

1.

State of South Carolina
In the Supreme Court

Certiorari to Greenwood County

Eugene C. Griffith, Circuit Court Judge

Zachary F. Phillips

PETITIONER,

vs.

State of South Carolina,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI
PRO SE BRIEF

APPELLATE CASE NO. 2014-000646

RECEIVED

OCT 27 2014

S.C. SUPREME COURT

2.

TABLE OF CONTENTS

TABLE of contents	1
Issues Presented	2
STATEMENT	3
QUESTIONS PRESENTED	4
CONCLUSION	5
CERTIFICATE of SERVICE	6
Summary of Facts	7

ISSUES PRESENTED

I. PROSECUTORIAL MISCONDUCT:

A. The petitioner contends that Greenwood County Police acting on behalf of and in accord with the state, sought unlawfully to seize petitioner and by doing so violated the statutory laws enacted by the legislature of this state.

II. COURT LACKED SUBJECT MATTER JURISDICTION DUE TO DEFECTS IN THE INDICTMENT AND WARRANTS.

III. INEFFECTIVE ASSISTANCE OF COUNSEL.

A (A.) Petitioner contends he was denied effective assistance of counsel when counsel failed to correct false and misleading testimony by prosecutor. Trial counsel was ineffective and prejudiced petitioner where counsel failed to move upon trial court to quash indictments on grounds that judge never signed warrant which denied due process of law.

B (B.) Appointed counsel failed to investigate the illegal search and seizure obtained by the use of falsifying evidence to an unconstitutional search and seizure. False imprisonment and conviction was obtained through use of false evidence by prosecutor. Counsel was ineffective when failed to investigate and move to object to chain of custody of confiscated vehical where "acid" drugs was later supposedly found after vehical had been thoroughly

4.

searched twice in petitioner's presence where no drugs were found.

C. (c.) Counsel failed to raise a motion of insufficiency of evidence used by court to obtain a conviction. Trial counsel was not effective in allowing state to process petitioner as a second time offender to trafficking.

D. (d.) Counsel was ineffective when failed to object to lack of preliminary hearing.

Statement

Petitioner Zachary F. Phillips pled guilty to Trafficking Crack Cocaine, 2nd offense and PWID marijuana, 3rd offense in Greenwood county on May 17, 2011. The Honorable Eugene C. Griffith sentenced the Applicant to confinement of fifteen years for each charge to run concurrently. Petitioner filed a motion to reconsider his sentence which was granted on July 13, 2011. Judge Griffith resentenced petitioner to twelve years for each charge to run concurrently.

A timely PCR was filed and PCR defender Tommy Stanbee, Esquire represented petitioner. PCR was dismissed with prejudice. A timely notice of appeal was filed by appellate defender Robert M. Pachal where-as he submitted "no merits" appeal and moves to be relieved as counsel.

Thus the petitioner has exercised his privilege to file and serve pro se brief on his own behalf as follows:

Zachary B Phillips

Questions Presented

1. Did Greenwood County Police Department act unlawfully in their seizure of petitioner?

Petitioner declares that G.C.P.D. NEVER had probable cause to pull him over where car I 827272 I 827271 warrants used to blue light him was dismissed and never became documented files in general session. Petitioner further stated that hadn't G.C.P.D. unlawfully seized him and further injustice wouldn't of been done.

2. Did Greenwood County Court lack jurisdiction to prosecute petitioner?

Petitioner declares that indictments for drugs/mon/pass sch 1,2,3,4 (I 827284) and trafficking (I 827286) never received signature of a judge to be served on me or incarcerate me which violated my due process of law as well subject matter jurisdiction statutes.

3. Was petitioner afforded effective assistance of counsel?

7.
Conclusion:

Petitioner prays that this honorable court would vacate / remedy guilty plea and remand to the trial court for further proceedings as the solicitor may choose appropriate to ensure justice is served in this case

I swore & subscribed to before me,
this 22nd day of October 2014.

Elaine M. Freeman

Notary Public For South Carolina

my Commission Expires: June 22nd, 2021

Zachary O. Phillips
Zachary F. Phillips, Petitioner

State of South Carolina,
IN THE STATE OF APPEALS

8.

Appeal from Greenwood County
THE Honorable Eugene C. Griffith, Circuit Court Judge.

