

State of South Carolina
County of Greenwood

In The Court of Common Pleas
Eighth Judicial Circuit

2013-CP-24-1371

Tyri Landron
SCDC# 309930

Applicant

Response to

v.

Conditional order

State of South Carolina
Respondent

of Dismissal

The applicant will like to show cause
of why the conditional order should not become
final.

I

On August 25, 2009 the applicant pled guilty
to trafficking cocaine and trafficking cocaine
within proximity of a playground. The applicant
was sentenced to twelve years for each to run
concurrent. Mrs Janna Nelson was the attorney
for the applicant.

October 2009 the applicant arrive at
Trenton CI feeling Mrs Nelson representation fell
below an objective standard of reasonableness
and he was prejudiced by such a deficient
performance. After going to the law library
the applicant learned that Mrs Nelson failure
to articulate a Fourth Amendment would be
grounds for ineffective assistance of counsel, but

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Mr Landron would have to show that his claim is meritorious and his plea would have been different absent the evidence Kimmelman v Morrison 91 Led 2d 305.

From October 2009 to August 2012 Mr Landron couldn't find any merits to support his claim of ineffective assistance of counsel. Whenever Mr Landron would find a case in the South Carolina or South Eastern Digest on 4th Amendment or ineffective assistance of counsel, he wasn't able to sit down and study the case. The South Eastern Reporter were limited at Trenton the only volumes were 374-577. I would go to Mrs Glenn who was the person in charge of the library and ask her about getting copy of the cases. I was told that it isn't possible. I was told that the only cases that was going to be available to me was the ones the library already had.

August 2012 the South Carolina Department of Correction put computers in the libraries of level two and level three institutions. With the help of these computers I was able to find the merits I need to file a proper PCR. The volumes I needed were 188, 623, 682, 694, 698 and 722.

The merits to support my grounds of ineffective assistance of counsel were the mere perfunctory representation by Mrs Nelson didn't satisfy the Constitutional rights of the applicant Taylor v. State 188 SE2d 850

The purpose of the Constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his and constitutional right. Cruz v. US 347 F. Supp 835

In order for an anonymous tip to justify an investigatory stop its reliability must be verified. an anonymous tip can provide the basis for an investigatory stop if the officer conducting the stop verifies the tip's reliability by observing the suspect engaged in criminal activity. In order to rely upon an anonymous tip to effectuate a stop, Tip must demonstrate knowledge of concealed criminal activity. Wealth of experience will not over come a complete absence of facts. State v Taylor 694 SE2d 60; State v. Robinson 722 SE2d 820.

The 911 caller never reported any criminal activity. She only reported that she was concerned about a black male sitting in a car in a store parking lot. Upon arrival the officers only observe two males in a car exiting the parking lot.

After the traffic stop the officer reported that the driver was extremely nervous. Being nervous in front of officers alone doesn't justify reasonable suspicion. State v. Rivera 682 SE2d 307 State v. Pichardo 623 SE2d 940; State v. Tindall 698 SE2d 203

Captain Atkins asked the driver for his licence, registration, and proof of insurance. The driver provide him with all the proper paperwork.

Captain Atkins asked the driver can he search the vehicle. The driver gave the officer no consent, so the officer said that due to the nature of the call that he was going to pat down for weapons.

The officer over stepped their boundary because reasonable suspicion didn't exist that we were engaged in criminal activity nor did the officer reported we poses a threat to their safety or the safety of others.

Mrs Nelson was ineffective because I express my concern about the traffic stop being unlawfully.

II

September 18, 2012 is when I file my PCR application and alleged I was being held unlawfully because of the following reason:

- ① Based on the collective surrounding facts and circumstance of my charge and Counsel inaction, heavy case load and lack of knowledge pertaining to my defense lead to my wrongful conviction

The facts to support my grounds was the following reason:

- Ⓐ Trial counsel failed to properly investigate the case in which there was a clear violation of my 4th Amendment.

