

State Of South Carolina
In The Supreme Court

Appeal From Marlboro County
To Farrell Cotton, Jr., Circuit Court Judge

Marcus Townsend,

Petitioner,

vs

State Of South Carolina,

Respondent,

Notice Of Intent To Appeal

RECEIVED

JUL 07 2014

S.C. SUPREME COURT

Marcus Townsend #3484133
Lizbeth Smith #06
990 Wilsbacher Hill
Bishopville, SC, 29000

Pro-Se Petitioner

State Of South Carolina
In The Supreme Court

Appeal From Marlboro County
Re Terrill Cottman, Jr., Circuit Court Judge

Marcus Townsend,

Petitioner,

vs

State Of South Carolina,

Respondent,

Petition For Writ Of Certiorari

MARCUS TOWNSEND, #348438
LIZ-LI-370-NORTH #06
990 WISSELY HILL
BISHOPVILLE, SC, 29010

RECEIVED

JUL 07 2014

S.C. SUPREME COURT

Pro-Se Petitioner

-Index-

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|----------------------------|-----------|
| Index, | <u>1</u> |
| Issue Presented, | <u>2</u> |
| Statement, | <u>3</u> |
| Argument, | <u>4</u> |
| Conclusion, | <u>16</u> |

"Issue Presented"

Did petitioner plea guilty Counsel Emily Clayton render Ineffective Assistance of Counsel when she failed to provide petitioner an full discovery of his Brady materials, which contained exculpatory evidence, by an eye witnesses that petitioner was not the shooter; rendering petitioner guilty plea, not understandingly, voluntarily, intelligently and knowingly entered, as petitioner would have went to trial?

1

"Doyle v. Alabama," 395 U.S. 238, 243-244, 89 S.Ct. 1709, 1712 (1969).

"Statement"

Marcus Jermale Townsend, was indicted before the Marlboro County Grand Jury at July 2010, term for armed robbery (2010-IS-34-0448) and murder (2010-IS-34-0450).

Marcus Jermale Townsend, did plea guilty within Marlboro County Court, before the Honorable Judge Michael L. Nettles, with an concurrent sentence of twenty-three years, at the term of October-31st 2011.

Marcus Jermale Townsend, made no direct of appeal notification.

An Post Conviction Relief Application was filed. An hearing was held before the honorable R. Ferrell Cotton Jr, and sustainingly dismissed with prejudice as follows August-26th 2013.

Marcus Jermale Townsend, was counseled by Tristan M. Staffer, during (PCR) of armed robbery and an lesser included offence of murder/voluntary manslaughter.

This petition for writ of certiorari hereby follows:

- "Argument" -

Petitioner Guilty Plea Counsel Emily Clayton did render Ineffectiveness Assistance of Counsel when she failed to disclose to Petitioner and Courts, Exculpatory Evidence, Furnished with in Petitioner Brady Disclosures; Eye Witnesses Statements, that Petitioner was not the shooter, rendering Petitioner Waiver to Trial not knowingly, voluntarily, intelligently and understandingly waived.

Petitioner asserts, Ineffective Assistance of Counsel; (1). Conduct so undermined the proper functioning of the Adversarial Process that the Guilty Plea trial could not be relied on as having produced a just result. U.S.C. A. Const. Amend. (6); and (2). In the context of petitioner guilty plea, the deficiency prong of "Strickland," Ineffective Assistance Analysis turns on whether the plea was "voluntarily, knowingly and intelligently," entered. U.S.C.A. Const. Amend. (6). "Strickland v. Washington," 466 U.S. 668, 104 S.Ct. 2032. U.S. (1984) (May 14th 1984).....

- First; Petitioner must show that his plea guilty Counsel Emily Clayton, Performance was Deficient, requiring showing that her errors so serious, that she was not functioning as the Counsel guaranteed to Petitioner by the Sixth Amendment. U.S.C.A. Const. Amend. (6)...

²
"Boykin v. Alabama," 395 U.S. 238 (1969).

