

IN THE SUPREME COURT OF SOUTH CAROLINA
Appellant case No, 2014-001067

JAMAR BELK
appellant

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DEC 22 2014

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA
respondent

Petition for writ of certiorari

statement of the case

On August 19, 2010. A York County grand jury indicted petitioner for murder, armed robbery, conspiracy and a weapons charge. On Oct 4, 2012 petitioner pled guilty before the honorable Micheal Nettles. On Nov 7, 2012 the honorable Lee S Alford sentenced petitioner to concurrent terms of thirty years in prison. petitioner did not appeal. On Sept 30, 2012 petitioner filed a p.c.c. application a hearing was held before the honorable John C. Hayes III. on April 16, 2014 Judge Hayes denied petitioner application. On Nov 5, 2014 petitioner counsel filed a Johnson brief. This petition follows.

Issues presented

Did a conflict of Interest exist where appellant was represented at p.c.r. by the same counsel as his co-defendant.

Did the p.c.r. court err when the court ruled that trial counsel was not ineffective when counsel failed to investigate the alibi witness, exculpatory evidence, co-defendant conflicting statements of my co-defendant and defective arrest warrants.

Did the p.c.r. court err when the court ruled my trial counsel was not ineffective failed to prepare my case for trial when I wanted to go to trial.

Did the p.c.r. court err when the court ruled to challenge the delay of my indictments, or my denial of my right to a speedy trial.

Counsel was ineffective when he lied about a statement that was supposed to have been written by appellant.

Counsel was ineffective when he failed to inform appellant of his right to an direct appeal nor did counsel file the direct appeal.

Did the p.c.r. court err when the court ruled that trial counsel was not ineffective when counsel failed to investigate the alibi witness.

Appellant informed trial counsel of witness(es) who could testify that appellant was not at the scene of the crime. Had the counsel investigated the alibi witness, Appellant who would have went to trial and the out-come would have been different.

One component of the duty of counsel is to investigate alibi witness identified by the defendant, and failure to make some effort to contact them to ascertain whether their testimony would aid defense is unreasonable. See Walker v. State 756 S.e.2d 144. Counsel's failure to interview appellants alibi witness prejudiced appellant as a element of ineffective assistance of counsel alibi witness testimony. At a minimum counsel has the duty to interview potential witness and to make an independent investigation of the facts and the circumstances of the case.

Trial counsel failed to investigate exculpatory evidence (statement) that co-defendant wrote on my innocence.

Appellant informed counsel of conflicting statements and the lies told to police by his co-defendant.

At a minimum counsel has the duty to interview potential witness and to make an independent investigation of the facts and the circumstances of the case. This is a duty to conduct a reasonable investigation to discover all reasonable available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the state. Had my counsel done any kind of investigation in this matter he would have found that there exist evidence that would tend to prove my innocence. And had he done this investigation he would not have been encouraging me to take the plea and would have went to trial, and the out-come would have been different. See Bagwell V. State 763 S.E.2d 630. Had counsel done my investigation into the conflicting statements he would have been able to impeach co-defendant's testimony at trial. The adversarial process protected by the sixth amendment requires that the accused have counsel acting in the role of an advocate. Appellate's trial counsel failed to conduct a mitigation investigation. See State V. Barnes 753 S.E.2d 545, counsel failed has a duty to undertake reasonable investigation to discover all mitigation evidence. See Taylor V. State. 745 S.E.2d 97, State V. Blakley 742 S.E.2d 29.

Did p.c.c. court err when the court ruled that my trial counsel was not ineffective when he failed to prepare my case for trial, when I wanted to go to trial.

Counsel refused to prepare appellants case for trial instead he kept encouraging appellant to take a plea. His failure to investigate any aspect of my case he was not able to prepare or seek any defense. By not investigating or preparing he was not able to fulfill the role of adversary, appellant suffered prejudiced attributed to counsel deficiencies depriving appellant of due process of Law. Counsel also failed to request a bond hearing, defective indictment or move for a fast and speedy trial.

Counsel lied stating that appellant wrote a statement to the victims family confessing this crime. And this was never proven.

Counsel did not have a strategic reason for failing to call key witness do adequate investigations or prepare this case for trial or file the appropriate motions, counsel failed to subject the prosecution case to meaningful adversarial testing as required by the const Amend 6.

There is a reasonable probability that appellant would have insisted on going to trial had he not recieved the ineffective assistance of trial counsel.

Counsel failed to inform or file the notice of appeal for the appellant as required by law. Counsel never explained to appellant his right to an appeal or file the notice of appeal. counsel was ineffective when he failed to file notice of appeal. See white v. State 208 S.E.2d 35. Even though there is a reasonable basis for trial counsel's conclusion or assumption that defendant is fully aware of his appeal rights. Counsel should not rest upon that assumption, but should make certain that defendant is fully aware of his appeal rights. see robinson v. State 754 S.E.2d 862 Appellant attempted to file a notice of appeal on his own, but because his was not fully aware of the process was unable to

proceed. see attached copy. Had counsel file the notice of appeal, appellant would have been able to the invalid arrest warrants and the issues with the indictments, the out-come of the appellants case would of been different.

Argument

Did a conflict of interest exist when the appellant was represented at p.c.r. by the same Counsel as his co-defendant.

Appellant was speaking with his mother after the p.c.r. hearing discussing what had happened. Appellant told his mother who represented him at p.c.r. hearing and was informed at that time by his mother that MS Leah moody had represented his co-defendant at his p.c.r. hearing also. This was appellant first time hearing about this so he had no way to object to her representing his co-defendant also.

The record at the p.c.r. hearing will reflect that the issues that were raised or concerned the appellant and the fact that his co-defendant had made conflicting statements and those statements went to the heart of the appellant guilt or innocence. MS Leah moody was attempting to shield appellant co-defendant by not asking or going into the facts concerning statements by appellants co-defendants.

There exist a conflict because these co-defendants are pitted against each other. Appellant was harmed in MS Leah moody did not or would not address the conflicting statements made by the co-defendants, had she done so there is a reasonable probability that but for this conflict of interest all of appellants issues would have been addressed at p.c.r. hearing and ruled on.

Conclusion

Counsel failed in his/her duty to protect appellants' due process rights. Had he done his duties the outcome of this case would have been different. This court must order at the least a new p.c.r. hearing where appellant will be afforded a fair and impartial hearing.

Respectfully,
Jonae Bell