THE State, Respondent

Zachary F. PHILLIPS, Petitioner

CERTIFICATE OF SERVICE

The Petitioner, Zachary F. Phillips, hereby certifies that he served a true and complete copy of his PRO SE BRIEF developed pursuant to Anders v. California upon the below listed parties, by depositing the same in U.S. mail, postage prepaid, addressed and titled as follows.

Daniel E. Shearouse
Clerk of Court Supreme Court of

South Carolina

Po Box 11330

Columbia SC 29211

I further certify that all parties known to me as required by rule to be served has been served.

Sworn and subscribed to before me
this 22nd day of October, 2014.

Elaine M. Freeman

Notary Public For South Carolina

my commission expires June 22nd, 2021.

Zachary Phillips

Petitioner

Zachary F. Phillips

Summary of Facts 1-9

A. Ineffective assistance of counsel.

B. Ineffective assistance of counsel.

C. Ineffective assistance of counsel.

A. Appointed counsel failed to object to false and misleading testimony by prosecutor.

B. Appointed counsel failed to investigate the illegal search and seizure obtained by the use of falsifying evidence to an unconstitutional search and seizure, false imprisonment and the conviction was by the court and obtained through the use of false evidence by the prosecutor.

C. Appointed counsel failed to raise a motion of insufficiency of evidence use by the court to obtain a conviction.

Counsel was ineffective for failing to file motion to suppress evidence.

The applicants contend that, a crime is defined as having two elements, the guilty act (actus reus) and the guilty mind (mens rea). Due process requires the state to prove every element of a criminal offense beyond a reasonable doubt. State v. Brown, 360 O.C. 581, 602 O.S. 2d 392 (2004) Citing In re Winship, 397 U.S. 357 (1970).

Here, counsel was ineffective for failing to suppress evidence that the state could not prove he was in possession of. Where defense counsel's failure to litigate a Fourth amendment claim competently is the principal allegation of ineffectiveness the defendant must also prove that the Fourth amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent this excludable evidence in order to demonstrate actual prejudice.

Kimmell v. Morris, 106 O.C. 2874.

3

Before a person may be convicted of offenses of trafficking in crack cocaine, state must prove the person knowingly possessed ten grams or more, person mere presence, where drugs are, would not be sufficient to convict without more. State v. Scott, 400 S.E.2d 784, 303 S.C. 360. mens rea requires that defendant, have knowingly or intentionally "engaged in the prohibited activities. U.S. v. Fuller, 162, F.2d 256, certiorari denied 120 S.Ct. 75, 528 U.S. 826, 115 L.Ed.2d 64 conviction of drug possession, requires proof of possession, either actual or constructive, coupled with knowledge of it's presence. (State v. Muhammed, 524 S.E.2d 637, 338, S.C.22

Therefore, base on all facts and laws as stated above it was a reasonable probability that had counsel moved to suppress the substance motion would have been granted all charges against applicant dismissed.

Had I known that there was a reasonable suppress. I would have not plead guilty and insisted on going to trial. See Barker v. Alabama 395 U.S. 238, 243

4
THE SUPREME COURT, MR. CHIEF JUSTICE WARREN, HELD THAT STATEMENTS OBTAINED FROM DEFENDANTS DURING INCOMMUNICATED INTERROGATION IN POLICE DOMINATED ATMOSPHERE, WITHOUT FULL WAIVING OF CONSTITUTIONAL RIGHTS, WERE INADMISSIBLE AS HAVING BEEN OBTAINED IN VIOLATION OF FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION.

PROSECUTION MAY NOT USE STATEMENTS, WHETHER EXCULPATORY OR INCULPATORY STEMMING FROM CUSTODIAL INTERROGATION OF DEFENDANT UNLESS IT DEMONSTRATE USE OF PROCEDURAL SAFEGUARDS EFFECTIVE TO SECURE PRIVILEGE AGAINST SELF-INCRIMINATION. U.S.C.A. CONST. AMEND. 5

Prior convictions

A defendant should not have been sentenced as a second offender under the cocaine cocaine statutes which provided an enhanced sentence for a second offender or one whose first conviction was related to narcotic drugs where his second offender statute was based on prior convictions for distributing marijuana which is not a narcotic drug as defined by 44-53-110, 44-53-470, which provides that an offense is a second offense if the defendant had previously been convicted under a statute relating to marijuana, is inapplicable since, 44-53-375 is both more recent and more specific *Raines v. State* - (S.C. 1992) 307 S.C. 150, 414 S.E. 2d 131.

