1-14-15

Dear MadamClerk

Enclosed is an pro-se brief of appellant

I am requesting that you and/or your office To please send Certified Copies to all Pertinant and relevant parties and please send me an Copy.

Thank you For your assistance in this matter.

Respectfully Antonio Calloway

C.C. File
Attorney General
Clerk of Court
Pro-se litigant

The State Of South Carolina
In The State Supreme Court

Court Of Common Pleas
Greenville County Courthouse
Hon. G. Edward Welmaker

Antonio Galloway,
Petitioner.

-against-

State Of South Carolina,
Respondent.

Appellate Case # 14-000353

Appellant Pro Se Brief

Antonio C. Galloway / Pro Se
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29010

Question One:

Whether Trial Counsel Was Ineffective for Failure To Submit Documents Showing The Applicant Mental Disabilities?

During Pcr hearing, it was argued that counsel was ineffective for failing to Present mental records showing I had severe mental Problems since childhood. (See Exhibit A.B) Moreover, this document refutes counsel mitigating evidence he Presented to the court that:

> Judge, Antonio is a bright young man. I checked in his academic record Prior to dropping out of school. He was basically a B Student taking normal classes, no behavior Problems other than little mischief. It seems to be the death of his Grandmother kind of spun his life in a bad direction.
>
> App. Pg. 14; lines 5-10

Based on counsel own testimony at hearing, that:

> But most of the information I spoke of came from my discussions with him. He did not have much family support, so -- or anybody else I could really talk to, so most of the information I Gathered about him came from Mr. Calloway.
>
> No. I saw no cause to do that, nor did

I have support to allow for that.

App. Pg 51; lines 7-11; 14-15

Thus, we must analyze each Prong of Strickland v. Washington, 466 U.S. 668 (1984) in same manner as lower court did (App. Pg 59-67)

First Prong Of Strickland:

The court is asked to reconsider whether counsel refusal to hire an expert or conduct a meaningful investigation satisfies Strickland's (1) counsel failed to reasonably render effective assistance under Prevailing Professional norms. Hence, the allegation was made counsel failed to conduct an investigation into my mental capacity, and statements he made at the Plea colloquy were factually inaccurate. Whereas, because counsel did no investigation, he was completely unaware of the report (Exhibit A) totally contradicting his assertions. Likewise if counsel said he derived all of his information from me, then counsel can not claim he was unaware of my mental condition or why my family would be of little or no benefit. See, Wiggins v. Smith, 539 U.S. 510 (2003); See also, Nance v. Ozmit, 626 S.E.2d 878 (2006) When Nance court held that:

> "Noting the holding in Wiggins and concluding defense counsel should have among other things, investigated and Presented mitigating social history outlining defendants troubled childhood and mental illness."
>
> Nance, id at 883 N.8

The court ruling is not supported by Records attached herein, and when the Psychological evaluation is viewed which reads "She is concerned that Antonio is having difficulties in school with reading and comprehension." and test reveal I scored severely below average or below average on the Wechsler intelligence scale for children. The objective test for Strickland was Proven by

me at hearing and when I testified that counsel should have investigated my family history which was available at school as well as family court. (App. Pg 41 lines 9-18) The only reason counsel had no support to do that, is his own failure to go to family court or check my school and obtain these reports for Presentation before court. Such explanation by counsel is below standards and the Wiggins. Nance courts were clear in their opinions, about as herein when counsel is made aware of Potentially credible mental instability of client as well as broken home. The failure to obtain documents or acquire an expert is below standards demanded of counsel in this circumstances. See, Hinton v. Alabama, 134 S.Ct 1081 (2014) Even the Hinton court which quotes Wiggins was based on the same Proposition as case at bar.

