LOCKHART, 474 U.S 52, 58-59, 106 S.CT. 366, 370 (1985); ROSECOE V. STATE, 345 S.C 16, 20, 546 S.E.2D 417, 419 (2001).

THE PETITIONER'S COUNSEL DID NOT ADVISE HIS CLIENT THAT HE COULD POSSIBLY SUPPRESS THE DRUG EVIDENCE BY CHALLENGING THE CHAIN-OF-CUSTODY, AS REFLECTED BY THE POST CONVICTION TRANSCRIPT WHERE THIS POINT WAS NOT REFUTED BY THE STATE. PETITIONER'S PLEA COUNSEL TESTIFIED HE MADE A STRATEGIC DECISION NOT TO HAVE A SUPPRESSION HEARING FOR FEAR OF ENHANCED PENALTIES (APP. 215 LINES 1-9). PLEA COUNSEL ADVISED PETITIONER TO PLEA GUILTY SO

THAT HE WOULD CONTINUE TO FACE LESSER CHARGES BASED ON LESSER AMOUNTS, AND NOT HAVE HIS INDICTMENTS AMEND TO HIGHER AMOUNTS. (APP. 223 LINES 13-25). PLEA COUNSEL'S TRIAL TACTIC AND ADVISE FAIL BELOW THE STANDARD OF REASONABLENESS WHEN ITS TAKEN INTO ACCOUNT THAT THE PETITIONER WAS ALREADY FACING ENHANCED PENALTIES. AS NOTED BY THE SOLICATOR'S OPENING STATEMENTS DURING TRIAL (APP. 37 LINES 22-25): "AT THAT POINT THEY FOUND A LARGE QUANTITY OF DRUGS AND MONEY INSIDE THE VEHICLE. IT WAS APPROXIMATELY 250 GRAMS OF POWDER COCAINE, ALMOST 60 GRAMS OF CRACK COCAINE, AND APPROXIMATELY 5 GRAMS OF MARIJUANA, AND A SCALE--" . THIS POINT WAS MADE EVEN CLEARER DURING THE GUILTY PLEA WHEN THE SOLICATOR POINTED OUT TO THE JUDGE THAT THE STATE WAS REDUCING THE DRUG GRAMS FROM 200 TO 28 TO 100 FOR THE PETITIONER TO PLEA TO, (APP. 155 LINES 9-16). MOREOVER, PLEA COUNSEL WAS ALSO ALREADY AWARE THAT THE INDICTMENTS HAD ALREADY BEEN ENHANCED BEFORE THE PETITIONER'S TRIAL AND PLEA (APP. 157 LINE 3-13). THE PLEA COUNSEL INTENTIONALLY KEPT THE PETITIONER IN THE DARK BY NOT GOING OVER DISCOVERY. PLEA COUNSEL'S OWN TESTIMONY CONFIRMS HE DID NOT GO OVER THE DISCOVERY WITH THE PETITIONER. (APP. 211 LINES 7-24). WHEN JOINTLY CONSIDERED WITH THE LACK OF ADVISE ON OPTION TO CHALLENGE THE EVIDENCE BY WAY OF A SUPPRESSION HEARING, THE GUILTY PLEA CANNOT BE SAID TO MEET THE STANDARDS SET FORTH IN BOYKINS V. ALABAMA, 395 U.S 238 (1969), BERRY V. STATE, 381 S.C 630, 635, 675 S.E.2D 425, 427 (2009).

THE PETITIONER WAS PREJUDICED BY PLEA COUNSEL'S PERFORMANCE. THE PLEA COUNSEL DECIDED NOT TO GO OVER DISCOVERY OR DISCUSS DEFENSE OPTIONS TO PLACE HIMSELF IN A BETTER POSITION TO CONVINCED THE PETITIONER TO PLEA GUILTY. (APP. 216 LINE 6-18). PLEA COUNSEL KNEW THAT IF HE HAD DISCUSSED THE DISCOVERY MATERIAL WITH PETITIONER AND THE OPTION TO CHALLENGE THE DRUG EVIDENCE THROUGH A SUPPRESSION HEARING, BEING THAT PETITIONER ALREADY BELIEVED HE HAD A GOOD SHOT AT WINNING A TRIAL (APP. 203 LINE 16), THIS INFORMATION IF KNOWN WOULD HAVE PERSUADED THE PETITIONER TO GO ON WITH TRIAL, (APP. 203 LINES 1-17).

IN THE COURTS FINDINGS IN THE ORDER OF DISMISSAL, THE POST CONVICTION COURT DETERMINE THAT THE CLIENT FAILED TO PRESENT DOCUMENT EVIDENCE TO SUPPORT "HIS CONTENTION THAT THE DIFFERENCE

IN THE DRUGS' WEIGHTS WAS BECAUSE OF A DEFECTIVE CHAIN-OF-CUSTODY (APP. 232). EVIDENCE WAS PRESENTED OF THE DEFECTIVE CHAIN-OF-CUSTODY THROUGH THE PETITIONER'S TESTIMONY AND THAT OF THE PLEA COUNSEL, ALONG WITH WARRENTS AND INDICTMENTS. (APP. 222 LINE 9-21).

TO BE KNOWING AND VOLUNTARY, A PLEA MUST BE ENTERED WITH A FULL UNDERSTANDING OF THE CHARGES AND CONSEQUENCES OF PLEA. BOYKINS V. ALABAMA, 395 U.S 238, 243-44, (1969); U.S CONST. AMENDS. SIX. AND FOURTEEN. ACCORDINGLY, THE PETITIONERS PLEA WAS NOT KNOWINGLY AND INTELLIGENTLY MADE.

CONCLUSION

PETITION FOR CERTIORARI BE GRANTED. REVERSE PCR COURT'S DISMISSAL, VACATE AND REMAND FOR TRIAL.

GLENN PERNELL #268271
LIEBER CORR. INST.
P.O BOX 205
RIDGEVILLE, S.C 29472

DATED:

10-28-11

(PRO SE)

Glenn P. Purnell

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO MARLBORO COUNTY
THOMAS A. RUSSO, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

V.

GLENN Q. PERNELL,

APPELLANT

CERTIFICATE OF SERVICE

I CERTIFY THAT I HAVE SERVED THE PETITION FOR WRIT OF CERTIORARI TO KAREN RATIGAN, BY DEPOSITING THE SAME IN THE SCDC MAILING SYSTEM ON THIS DATE:


GLENN Q. PERNELL #268271
LIEBER CORR. INST.
P.O BOX 205
RIDGEVILLE S.C 29472

DATED: 10-28-11

(PRO SE)



Sworn to and subscribed before me on this
28th day of September 2011



My commission expires on May 26, 2020