Petitioner will provide the first test in "Strickland", as follows:

1). During Petitioner Colloquy before the Honorable Judge Michael E. Nettles; Occupied with the Assistance of Counsel Mrs. Emily Clayton; on October-31st 2011; at the County of Marlboro, Court of General Session; Petitioner Marcus Townsend; do assert his guilty plea was invalid due to his Counsel Ineffectiveness....

i). With in the guilty plea transcript page 14 Line:(7-10); [The three disputes the original statement from Mr. Bashirs stated that Mr. Townsend was not the shooter, but that the third child was the shooter, Mr. Davis.]..... Also as follows Transcript page: 14 Line:(12-17); [I believe that the Solicitor's Office originally thought that Mr. Townsend, was the shooter because although several weapons were recovered they believe that the one that Mr. Townsend, gave them was actually the murder weapon in which we have found out it is not.]..... This act of petitioner Counsel Ineffectiveness follows the more as viewed, Transcript page: 14 Line:(21-24); [Judge, there are two independent eye witnesses that were in the store that say that the shooter of the boys was the shooter. I don't believe that's Mr. Townsend.].....

ii). IF it please the Court, we will turn to petitioner plea Counsel years later, as she was here-to (Perd) to Petitioner Past Conviction Relief hearing.

Petitioner Counsel (Tristan M. Shaffer), gain statements from Petitioner Plea Counsel in dealings with undisclosed evidence... During petitioner (PCR) his (PCR) Counsel asserts, see Transcript page: 3 Lines: (14-20); [Mr. Shaffer: Your Honor, the applicant actually is going to move for a continuance in this case. The Applicant has been incarcerated quite a while. This is a case out of the Bennettsville P.D. They take video depositions there. And in this particular case those are very long, and he has not actually seen all the evidence against him.]..... This motion of Petitioner was denied..... Before moving forward, the petitioner guilty plea Counsel did not view with petitioner such Exculpatory Evidence. See Transcript page: 4 Lines: (8-12); [I don't believe that the public defender has viewed all of the videos with him; therefore, he believes that he needs to - a chance at least review those before he can assist with his case going forward.]..... (omissions of denial) see Transcript pages: 6 Line: (24-25) & page: 7 line: (1); [THE COURT: Okay. I agree with the state. I can't see that a continuance would help anything. We'll go forward.]..... Petitioner asserts if such Exculpatory Evidence were provided; petitioner would have furnished the courts that Mr. Davis; was the murder. See Transcript page: 8 Line: (24-25) & page: 9 Lines: (1-4); [The - Originally the statements indicated Mr. Townsend, along with one of the other boys who were inside the store, said that the juvenile was the shooter. That was their original statement to law enforcement. The juvenile, I believe his last name was Davis.].....

This clearly Discloses Exculpatory Evidence was Warranted for Considerable Production..... Even so, the petitioner could not have thrown these legal norms as an layman. Petitioner did not understand his plea; nor did plea counsel make an governing test. See transcript page: 10 Line: (17-25) & page: 11 Line: (1-6); L(A). I had been visiting Marcus for some time, and I worried that maybe he wasn't understanding what I was saying just because he - a lot of times you'll ask him something and he'll just say uh-huh, uh-huh. It's almost like it's an automatic response and I'm not sure you're really understanding our conversations. I wanted to make sure that given the huge significance of this case and that it was a murder, it's not something simple, I wanted to make sure that he understood exactly all of our conversations. I wanted to make sure he understood, you know, what would happen if he pled guilty, what would happen if he went to trial. So we asked Judge thing to - I believe it was Judge thing - to send him for evaluation. I..... This evaluation was not done and in no wise did the petitioner understand his waiver to trial; nor did petitioner understand his plea. See Transcript page: 11 Line: (3-16); L(A). Did Judge thing later send him for a evaluation with the Department of Mental Health? (A). For a full evaluation? No, not that I'm aware of. I..... Looking at the individual procedure of petitioner plea counsel Mrs. Clayton, even an layman knew the dangers within the litigation woods. This stopped petitioner from understanding his rights, and

Mrs. Crayton, Ineffectiveness was evident. Even as she gave statement that she knew there were an they eye witnesses that could have set petitioner at liberty. see Transcript Page: 4 Line: (9-14); Q (A). I might have told him that, I told them that. I don't remember. I always contended that Marcus was not the shooter given the eye witness testimony although I did not think it really had a huge bearing on his case besides the fact that told the Solicitor's office looked at his case. Not only the fact of an they eye witness, but the weapon that petitioner was handling during the crime, was not the murder weapon as tested by SHED. See Transcript Page: 16 Lines: (9-16); Q (A). Okay. And Marcus had told somebody, told people in the statement about a gun, correct? (A). I believe he took them or either told them where a gun was. They originally believed that to be the murder weapon, but which is one of the reason why they believed him to be the shooter, but SHED determined that was not the gun used in the shooting. Each factual ground of his counsel poor performance, and with holding evidence to his liberty; made petitioner plea. But if petitioner counsel was not ineffective, petitioner would have viewed all and not parts of each disclosed evidence. see Transcript. Page: 18 Line: (2-5); Q (A). Okay. And did Marcus view all these videos? (A). I know he viewed most of these videos, not in one sitting obviously, but days at the jail where I would come bring a video he would watch. These Exculpatory Evidence marked (video) testimonys; would have