2nd Prong Of Strickland:

The court reached an unreasonable conclusion of law when it ruled "This court also finds the applicant has failed to Prove the second Prong of Strickland - that he was Prejudiced by Plea counsel's Performance." (App. Pg 66) Whereas, correct Principle should have been derived from decision in Hill v. Lockhart, 474 U.S. 52 (1985) holding "there is a reasonable Probability that he would not have Pled Guilty and would have insisted on going to trial. Hill, id at 58-59; The facts stated by Per court that "... became the sole caretaker of his Younger Siblings at a Young age." (App. Pg 65) Our reports shows I along with others relied on older sibling, and in fact our Grand Parents Provided food, clothing, shelter as ordered by family court. (Exhibits B. C.) The documents depict an entirely different mitigation outlook, and the evidence would change outcome (App. Pg 41; lines 15-22) and when the Hinton court held counsel was ineffective when counsel failed to hire an expert as in both instances there was a need to

do so. Given the strength of documents attached, these mitigating documents reveal a reasonable probability the state during Plea negotiations would have offered a more favorable Plea Wiggins, id. at 535. Not only was Pcr court wrong for concluding trial counsel presented sufficient mitigating evidence, but it was even more unreasonable for court to conclude counsel conduct an adequate investigation was sufficient herein. Therefore, the lack of investigation was not a trial strategy as counsel testimony reveals, and neither was counsel failure to call expert a trial strategy, but as he said no need to do so (App. Pg 51; lines 14-15) Such conclusion by counsel if based on conversations with me. is clearly unreasonable under Hill second prong.

Failure To Investigate:

My argument, that counsel was ineffective when counsel did not review, education, family and mental history before he advised me to accept Guilty Plea violates Tollet v. Henderson, 411 U.S. 258 (1973) As noted, counsel testified that most if not all of the information he obtained came from me (App. Pg 51; lines 9-11) According to the standards set forth in Tollet. Hill. once counsel failed to obtain documents of my mental stability this Guilty Plea should be rendered involuntary. In case at bar, relying on Tollet for sole Proposition. Trial counsel did not obtain medical records, even after he said that:

> "... I checked in his academic record Prior to dropping out of School."
>
> App. Pg 14; lines 5-7

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The statement during Plea contradicts what counsel said at hearing that:

"No. I saw no cause to do that, nor did I have support to allow for that."

App. Pg 51; lines 14-15 (Ex. A, B, C)

Counsel testimony at hearing undermines Per curiam credibility analysis as it confirms counsel not only did not review his academic record but if he did. There is no way counsel could have missed or was not directed by school officials to school Psychologists. My case is a home removal by DSS authorities (Ex D, E,) during anytime counsel as he says "Read my files" were filled with many "Red flags" for counsel not to have known about my mental instability. Within this file contained a 9/23/2002 report which reads:

On supplemental testing, Antonio's level of adaptive behavior appeared in the below average to severly below average range."

Based on assesment results, Antonio displays a Profile much like a child with a mental disability."

(Ex. A-1 Pg 2)

Thus, in looking at the voluntariness of Guilty Plea and intelligence is not based on a sound choice among other options. As already shown had counsel reviewed file he would not have made decision as he did. (App. Pg 41; lines 15-22) Clearly, an expert was needed in this case based on report of school. This report Provides Plenty of support and impeaches validity of counsel reason for not doing so. A decision to Plead Guilty on advice from counsel, requires counsel conduct a reasonable investigation. Considering counsel said he reviewed my academic record (App. Pg 14; lines 5-7). then taking

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testimony in content it was Given. The Tollet. Hill analysis. was unreasonably applied to facts of case. Under these Prongs set forth in Tollet. court must asses whether these documents Present facts which find it unreasonable not to have an expert hired to evaluate me. Diagnosed with a mental disability. and the fact his educational has not increased according to (Ex. 7.G). The choice of Pleading Guilty was not intelligently. or voluntarily made. a defendant mental disability can render a decision to accept Plea when counsel did not review report or consult with school Psychologists as unintelligent and involuntary after reviewing facts herein. Counsel made a decision not to hire an expert. after reviewing school records. Within these files contained evaluations. one which said his ability to adapt to corrective behavior is below average or severly below average. is another "Red flag" suggesting I'd do anything to fit in with the crowd it was more easier to do wrong thing as opposed to the Right thing. Which could stem from report which says that

"In the area of social interaction/communication skills. Antonio identifies his Printed name. speaks in three or four sentences. and asks simple questions."

