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STATE OF SOUTH CAROLINA S.C. SUPREME COURT
IN THE SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

DONNELL MCFADDEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002667

PRO SE BRIEF FOR WRIT OF CERTIORARI

DONNELL MCFADDEN
PRO SE

LEE CORRECTIONAL INSTITUTION
RICHLAND B POD 269
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BISHOPVILLE, SC 29010

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ISSUE PRESENTED

Whether the trial court inappropriately left the burden of persuasion on the party opposing the Batson motion to show that a peremptory strike was not racially discriminatory?

STATEMENT

On October 2, 2008, the Florence County Grand Jury indicted Petitioner Donnell McFadden for distributing crack cocaine. App. 244-245. The State alleged that on April 2, 2008, Petitioner sold crack cocaine to a confidential police informat in Lake City App. 47, line 25 - App. 49, line 20. The State had videotape evidence showing Petitioner had two prior convictions for distribution and was facing a mandatory fifteen - year sentence for a third. App. 163, line 22 - App. 164, line 8 ; App. 171, lines 13-16.

Fortunately for Petitioner, Attorney Scott Floyd raised an Batson Motion towards the solicitor, John Jepertinger for the way he was selecting the jury. App. 222, lines 2-25 ; and also App. 223, lines 1-24. However, the Honorable Judge Russo ruled that the solicitor Mr. Jepertinger provided an racially neutral reason towards the challenge. Which petitioner will show he did not provide an proper explanation towards the three - step inquiry for evaluating whether a party executed a peremptory challenge in a manner which the Equal Protection Clause Protects under the Fourteenth Amendment to the United States Constitution.

Unfortunately for Petitioner, the Honorable Judge Russo found that the solicitor John Jepertinger clearly shown an racially neutral reason why the Batson Motion was proper. App. 230, lines 4-25 ; and also App. 231, lines 1-6.

Accordingly, the reasons stated why the strikes was made is clearly an improper way of granting an racially neutral reason as to why the challenge prevailed. At the conclusion of the trial on April 25, 2009,

the jury found Petitioner guilty, and the trial court imposed a twenty-two year sentence App.158, line 20 - App. 159, line 2 ; App. 172, lines 11-21.

On July 10, 2012, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 174-187. On December 19, 2012, the State filed its Return. App. 188-192. On October 10, 2013, Petitioner appeared at an evidentiary hearing before the Honorable William H. Seals, Jr., Josh Thomas represented Respondents and Daryl Corbin represented Petitioner. App.194.

Petitioner testified at the hearing that Attorney Scott Floyd raised an Batson Motion because of the issue of certain minorities which tends to be African American the same color as Petitioner were stricken from the jury. App. 209, lines 15-19. Trial Counsel also testified and confirmed Petitioner testimony. This issue was preserved and Appellate Counsel ineffectively overlooked this issue which Attorney Scott Floyd reflected upon. App. 225, lines 2-25 ; App. 226 lines 1-8.

On December 11, 2013, the PCR court issued its order of dismissal concluding Petitioner failed to show ineffective assistance of counsel. App. 233-232. In particular, the court found that petitioner's appellate counsel was not ineffective towards raising the issue on appeal which is improper. App. 241.

ARGUMENT

DID THE TRIAL JUDGE ERR IN NOT FINDING A BATSON VIOLATION.

The record does not support the PCR court's finding that solicitor John Jepertinger clearly shown all three (3) steps towards proving the

Batson challenge. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI ; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687.

The right to assistance of counsel extends towards Batson Motions. See: Batson v. Kentucky, 106 S.Ct. 1712, (1986) ("If a party asserting a Batson challenge to an peremptory strike of juror makes a prima facie showing that the challenge was based on race, trial court will move to the second step in the process, which requires the party opposing the Batson challenge; if the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the party asserting the challenge has provided purposeful discrimination. Specifically, it is shown that trial counsel and appellate counsel representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would have won his Batson challenge at the process of the Appellate Court. App. 224, lines 12-17. Had attorney proceeded under professional norms the "Hot Issue" which was perserved would've easily prevailed during the Appellate Court stages. However, Appellate Counsel Mrs. Blanchard failed to brief all objected to and arguable issues this deeming her ineffectiveness toward the Batson challenge. See: State v. Inman, 2014 WL 2765674, quoting in the standard of review that in all criminal cases, the appellate court sets to review errors of law only".

State v. Wilson, 545 S.E.2d 827 (2001). A court is "bound by the trial court's factual findings unless they are clearly erroneous". Id at 545 S.E.2d at 829; see also; State v. Edwards, 682 S.E.2d 820, (20-09); State v. Haigler, 515 S.E.2d 88 (1999)(" The trial court's findings regarding purposeful discrimination one accorded great deference and will be set aside on appeal only if erroneous.").

Appellate Counsel's performance was deficient based on sandbagging of the Batson challenge proving discrimination. App. 230, lines 13-15.

Therefore, Petitioner not only had this issue waived during the appellate process purposefully from the deficient performance of Appellate Counsel. It's still prejudicing the Pettitioner from ever receiving an fair trial. Which this court should zero in on and rule on the merits of this petition.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Donnell McFadden's petition to allow full briefing on the issue at hand and after viewing vacate his sentence.

This the ____ day of August 2014.

Respectfully Submitted,

(6)

Donnell McFadden, #229635