

State of South Carolina)
County of Greenville)
Phillip Antonio Byrd #281812

v.

State of South Carolina

In the Court of Common Pleas

2010-CP-23-2761

Motion to Alter or Amend

Judgment Pursuant to Rule 54(c)

Petitioner Phillip Antonio Byrd moves the court pursuant to Rule 54 of the Federal rule of civil Procedure, for Alter or Amend Judgmentation of its denial of Post-conviction Relief. The order denying PHILLIP BYRD'S Petition for Post-conviction relief amounts to clear error and a Manifest injustice for the following reasons and thus shall be reversed:

- 1.) The court's order fails to sufficiently address the issues raised at hearing regarding the Trafficking Charge case No. 06-8710, and ABWITK case No. 08-0239. At the hearing Petitioner argued that he informed counsel he was guilty of Trafficking offense dated January 11, 2008, not the Trafficking offense 06-8710. Petitioner argues that counsel was ineffective for rendering erroneous advice, giving Petitioner the presumption that he was pleading to a 2008 trafficking charge not the trafficking offense 06-8710. Also Petitioner argues that counsel was ineffective for failing to investigate. At the hearing Petitioner argued that after his conviction he received his Rule 5 and discovered a eyewitness statement describing another individual as the party to a ABWITK that counsel advised Petitioner to Plea to. The courts failed to address or rule upon these issues of trial counsel ineffectiveness and Petitioner's Involuntary Plea. For this reason the motion to alter or amend judgment shall be granted upon trial counsel's ineffectiveness in which resulted in a Involuntary Plea.
- 2.) The court's order erroneously finds that counsel was effective, at hearing trial counsel testified he did not go over all charges, elements, and possible sentences with Petitioner (P.C.R. Tr. Pg. 22, L. 1-12) thus Petitioner was not aware of to what he was pleading to; thus making counsel performance below reasonable norms. At the hearing Petitioner testified that he was forced to Plea because the courts said if he did not Plea to the charges before him then they would take him to trial on the charges he wanted to Plea to (P.C.R. Tr. Pg. 17, L. 25, Pg. 18, L. 1-9) The motion to Alter or Amend judgment shall be granted and the Petitioner for Post-conviction relief should be granted on this case.
- 3.) The court's order erroneously finds that counsel was effective when counsel failed to contact Alibi witness. At hearing counsel testified that he had not tried to contact Petitioner's Alibi witness (P.C.R. Tr. Pg. 22, L. 16-20 Pg. 23, L. 1-6) Counsel failed to discover this evidence by failing to investigate and by giving Petitioner erroneous advice rendering Plea Involuntary. The courts have produced a ruling that the failure to make "reasonable effort" to procure testimony of Alibi witnesses constituted deficient performance. The motion to Alter or Amend judgment shall be granted and the Petitioner for Post-conviction relief shall be granted on this case. Also see P.C.R. Tr. Pg. 30, L. 9-13

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4) The court's order is erroneous by finding that Applicant failed to produce any evidence that plea counsel rendered improper or inaccurate advice. At hearing Petitioner introduced letters written by trial counsel informing him plea was for Trafficking case from January 2008 (P.C.R. Tr. Pg 11 L. 7-16. Pg 15 L. 3-23) Trial counsel was ineffective for erroneously advising Petitioner that he would plea to trafficking not 00-8710 trafficking charge. The motion to Alter or Amend Judgment should be granted and the Petition for Post-conviction relief should be granted on this issue.


5) The court order is erroneous by finding that Petitioner failed to introduce the Arrest Warrant and Co-Defendant's Statement. At the hearing Petitioner introduced statements and Arrest Warrant as evidence showing that Affidavit was false in which officers used to procure arrest Warrant (P.C.R. Tr. Pg 7 L. 14-25; Pg. 8 L. 1-22) et so Pg. Tr. 29- L. 1-25. Pg. 30 L. 1-7) The motion to alter or Amend Judgment should be granted and the Petition for Post-conviction relief should be granted on this issue.

6) Finally the court's order is erroneous by finding that counsel was effective. At the hearing Petitioner testified that in a photo line up only one picture of Petitioner was shown for identification purposes. This procedure was highly prejudicial and cause for irreparable misidentification and counsel clearly failed to render effective assistance of counsel by advising Petitioner to plea. The motion to Alter or Amend Judgment should be granted and the Petition for Post-conviction relief should be granted on this issue.

7) Byrd incorporates herein all legal theories and arguments contained in its previously filed Petition for Post conviction relief Supplemental Petition for Post-conviction relief and memorandum in support thereof.

Wherefore the Petitioner respectfully requests that this motion to alter or amend Judgment be granted. This motion is based on the pleadings and discovery herein. The applicable law and the arguments previously set forth at the hearing held in this matter.

October 6 2014
Ridgeway S.C.


Phillip Byrd #28181d
LCDR P.O. Box 205
Ridgeway S.C. 29472
A/B #35

State of South Carolina
County of Greenville
Phillip Byrd #281812

In the Court of Common Pleas
2010-cp-23-2961
Certificate of Service

v.
State of South Carolina

I do hereby certify on This 6 day of October, 2014
~~That~~ That a copy of the Sure going motion to Alter or Amend
Judgment Pursuant to rule 54(c). were served by depositing
copies of the same in the United States Mail Postage Prepaid
addressed to counsel as follows:



South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

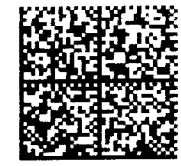
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