His overall level of cognitive functioning appeared in the severly below average. Academically he had trouble achieving at Grade."

Ex. A-1 PG 2

Magnitude of these documents. without testimony of expert is enough for this court to conclude. Counsel actions were unreasonable when at the department of corrections. my educational level is "Special Education" and Lee Correction shows 2nd Grade level (Ex. 7.G) there is no factual or legal basis to find counsel actions reasonable. These

are medical documents, which can be relied upon absent medical testimony in court. Therefore, at hearing and Plea is counsel own admissions which impeached his credibility. Considering state is going to deny it impeaches testimony. when Plea shows counsel Presented mitigation can be characterized as the same as Cullen v. Pinholster, 131 S.Ct 1388 (2011); Yarbrough v. Johnson, 520 F.3d 329 (4th Cir. 2008) So it is conceded by me that counsel did Present mitigation at Plea, but the mitigation did more harm than good as expressed by the court in Pinholster, id. Sears v. Upton, 561 U.S. 945 (2010) where counsel in both instances either overlooked or disregarded information contained in these individual cases and in case at bar. Counsel did not Present an accurate account of my academic, family history. Mental disability stemming from a dysfunctional family is as court in Jackson v. United States, 638 F. Supp. 2d 514 (W.D.N.C. 2009) said that:

> "Evidence about the defendants background and character is relevant because of the belief long held by this society that defendants who commit criminal acts that are attributable to disadvantaged background may be less culpable than defendants who have no such excuse.
>
> Jackson v. United States, id at 547 (quoting; Yarbrough v. Johnson, id, at 340-341

There is uncontroverted evidence, my mother was on drugs and my sister was molested by step-father and Department Of Social Services (D.S.S.) had moved for removal of us from home. Any rejection by the state, trivializes my argument that my actions stem from low or below average on Wechsler intelligence scale for children Given to me by the school. Quite the contrary. In Cullen, Sears the court has required the lower courts to engage an analysis of what was Presented at Plea and if

as herein counsel overlooked critical medical information and school psychologist who could at anytime provided counsel with information he could use at any subsequent trial or plea as mitigation. No reasonable counsel reading my file, could reasonably assess how he saw no need for investigating further when he read the file. Despite him not viewing SCDC files, there is no way within a matter of years to go from a B+ or B student to one scoring as "Special Education" as corrections records show. (Ex. 7.G). Consequently, two times counsel gave evidence which at plea gave information contradicting his analysis of academic records, or per testimony contradicting his analysis of him seeing no need to hire an expert. Thus, the question is not nor is the matter settled simply because as lower court ruled that:

> "... as the applicant has failed to present either mitigation evidence or a mitigation expert."
>
> App. pg 65

The overall question is not whether or what expert would have said, but is centered on whether counsel should have obtained an expert. With documents attached herein, the ruling defies logic and insulates counsel from attacks as this. Neither Jackson, Sears, Cullen courts, demand less than or placed on me a greater burden to bear other than what has already been established by law. See, United States v. Roane, 378 F.3d 382 (4th Cir. 2004); Winston v. Kelly, 592 F.3d 535 (4th Cir. 2010) There are numerous files counsel did not obtain, as a report from Pendleton Place was done based on DSS removal, DSS reports, DJJ reports. Any investigation would be extensive, and not as short as counsel did in ob-