Shown that even an jury function would have scope
petitioner being Not guilty, as the they independent
eye witness of the shooting stated; the shorter
guy shot the clerk; in opposition to petitioner's
See Transcript Page: 19 Line: (19-25) and Page: 18 Lines (1-
6); I (Q). Where in there does it say anything about viewing
videos? (A). It looks like June-10th it says something.
I'm just, I just stopped and saw that it said something
about a video in there so I haven't read the whole
thing. But it looks like it says something about a
theyon George. He was one of the independent witnesses
if I remember, if I remember properly. And then Terry
Stanton who, he is the individual who was actually
inside the store that said the shorter guy shot the
clerk. And I did note that - and that all the other
guys were taller and Marcus is over 6-foot tall I be-
lieve. These pointed out analysis are over-
whelming to Mrs. Clayton, deficiency of performance
as ineffective. Petitioner had long requested that
counsel be effective in providing his full disclosure
as she failed to do so. See Transcript Page: 22
Line: (16-23); I (Q). Okay. Could you please tell us what
that note says. (A). It says, met with client and Moe
at the jail. Moe would have been our investigator, Moe
Goodman. Explained that client can have a bond hearing
again on May 20th. Plea offer is voluntary 30 years.
Client would like to waive the rest of the Rule 3 including
the videos. (Q). Okay, so he would like a complete copy
of Rule 3 and the videos? This shows an
sustainable cause of Ineffectiveness, as petitioner
counsel threw, and viewed all the evidence and

each video; and deliberately withheld each of these exculpatory evidence from petitioner, to lighten her duties of an lengthy trial. See Transcript page: 35 lines: (14-16); L(a). Now you said that you viewed every single one of the videos? (A). Yes, I did." J.....

Again... If it pleases the court, not as being an repeat; these exculpatory evidence would have shown good cause - from petitioner counsel ineffectiveness - that if petitioner did have evidence; the evidence would have shown an reasonable jury function that petitioner was not the shooter. See Transcript page: 36 line: (17-19); L(a). The only thing that was really helpful to Marcus in that was that they said the shorter individual was the shooter." J..... This testimony of such exculpatory evidence was more than L.H. helpful. It was vital, in which the whole outcome would have been different, and petitioner would have went to trial as the shooter was 5'8", and petitioner was 5'11" to 6 foot tall. See Transcript page: 43 lines: (21-23) and page: 44 lines: (1-4); L(a). Now tall is the juvenile? (A). About like the time something, 5'8" something like that. (A). Good bit shorter than you? (A). Yeah. (Q). Okay. How tall are you? (A). I'm 6'11" now. (Q). How tall were you then? (A). Almost 5'11", 6, 6-foot." J..... This is an clear and an shock of such performance in dealings with Mrs. Crayton, client. Not just an client; but one that mentally not understanding the statement of his killer to an trial. One that was not granted an ordered mental evaluation by Judge King. See Transcript page: 44 lines: (8-13); L(a). Okay. Do you recall speaking with someone with Tri-County Mental Health? (A) yes, sir. (Q).

O'Hay. But they never sent you to the Department of Mental Health? (A). No, sir. "I..... This clearly shows that petitioner would not have pled guilty but for his Counsel performance which fell well below Perfections of Counsels. See Transcript Pages 46 Lines (9-13); I (a). O'Hay. And if you would have known how your trial attorney was going to argue or what she was gonna argue for in front of the judge on your plea, would you have pled guilty at that time to the cap? (A). No, sir. "I.....

Placing the first prong of the "Strickland" test to petitioner Counsel performance of withholding Exculpatory Evidence, Failing to get petitioner an evaluation and mental treatment for an understanding of the Nature of his guilty plea; all Constituted that petitioner Counsel at guilty plea, Performance was Deficient, and such errors was so serious that counsel was not functioning as guaranteed to petitioner under the Sixth Amendment:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the Crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

In this case; Petitioner was not guaranteed the language provided within this constitution as the Assistance of Counsel. For that denial; Petitioner did suffer, the after math of Ineffective Assistance of Counsel.

The Testimony of such witnesses by an they eye witnesses would have; if furnished by Counsel; been favorable to Petitioner at trial. "Foster v. California," 394 U.S. 440, 89 S.Ct. 1127, 22 L.Ed.2d. 402 (1969); ("The petitioner was six feet in height while the other two men in the line up were about five feet, 6 inches tall.").....