The Respondent filed its Return and Motion to Dismiss on October 30, 2012. The Respondent alleged that the applicant was past the one year limitations set by the filing Procedures of the Uniform Post Conviction Procedure Act SC Code 17-27-10 to -160

The Honorable Frank R Addy Jr filed a Conditional Order of Dismissal on November 19, 2012

The week of November 19, 2012 the applicant was moved from Trenton CI to Livesay B Correctional Institution. Once at Livesay CI the applicant had to make a request to go to the law library at Tyger River CI because Livesay CI didn't have a law library. By the time the applicant

was able to go to the law library at Tyger River the 20 days to respond to the Conditional Order of dismissal was up.

January 25, 2013 Judge Addy denied and dismissed the application with prejudice

The applicant timely served and filed an appeal. The South Carolina Supreme Court filed an Order dismissing my appeal on March 15, 2013 because I didn't respond to the Conditional Order of Dismissal

The Remittitur was sent on April 2, 2013

I filed a Habeas Corpus in the United State District Court for the District of South Carolina. Summary Judgment was granted in favor of the Respondent on December 16, 2013

III

While the applicant was at the Tyger River law library, the applicant had access to the Federal Reporter 3d. The Federal Reporter wasn't at Trenton CI, the computers at Trenton only allow access to cases in South Carolina. The Federal Reporter 3d allowed the applicant to gather more merits of ineffective assistance of Counsel.

The applicant has file a PCR on the grounds of Newly Discovered Evidence of ineffective assistance of Counsel based on the evidence the applicant found while at Tyger River CI.

Mrs Nelson was ineffective for failing to seek suppression of drug evidence that was only basis for prosecution for trafficking cocaine.

Counsel knew that the officer had stop defendant based solely on nonpredictive anonymous tip and should have known that illegal stop rendered inadmissible cocaine evidence seized during search incident to arrest that flowed from stop Northrop v. Trippett 265 F3d 372.

Justice white held that except in these situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check license and registration of the automobile are unreasonable under the 4th Amendment Delaware v Prouse III 99 S.Ct 1391

The officers did not have reasonable suspicion for investigative Terry stop when they receive fleshless anonymous tip of a male sitting in a car. That provides only readily observable information, and they themselves observe no suspicious behavior. Caller contained no details of defendant's future actions. Officers had no basis for assessing either reliability of caller or grounds on which caller believed that crime was being committed. US v Roberson 90 F3d 75

The callers concern of a male sitting in a car does not show that the caller had knowledge of concealed criminal activity as would establish reasonable suspicion to warrant an investigative Terry stop. The reasonable suspicion at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Law does not free law enforcement officials from all restriction concerning vehicle stops; rather it imposes two requirements: first, reasonable suspicion of illegality must not be based simply on subjective belief but must be supported by articulable and objective facts; and second, the stop must be brief.

Because an automobile stop is considered a seizure of a person it must be justified by probable cause or a reasonable suspicion based on specific and articulable facts of unlawful conduct.

IV

The Respondent filed a motion to dismiss claiming the applicant current PCR application is successive to the previous application for Post conviction relief.

The applicant allegations that he is being held unlawfully are the same in the second PCR application as they are in the first. The applicant grounds in the first application are Ineffective assistance of Counsel. The second application grounds are Newly Discovered Evidence of ineffective assistance of Counsel.

The only different is the facts supporting each ground. The facts supporting the first application was discovered while I was a Trenton Correctional Institution, when the computers were put in. The facts supporting the second application was when I was able to go to Tyger River Correctional Institution, where I was able to read the Federal Reporter 3d.

My grounds are not different so my second application isn't successive. My second application is well within the boundary of S.C. Code 17-27-90

V

The applicant will like for the court to dismiss the Respondent's Motion for Summary Judgment and grant the applicant a Post Conviction Relief Hearing

Respectfully submitted

Tyri Landron #309930

Tyri Landron

May 2014

Sworn to and subscribed before me

this _____ day of _____, 2014

Notary Public for South Carolina
My Commission expires _____