taining information he Presented. inter alia, counsel did not read my academic file. Without viewing other half of record. similarly, since case was turned over to the school Psychologists then according to school Policy any authorities to have file reviewed was and must be referred to the schod Psychologist. What is surprising, however, is the courts analysis regarding whether counsel's facially inadequate investigation Prejudiced me. Although the court appears to have stated the Proper Prejudice standard, it did not conceptualize how that standard applies to the circumstances of this case. Because as noted, counsel Presented some mitigation evidence during sentencing, the court concluded that case can not be fairly compared with those where little or no mitigation evidence is Presented and where a reasonable Prediction of outcome can be made. (APP. PG 41; lines 19-21) A "Tactical Decision" is a Precursor to concluding counsel has developed a "Reasonable" mitigation theory in a Particular case. Second, and more fundamentally, the court failed to apply the Proper PreJudice inquiry. Courts have never limited the PreJudice inquiry under Hill. Tollet to cases in which there was only "little or no mitigation evidence" Presented. True, courts have considered cases involving such circumstances. Wiggins, id at 515-516, and in Wiggins court explained that there is no PreJudice when the new mitigating evidence would barely alter the sentencing Profile Presented to the court. But courts have found deficiency and PreJudice in other cases in which counsel Presented what could be described as a superficially reasonable mitigation theory. See, Rompilla v. Beard, 545 U.S. 374 (2005) Porter v. McCollum, 130 S.Ct 447 (2009) When counsel

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attempted to blame my bad acts on Grandmother death and a caretaker of his Younger siblings. when report from DSS reveals an entirely different Picture than what counsel told court and either it was intentional or inadvertent is a Question counsel can answer. His failure to discover significant mitigation relating to my mental health that came to light at hearing. Moreover. counsel also failed to investigate co-defendant redacted statement (Exhibit PG 58) as testimony from me reveals that:

> "Mr. Poser let me listen to an interview with an investigator and his lawyer that was interviewing him stating why did he recant and take back his statement? He said they asked him was You forced by anybody. did he force You or did he send anybody else to force You? He told them no. I didn't. And he said for the simple fact he didn't want to see me Get no time for nothing I didn't do"
>
> App. PG 48; lines 7-14

When counsel heard this statement. it was his duty to adequately inform me of the impact such statement would have at trial. But instead of doing so, it is my contentions counsel instructed me to Give a statement and testify against my co-defendant should he decide to Go to trial (App. PG 49; lines 6-12) Counsel actions show he failed to consider. the low mental capacity of his client when it is clear. That a Person who has a far below average of comprehension. will realistically take longer for him to comprehend than average Person(s) in my age Group as mental examinations show. Similarly. counsel is fully aware of fact that Mr. Seymour might not Go through with his testimony as counsel said at hearing that:

> A: What we did discuss is Mayer still offered him a chance to cooperate because he was not sure Mr. Seymour would Go through with his cooperation and Plea."
>
> App. PG 55; lines 5-7

Therefore, the Plea, confession is involuntary as a matter of law. As it was obtained basically from someone who was retarded, which can be supported by authentic medical reports. Similarly, it must also be noted that co-defendant Gave Police false information, when he told Police about someone named Mike and then subsequently thereafter told them I was with him. Now days before Plea with his counsel Present tells investigator, that I had nothing to do with crime. However, instead of counsel advising me not to accept Plea, my counsel told me or as he said at hearing that:

> "... So I did advise Mr. Calloway at that time if he was going to, in fact, enter a Plea, it would be best to cooperate and help Put him in the best light Possible in front of the court."
>
> App. Pg 55; lines 9-13

Considering testimony in its Proper context, a Person such as myself with a low comprehension level would realistically interpret this to mean confess to crime so court could be lenient on him. What counsel did was coerce me into not only giving a statement, but Plead Guilty to a crime and or charge he knew state had no evidence. Moreover, the Plea was not based on an intelligent decision because a reasonable Probability exist, counsel did not contrary to lower court decision Properly investigate this case, inter alia, due to this inadequate investigation by counsel. There is no way an informed decision can be made about all options, when no investigation took Place and such evidence is contradicted by medical documents. Under Hill, no counsel would tell his mentally retarded client what he did and think he would not do so (App. Pg 55; lines 5-13). conversely, it is also unreasonable based on my medical reports for counsel to think I can

be of assistance to him and it is therefore unreasonable for him to spend such a short Period of time explaining on as he said cooperating with the state for a favorable deal.

Wherefore, it is Prayed court Grant Writ.

Date: 14 day of January, 2015.

Respectfully Submitted:
s/ Antonio C Calloway
Antonio Calloway / Pro Se

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