Dytavis Hinton #346826
Lee Correction Institution
990 Wisacky Hwy / D.N 1113
Bishopville, South Carolina 29010

Honorable Chief Clerk of Court
South Carolina State Supreme Court
Columbia, South Carolina 29201

Hon. Chief Clerk

Please find enclosed an original Pro-Se brief to be filed in this court and ask that a stamped filed copy be returned for my files and a copy of this brief has been served on Attorney General.

With Kind Regards:

x Dytavis Hinton

Dytavis Hinton / Pro Se

CC: File
Assistant Attorney General
Ends.

The State of South Carolina

For The State Supreme Court

Appeal from York County

G. Edward Welmaker, Judge

Dytavis Hinton

Petitioner

~ Against ~

State of South Carolina,

Respondent.

Petitioner Pro Se Brief

#13-002625

Question Presented:

Whether Counsel was Ineffective for failing to Investigate case before Advising Applicant to plead guilty?

My contention is that lower court has unreasonably applied the Hill v. Lockhart, 474 U.S. 52 (1985) when it concluded I failed to prove the first prong of Strickland v. Washington, 466 U.S. 668 (1984) that counsel performance was unreasonable. Thus, the decision is not supported by record when my expert testified at hearing (App. Pg 110; lines 6-25) and counsel own admission at hearing that:

> "Now it is true we did not go beyond that in our investigation. We did not go and look at other things because I felt that point in time that our best efforts could be used to mitigate this."
>
> App. Pg 153; lines 13-16

As such the order (App. Pg. 279) fails to address whether expert at hearing testimony shows counsel who elected to obtain an expert to convince court to be lenient on me was unreasonable within professional standards.

> "... And I did retain the services of Dr. Kenneth Marsh who is a clinical psychologist out of Charlotte who basically analyzes or evaluates people for two things One, where to place them within federal system when -- Generally does work for the federal system..."
>
> App. Pg 153; lines 16-21

Accordingly, my argument is supported by Bagwell v.

State, 2014 WL 4212681; Taylor v. State, 745 S.E.2d 97 (2013) to find counsel is not reasonable when there is forensic evidence which does not in the least which establishes material facts for trial. Accordingly, as noted at hearing that statements from the Thomas brothers were inconsistent with crime scene. (APP. Pg 112; lines 2-5) What my expert said at hearing shows that counsel had all of these statements and Reports and if counsel conducted an investigation he would have known the weakness of state case and coupled with fact police investigation was faulty. See Ard v. Catoe, 642 S.E.2d 590 (2007); Hinton v. Alabama, 134 S.Ct 1081 (2014) There with my analysis begin as follows:

Actual Innocence:

To fully analyze both prongs of the Hill test, it is important to judge all evidence in State possession at time of guilty plea and at hearing. Hence, if this case went to trial the state told court it will show me and co-defendant went to rob these men (APP. Pg 11; lines 7-16) but this is contradicted by my testimony given to police that co-defendant was observed entering R.V (APP. Pg 261) and he did so after noticing his gun was gone and other testimony confirming co-defendant condition (APP. Pg 69; lines 20-25) while

State may down-play this testimony what it can not overlook is fact that as State said:

"... Mr. Burris was shot a number of times and killed and died in the stairwell of the --- as he fell into the stairwell of the RV. This defendant, Mr. Hinton, was also shot twice in the abdomen and in the side. He ended up trying to run out of the RV at that point..."

APP. Pg 12; lines 11-15

Now this is contradicted by testimony which says that:

"... they measure that, and those measurements are identical to what the laser trajectory is. It could not have been done in the trailer unless he would have been at the top. There's no indication that he was at the top..."

APP. Pg 134; lines 4-8

This statement contradicts any notion of me being inside trailer as Prosecution alleges. inter alia. in order the court ruled that:

"This court finds .... that differences are common places in investigations and none of those relied upon by the expert would have resulted in a change in the outcome."

APP. Pg 279

Contrary to order of court it is not a matter of differences in terms of police investigation of case.

What it comes down to is police and counsel made mistakes in this investigation when key persons were not communicated with (APP. Pg 110; lines 4 - 24) and it has also been shown that witnesses statements did not match with forensic evidence. Similarly, what State has as a consequence overlooked themselves, is that the counsel testified that he never did an investigation like what my expert said should have been done. (APP. Pg 153; lines 13-14) Conversely, it is not that my expert questions what police did because he said that:

"Well I found there was no indication whatsoever that this case had been investigated. Everything that I saw in the C.D. were items documents recieved from the police department..."

APP. Pg 110; lines 6-9

Then per court ruling is refuted by record, as the police investigation was not being questioned but trial counsel. Who as evidence shows is unrefuted counsel relied solely on the State documents and failed to conduct his own independent investigation. Likewise the State and court seems to suggest since I admitted to counsel I comitted this offense then trial counsel reasonably felt no investigation was necessary.