Florida v. J-L 029 US 266 O.C.T

Held that an anonymous tipster's accurate description of subjects readily ascertainable location and appearance.

"Is not enough to establish that the tipster had knowledge of the target's criminal activity. This police officer must investigate and determine, before determining the target, whether the tip is reliable in its assertion of illegality not just its tendency to identify a determinate person.

Agent Lovett stated he located two clear plastic bags that contained an off white rock like substance believed to be crack cocaine, in a compartment beside the steering wheel. which is considered from me in my view, the vehicle was a rental which meant many people had possession of the vehicle, before me and after me. During the traffic stop agent Lovett and agent Buckman searched the vehicle, not once but they searched it twice on the scene and found no drugs. Agent Lovett and agent Buckman fail to make contact with the person who name was on the bill to rent the car. These agents broke into and searched the vehicle hours later without a search warrant or permission from the person who name was on the bill to rent the car. Again after car was taken back to heartfields car rental. This process took it's placement because car rental owner informed agents that he was out of town for the weekend. From time petitioner was blue lighted car was searched twice towed and sent back to rental car lot breaking chain of custody. A lawful traffic stop can become unlawful if it is prolonged beyond the required time to reasonably complete it's mission.

U.S.C.A. Const. Amendment. 4. State v. moreps, 720 S.E. 2d 462, 395. S.C. 600

MISSOURI VS FRIZ

TO SHOW PREJUDICE FROM INEFFECTIVE ASSISTANCE OF COUNSEL WHERE A PLEA OFFER WAS MADE OR BEEN REJECTED BECAUSE OF COUNSEL DEFICIENT PERFORMANCE, DEFENDANTS MUST DEMONSTRATE A REASONABLE PROBABILITY THEY WOULD HAVE ACCEPTED THE EARLIER PLEA OFFER HAD THEY BEEN AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL, AND DEFENDANTS MUST ALSO DEMONSTRATE A REASONABLE PROBABILITY THE PLEA WOULD HAVE BEEN ENTERED WITHOUT THE PROSECUTION CANCELLING IT OR THE TRIAL COURT REFUSING TO ACCEPT IT, IF THEY HAD THE AUTHORITY TO EXERCISE THAT DISCRETION UNDER STATE LAW. U.S.C.A. CONST. AMEND. 6.

I

1. Antecedent: *Escobedo v. Illinois*, 378 U.S. 478 (1964) formulated rule that "suspects" must be informed of right to remain silent and consult with attorney or confession is invalid.

II

2. Specific warnings required: General standard of voluntariness has been supplemented by requirement that certain warnings must be given accused prior to custodial interrogation.

Miranda v. Arizona, 384 U.S. 436 (1966).

These warnings include:

A. THE RIGHT TO REMAIN SILENT; (B) ANY STATEMENTS MADE CAN BE USED AGAINST ACCUSED; (C) RIGHT TO COUNSEL; (D) RIGHT TO HAVE COUNSEL APPOINTED. *Id.* Such warnings are deemed necessary to preserve both Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel. IF ACCUSED INDICATES DESIRE TO RETAIN COUNSEL, INTERROGATION MUST CEASE UNTIL COUNSEL IS PRESENT. *Id.* AT 474.

MIRANDA WARNINGS ARE NOT INADEQUATE SIMPLY BECAUSE OF ORDER IN WHICH THEY ARE GIVEN.

CALIFORNIA V. PRYOR, 453 U.S. 355, 361 (1981).

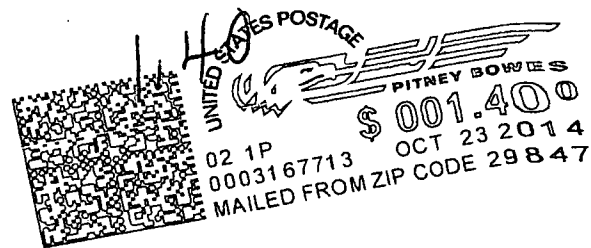
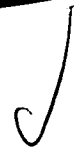
MOREOVER, SUSPECT MAY INVOKE RIGHT VERY EARLY, EVEN DURING RECITATION OF RIGHT BY INTERROGATOR. SEE *SMITH V. ILLINOIS*

ZACHARY F. DILLI DS # 269602

TCI 3 D 52

84 GREEN HOUSE ROAD

TRENTON SC 29847



OCT 23 2014

THE SUPREME COURT OF SOUTH CAROLINA
DANILE E. SHEAROUSE
CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA,
29211