STATE OF SOUTH CAROLINA

IN THE SURPREME COURT

Writ of Certiorari to Sumter County

R. Knox McHaon, circuit court Judge

Kwaun Ka'Shaw Peay,

Petitioner.

V.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2013-002651

Johnson Petition for Writ of Certiorari.

Petitioner comes before this humble court in his Pro-se status, and submits his reply to the Respondent Return, pursuant SCARR Rule 227 (h).

First I would like to bring to the courts attention the matter dealing with the motion to reconsider sentence. Petitioner's counsel filed a request for the hearing on a motion to reconsider sentence on February 9, 2012. Now if the court will allow me to elaborate on this matter. First petitioner plead guilty on January 25, 2012, now petitioner's counsel didn't submit his request for the hearing foe motion to reconsider sentence until February 9, 2012. I'm sure counsel was aware of the ten (10) day deadline this clearly shows that counsel was ineffective for failure to protect the rights of petitioner by violating the Sixth and Fourteenth Amendment Rights of petitioner.

Next, I would like to bring to the court's attention that on January 24, 2012 counsel left a message on petitioner's answering service stating that his case was being called to trial on January 25, 2012. On January 25, 2012 at trial Petitioner moved to relieve plea counsel and retain private counsel. Petitioner explained he wanted to retain Murrell Smith on charges, however Murrell Smith, a member of the South Carolina General Assembly, was unable to be present because he was in session. Judge Young refused Petitioner's request. Immediately thereafter, petitioner repeatedly informed Judge Young that he was not satisfied with the service of plea counsel. When judge Young inquired as to why, Petitioner (See App 37 3-17) explained that plea counsel never worked with him. Judge Young responded that plea counsel was ready for trial and would work with petitioner "right now". Concerning Petitioner's dissatisfaction with plea counsel, judge Young stated "that between you and her"! (See App 38 lines 1-4). Judge Young also stated "that will be for a different forum".

Next, I would like to bring to the court's attention where counsel admitted to only meeting with Petitioner only twice prior to his case being called to trial. Plea counsel further admitted she never met with petitioner to prepar for trial, (See App 84, line 12). App, 75, lines 21-23. During those meeting, plea counsel discussed no strategy for trial. Instead, plea counsel suggested he inform on others to the police in hope of leniency, App, 68, lines 7-9. The only evidence reviewed during the two meetings was the arrest warrants App 69, lines 12-23.

Due to the complete lack of communication with plea counsel, no planned defense stragety, and the Judge's denial of counsel of choice, Petitioner felt coerced to plead guilty. Had counsel not provided deficient performance, Petitioner would have gone to trial. This clearly shows that if it was not for counsel's unprofessional error that petitioner would have known about the counsel's defense and could have made a clear choice or rather to go to trial or plead guilty. This shows that counsel violated the petitioner's Sixth and Fourteenth Amendment Rights.

As an initial matter, the PCR Judge erred in finding Petitioner's claim was procedurally barred. Although Petitioner pleaded with judge that he was not satified with plea counsel and moved to relieve her, his claim of ineffective assistance was not morphed into direct appeal issue(s).

Now on App, 86, lines 15-17, plea counsel suggested that it was Petitioner's responsibility to stay in contact with her. Now, the South Carolina's Rules of Professional Conduct imposes duties of competence, diligence, and communication on lawyers, therefore plea counsel's action and behavior was clearly unprofessional. Now, on app, 84 line 12, counsel admitted she never met with Petitioner to prepar for trial. The South Carolina Rules of Professional Conduct imposes duties of competence. Rule 1.1 competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation, plea counsel failed to met the required requirements. On page 16, lines 4-6 counsel states "my client contends they didn't have arrest warrants, counsel did no investigation on warrant. (And agreed with Mr. Corbett , who represented the state) that the issue of warrants not to be brougfht up during trial, clearly unprofessional conduct and action.

