Rodney Thompson #345452
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January 21, 2014

Honorable Brenda F. Shealy
Chief Deputy Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re: Rodney Thompson v. State
Appellate Case No. 2014-001171

Dear Ms. Shealy,

Please find enclosed for filing the original of Petitioner's Pro se Johnson Brief.

As I was not instructed, niether counsel of record has been served. I trust this brief comports with the South Carolina Appellate Court Rules. Should there be an omission or other problem, please notify me immediately.

Thank you for your assistance in this matter.

With kind regards, I am,

Sincerely yours,
x Rodney Thompson
Rodney Thompson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lancaster County
J. Ernest Kinard, Jr., Circuit Court Judge

RODNEY THOMPSON,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-001171

PETITIONER'S PRO SE JOHNSON BRIEF

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ISSUE PRESENTED

Did defense counsel provide ineffective assistance of counsel, in derogation of petitioner's rights under the Six Amendment to the United States Constitution, by failing to advise petitioner that petitioner's statement was obtained in violation of petitioner's right pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article One, Section Twelve of the South Carolina Constitution due to petitioner's inability to knowingly and voluntarily waive his rights in light of his drug use and the deception employed by the police, thus, render petitioner's guilty plea involuntary and unknowing?

STATEMENT

Petitioner was indicted at the June 24, 2010 term of the Lancaster County Grand Jury for the offense of murder. App. 86-87. He appeared on March 28, 2011 before the Honorable Brooks P. Goldsmith. Michael Lifsey represented petitioner. Douglas Barfield was the solicitor. App. 1.

Solicitor Barfield told the judge that Petitioner was pleading guilty to the offense of voluntary manslaughter, and "the negotiated sentencing agreement is 20 to 30 years." App. 3, 11. 1-8.

Petitioner told the judge he was forty-two years old, and that he had been treated for his addiction "to crack cocaine and all kinds of drugs. I went to it was like a mental institution in Columbia and, then they sent me to a drug rehab place after I left the place and I just completed my time down there, did everything they told me to do." App. 4, l. 23 - 5, l. 8.

Petitioner told the judge that he completed the treatment and then got back to the same thing. Just got a real bad drug problem and addition to the drugs. App. 5, ll. 12-14.

In his factual assertions justifying the guilty plea the solicitor said petitioner had been involved in a dispute with the decedent. The solicitor maintained that petitioner entered the decedent's home -- "we don't allege that Thompson busted the door open..." and he shot the decedent with a .22 caliber pistol. The solicitor maintained that there was more than a five or ten minute interval between the altercation with the decedent, and petitioner returning to shoot the decedent. App. 6, l. 7 - 9, l. 23. As will be seen infra, petitioner said the decedent threatened to hit him with a pipe simultaneously with the decedent's threat to kill him.

The solicitor also said that the police officer who procured petitioner's confession to shooting the decedent "grew up together" with petitioner, and he was able to get petitioner to tell him what actually happened. Gunshot residue was also found on petitioner's clothes after the police obtained a search warrant after petitioner's arrest for clothing in the custody of the jailers at the detention center. App. 9, l. 22 - 10, l. 13.

Defense counsel Lifsey said his main concerns before trial were the admissibility of petitioner's statement, App. 15, ll. 11-12. And that we did have a challenge to the admissibility of the statement, it's my[Mr. Lifsey] belief that we ultimately would have lost those challenges at a Denno hearing and the statement would have been admitted. App. 15, ll. 13-16.

Judge Goldsmith sentenced petitioner to twenty-four years of imprisonment. App. 26, ll. 3-6.

Petitioner filed a pro se application for post-conviction relief (PCR) on January 3, 2012. App. 28-33. Petitioner alleged he was ineffectively represented. App. 30.

To this pro se application for post-conviction relief the State filed a return dated June 25, 2012. App. 35-39. Tristan Shaffer was appointed to represent petitioner. Mr. Shaffer did not amend pro se application for post-conviction relief to include the ground of involuntary guilty plea. An evidentiary hearing was convened on February 4, 2013 before the Honorable J. Ernest Kinard, Jr. Assistant Attorney General Suzanne H. White represented the State. App. 40.

ARGUMENT

Did defense counsel provide ineffective assistance of counsel, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, by failing to advise petitioner that petitioner's statement was obtained in violation of petitioner's right pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article One, Section Twelve of the South Caroling Constitution due to petitioner's inability to knowingly and voluntarily waive his rights in light of his drug use and the deception employed by the police, thus, render petitioner's guilty plea involuntary and unknowing?

The Fifth Amendment's privilege against self-incrimination provides an individual who has been accused of a crime the right to consult with an attorney and to have an attorney present during custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 478-479 (1966).

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." To have introduced a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda. See State v. Pittman, 373 S.C. 527, 656, 647 S.E.2d 144, 164 (2007); State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E. 2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 310, 318, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 625

(Ct. App. 2002). The waiver has two distinct dimensions. It must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986); see also State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010); see also Withrow v. Williams, 507 U.S. 680, 693 (1993)

> Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted). The test requires consideration of "totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." Dickerson v. United States, 530 U.S. 428, 434 (2000) (citations omitted). Consideration of a person's mental capacity is an important factor in determining

whether a statement to police was voluntary. State v. Callahan, 263 S.C. 35, 41, 208 S.E.2d 284, 286 (1974) (citing State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965).