Petitioner asserts that Counsel performance violated the: S.C.R.Crim.P. Rule 5; and an set law pursuant to: "Brady v. Maryland," 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 213 (1963); ("Exculpatory Evidence")..... This was by her failure to provide; and produce Evidence to Petitioner and Courts which was Exculpatory Evidence to Petitioner Innocence.

Petitioner show cause that he was coerced into making such plea by his Counsel as her being Ineffective to go to trial. "Gardner v. State," 370 S.E. 2d. 184, 186-87 (2002); And that with out such coercion; Petitioner would have went to trial. "Dolan v. State," 304 S.C. 433, 434, 403 S.E.2d. 391, 392 (1991); "Boylan v. Alabama," 393 U.S. 238, 243-44, 89 S.Ct. 1709, 1712 (1969); As showing his Guilty plea was not knowing; and Voluntary. U.S.C.A. Const. Amend. 5, 6.....

Wherefore; the first prong of Petitioner burden was and has been met.

2). Petitioner Pursuant to "Strickland" will uphold his burden of it's Second Prong; As to the petitioner must show that the deficient performance prejudiced petitioner and was prejudicial to the defense, as shown by counsel errors, which was so serious, as to deprive the petitioner of a fair trial, a trial who's result is reliable. U.S.C.A. Const. Amend. (6).

9). Petitioner asserts; To satisfy the prejudice prong of "Strickland" Ineffective Assistance Inquiry in the context of a conviction by guilty plea, petitioner must prove through the presentation of probative and credible evidence, that he would have gone to trial instead of pleading guilty but for counsel advice. U.S.C.A. Const. Amend. (6)(14).

• - If it please the court; petitioner has set forth all actions/inactions presented with-in his argument above, as to the "Strickland" First Prong here to; petitioner addresses the factor of the prong two which would be the Second Prong of prejudice.

11). The Fourteenth amendment has long held that no person shall be abridge of it's life, liberty, or property, with out due process of law; nor deny to any person with-in it's jurisdiction the equal protection of the law..... Petitioner would draw this court's attention to the Fourteenth Constitutional Amendment of the United States as follows:

• - "XIV. Section. 1., All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State 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 laws."

• - "Respectfully asserting; petitioner was prejudiced by his plea guilty counsel for her failure to disclose his Rule 3, materials. See: S.C. Crim. P. Rule 3, U.S.C. Const. Amend. 5, 6, and 14; which would have allowed petitioner to copy or seize any "property" that was entitled to him by due process of law".....

• - "Respectfully asserting; petitioner was deprived and abridged of his "life", due to his plea guilty counsel performance, which prejudiced petitioner due to counsel advise to plea rather than go to trial with the exculpatory evidence favorable to petitioner, which now deprived petitioner to be free from the custody of the South Carolina Department of Corrections".

• - "Respectfully asserting; petitioner was denied and abridged of his "liberty" to be free from this cruel and unusual punishment of confinement as petitioner counsel prejudiced him to any jury trial.....

• - Lastly; Petitioner Respectfully asserts, that he through and by the performance of his plea guilty counsel prejudicing him by her Ineffectiveness; She did abridge and deprived petitioner of Due process of Law, and the equal protection of the law. "U.S.C.A. Const. Amend. 5, 6, 8, and 14"; as within the jurisdiction here of; as she did not afford petitioner his guaranteed rights by the Sixth amendment, which is the total effectiveness of counsel provided by the Constitution. This Ineffectiveness caused an chain reaction which broke the Constitution of the United States of petitioner Life, Liberty and Property without the equal protection and Due Process of Law. See: "Strickland v. Washington", 466 U.S. 668, 104 S.Ct. 2052 (U.S. 1984). U.S.C.A. Const. Amend. 6, 14.

For the above reasons, petitioner guilty plea was not knowingly, voluntary, understandingly, and intelligently entered. And but for counsel Ineffectiveness, petitioner would have went to trial as the outcome would have been different if petitioner would have went to trial. U.S.C.A. Const. Amend. 6, 14.....

- "Conclusion" -

For the preceding reason, petitioner asks this court to grant his petition for writ of certiorari.

Dated: 07 / 1 / 2014

x Marcus Townsend #348435
MARCUS TOWNSEND

"Certificate of Service"

I certify that a true copy of the petition for writ of certiorari and a copy of the enclosed to Karen Peterson and Supreme Court, by LSC-I, Mail Room.

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Dated: 07/1/2014

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