Finally, I would like to bring to the court's attention. In the pre-trial transcript on page 14 of the appendix lines 23-24, the court states "any motion that we need too take up at this time?". Now on page 14 line 25, to page 15 lines 1-13, Mr. Corbett (which represent the state) says for the record "Judge I am not sure if this would take official form of a motion, but I do want to make the court aware of some testimony that I anticipate coming,

and perhaps deal with it now so it doesn't become a problem. On the date of the arrest, excuse me, judge, on the date of the incident, the state is going to allege that officers went to the defendant residence for the purpose of placing him under arrest purdsuant to an arrest warrant. My intention and my instruction to my witness at this point has been that we went to his house because we had a warrant for his arrest, and not to discuss the purpose and the reasons behind that arrest warrant. Now also on page 14 lines 18-19, Mr. Corbett says for the record, but I felt we had to establish the basis for going to his residence. Also, on page 15 of the pre-trial of the appendix on line 21-22 Ms. Stevens states: " obviously I can't object to the reason that they were there". Then on line 23-24 on page 15 of the pre-trial in the appendix the court states; " Right, as long as they don't bring up what it was". Then on the same page Ms. Stevens states: "Exactly" on line 25. Now, on page 16 of the pre-trial of the appendix lines 1-3, the court clearly states: "I mean, you all are on thin ice on that. So if something else can come in that results in a mistrial". Now, on the same page lines 4-6, Ms. Stevens clearly states: "Exactly, and my client understand that their testimony is that they did." Now if you will allow me to elaborate on just this part: lines 4-6 of the appendix on page 16. Now the Petitioner felt as if the Sumter County Police Department didn't have an arrest warrant for his arrest. Petitioner clearly came to his counsel and stated that he felt as if they didn't have a warrant, which he was maken aware to his counsel, a defense to prepar for trial and Petitioner's counsel clearly talked against the defense. Now, in the Amendments the 6th, it states in the last part (to have the assistance of counsel for his defense). Now, if Petitioner's counsel is taken against his defense that he came to his counsel with instead of investigating what petitioner told counsel, it clearly shows that counsel was ineffective and violated Petitioner's 6th and 14th Amendment(s).

For the issues that I have brought to this court's attention, I ask that you take them into consideration and remand for a new trial.

To establish ineffective assistance of counsel, petitioner must satisfy the two-prong test set forth in Strickland v. Washington 466 U.S. 668 (1984). "First, defendant must show that counsel's performance was deficient, under this prong, the proper measure of attorney preformance remains simply reasonableness under prevailing professional norms" Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (internal citations omitted) "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief" Id, at 117-18, 386 S.E.2d at 625 (internal citations omitted).

Where a defendant challenges a guilty plea, the defendant must show that there is a reasonably probability that, but for counsel's errors, he would not have pleded guilty and would have insisted on going to trial. Hill v. Lockhard, 474 U.S. 52, 58 (1985).

The United States Supreme Court has held that "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary", Strickland, 466 U.S. at 691. This includes a duty to investigate possible defenses even in case where the defendant ultimately pleads guilty. Cobb v. State, 305 S.C. 299, 303, 408 S.E.2d 223, 225 (1991) (provides that failure to investigate possible defenses constitutes ineffective assistance of counsel). "because a guilty plea is valid only if it represents a knowing and voluntary choice among alternatives,...a client's expressed intention to plead guilty does not relieve counsel of their duty to investigate possible defenses and to advise the defendant so that he can make an informed decision". Savino v. Murry, 82 F3d 593, 599 (4th cir, 1996).

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Certificate Of Service.

I certify that a copy of this Pro-se briefing has been return to the state.

Kwaun Ka'Shawn Peay #349444 1158 Darlington N
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

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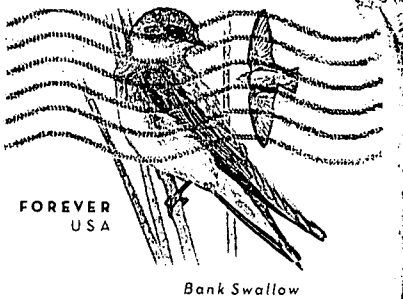

Bank Swallow

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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