Q: But wouldn't you agree with me that it's not necessary once Mr. Hinton admits to his purpose

IN that?

A: I disagree, and the reason I disagree is the Attorney and investigators that's representing an individual have the duty and the obligation to make sure that his rights are protected, that the case is investigated...."

APP. Pg 135; lines 7-13

Once in accordance with Strickland, id at 691. Hinton. id. the court fails to consider that even under Hill, id trial counsel must conduct an independent investigation into law and facts of case. See. McKnight v. State. 661 S.E. 2d 354 (2008); Padilla v. Kentucky, 559 U.S. (2010) The court ruled

"... counsel actions in this case were heavily influenced and guided by the information provided by applicant..."

APP. Pg 281

What this order proves is that counsel did nothing before or after speaking with me and this is not consistent with Padilla court ruling. Futhermore, despite my admission of guilt to counsel it still does not negate his responsibility to investigate case when he acknowledged when I said

... was a statement that he gave to Marcus Thompson while he was in the hospital which he said he tried to stop MR. Burris...

but where he says "I knew he was going to rob I knocked on the door" and that's when he see's what's going on inside."

APP. Pg 151; lines 19-25

Considering counsel was aware of these statements from me, it requires analyzing why no other investigation was conducted by counsel who testified his friends gave statements contradicting his version of events (APP. Pg 152; lines 21-25; Pg 153; lines 1-12) but the statements contradict counsel testimony in all aspects (APP. Pg 236, 231, 232) When as herein Bearden statement says "I heard that Twhiz tried to stop MANN going into the R.V. I also heard that MAN had asked to hold Twhiz gun to put back in my car before they went into the money" so it is clear counsel misinformed me about statements (APP. Pg 152; lines 21-25) and did not look at these documents based on testimony at hearing. As a consequence, the record was fully developed to refute any notion my friends testimony will not be favorable to me. Similarly, in looking at statements by MR. Page will not be admissible and constitue as hearsay and nor is testimony admissible based on his opinion or belief. For this reason, it is my contentions that counsel as an experienced trial attorney should have been aware of this. Even considering fact that Devon Bearden does not remember giving me the keys is not a significant fact which proves my in-

volvement in this case. What is even more critical of counsel investigation is fact that there are no GSR kits or ballistic reports (APP. Pg 88; lines 18-25; Pg 89; lines 1-6). This order disregards the trial lawyer obligation to conduct meaningful investigations, and in light of this when counsel testified that

Q: So you understand the concept of trajectory ballistics, things of that nature?

A: I do have. Yes. A basic understanding just by virtue of the fact that I've been a criminal defense lawyer for 23 years. Yes

APP. Pg 150; lines 1-5

So if court and respondent gives due consideration of trial counsel testimony and find him credible. Then when respondent said I was shot inside R/V (APP. Pg 12; lines 13-17) counsel if he had any knowledge of trajectory had an obligation as my lawyer to inform court himself that forensic evidence submitted does not support what prosecution is saying. Accordingly, when court ruled Mr. Guerrette testimony was not credible and that counsel is credible overlooks all the testimony showing inconsistencies and that counsel should have blood tested in the stairwell (APP. Pg 142; lines 1-3) And it is likewise important to note the police did not take finger-prints or DNA testing (APP. Pg 137; lines 19-25; Pg 138; line 1) Even Mr. Guerrette testified counsel should not

have relied solely upon me in this situation when it is possible my motives were too avoid getting more time (APP. Pg 135; lines 13-15) but despite all of this the lack of investigation was a critical aspect of this case and counsel testimony indicates that he relied solely upon my testimony or what I told him. None of the cases cited by state allows counsel to solely rely on what his client tells him. Where this is the case, once the counsel knew of my limits on revealing anything to him (APP. Pg 150; lines 21-23) and it is unclear of what counsel did during this time. Now what is clear, that once as counsel says I admitted to this crime he no longer sought to investigate case and even went so far as he said working on getting judge to be lenient in sentencing. (APP. Pg 150; lines 21-24; Pg 153; lines 13-25) Contrary to respondent or court views, there is no dispute I was at scene of crime and the only disputable facts are in what my role was as well as where prosecution is placing me in trailer, and therefore for counsel not to conduct an investigation and misinform me as he did concerning what page/Braden statements say, is a break-down in what is constitutionally required.

Wherefore, Petitioner prays court will grant Writ.

On this 22nd day of September, 2014,

Respectfully Submitted:

Dytavis Hinton

Dytavis Hinton / Pro Se

Dytavis Hinton #346826
Lee Correctional Institution
Darlington North - 1113
990 Wisacky Hwy.
Bishopville, SC. 29010

The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

SCDC
SEP 25 2014
MAIL ROOM

RECEIVED
SEP 22 2014
LEE CI MAIL ROOM