The PCR court, failed to apply the penultimate totality of the circumstances test to determine whether the confession was involuntary or coerced, as set forth in Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Had the PCR court applied the "but for" test, enunciated in Malloy v. Hogan, 378 U.S. 1, 7 (1964), in relation to Petitioner's being under the influence of or the withdrawal from long term drug use before waiving his rights under Miranda v. Arizona, had petitioner been properly advised and had elected to go to a jury trial, the statements could not have been admitted.

Petitioner suggests that the drugs inhibit a valid waiver of the Fifth Amendment privilege against self-incrimination. An analysis of United States Supreme Court precedents related to this issue should be determinant here.

In Schneckloth v. Bustamonte, 412 U.S. 136 (1973), the Court held "except where a person is unconscious or drugged or otherwise lacks the capacity for conscious choice, all incriminating statements... are voluntary..."

Even though the Court in Colorado v. Connelly, 479 U.S. 157 (1986) held "a defendant's mental condition, may be a 'significant' factor in the 'voluntariness' calculus," it did "not justify a conclusion that his mental condition, by itself" should ever "dispose of the inquiry into the constitutional 'voluntariness,'"; the facts in dicta of Connelly illustrate the basic human quest for a will being overborne where, bewildered by Connelly's confession, the officer asked Connelly if [he] had been drinking or taking any drugs. Id. at 160.

Petitioner's drug-induced psychosis or withdrawal from long term drug use [crack-cocaine, powder cocaine and MDA] and his trust of the police officer that he had known all of his life as they we raised up near each other, destroyed his voilition and vitiated his waiver of the privilege against self-incrimination. The detective here knew petitioner and of petitioner's long term drug use and neither the plea judge, the PCR court nor defense counsel or PCR counsel, focused on the correlation as to whether the drugs alone or combined with petitioner's trust of police officer, rendered the statement a product of petitioner's rational intellect and freewill. Petitioner's trial testimony as well as his PCR testimony was the signal flare to both the plea court, PCR court and defense counsel and PCR counsel — "the use of cocaine, as with any other psycho-active substance as well as the withdrawal from same, has the potential to affect a person's judgment."

In Connelly, the court-appointed psychiatrist testified that Connelly was not capable of making a "free decision with respect to his constitutional right of silence," id. at 169. Compulsion existed in the mind of the detective who knew petitioner and of his long term drug use and this withdrawal from a psychoactive drug (crack-cocaine, powder and MDA) with well documented side effects encompassing delusions and paranoia. Certainly, once the custodial relationship was established by placing petitioner in handcuffs and arresting him, the questioning assumed a presumptively coercive character as well as deceit when officer known to petitioner since childhood and trusted questioning petitioner and obtained what actually happened. Miranda v. Arizona, 384 U.S. at 467.

The United States Supreme Court has found confessions involuntary on more than one (1) occasion where a defendant

was under the influence of a drug (Mincey v. Arizona, 437 U.S. 385 (1978); Greenwald v. Wisconsin, 390 U.S. 519 (1968) and Beecher v. Alabama, 389 U.S. 35, 37 (1967) (morphine addict who signed a confession prepared for him)). Similar to Beecher v. Alabama, supra, the statement in the instant case was prepared by the detective for the otherwise educated petitioner.

Indeed, the confession in Townsend v. Sain, 372 U.S. 293 (1968) was obtained by officers who knew Townsend had been given drugs, was held to be involuntary. Id. at 298-299. Townsend suffered stomach pains induced by heroin withdrawal to which a physician administered medication. Townsend then confessed. Id. at 298. The Townsend Court examined "relevant circumstances" that included Townsend's drug addiction, Id. at 308, n.4, and that the confession was obtained by officers who knew Townsend had been given drugs. Id. at 298-299. Where the Townsend detectives did not know what drug the physician administered or its side effects, the detective(s) in the instant case were intimately aware of petitioner under the influence of or withdrawal from crack cocaine and MDA and its particular psychological side effects from long-term usage. This knowledge combined with officer deception of appearing as a friend constituted "police over-reaching."

The coercive police activity which is a necessary predicate to the finding that a confession is not voluntary (Connelly, 479 U.S. at 167) is evident in the knowledge of Detective Billy Hilton of petitioner's very recent drug use and [Hilton] posing as a concerned friend after petitioner's arrest questioning petitioner while he was withdrawing from long-term drug use without an inquiry specific to that drug use or petitioner's state of mind as a result thereof.

This is not new ground in South Carolina and the PCR court and PCR counsel should have taken notice.

In State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992), this Court hear evidence of drug use is incompetent to establish motive for the crime or the state of mind of the defendant where the record does not support any relationship between the crime and the drug use.

In State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990), this Court held that evidence of defendant's crack cocaine use the night before the robbery was admissible as part of the res gestae of the crime.

Where this Court has held that crack cocaine use was admissible as to intent, it follows logically that it must be admissible as to state of mind in the waiver of the Fifth Amendment privilege against self-discrimination.

Had petitioner been specifically advised that he could have challenged his statement in an in camera Jackson v. Denno hearing on the basis of it being rendered involuntary due to his being under the influence of crack cocaine or the withdrawal therefrom and of police deception from officer questioning petitioner and finding out what actually happened because petitioner had known and trusted officer from childhood rendered his statement involuntary as not a product of his free will. And that no reasonable juror would have found petitioner guilty beyond a reasonable doubt absent the statement in question.

An examination of the totality of the circumstances demonstrates petitioner's waiver was unknowing and involuntary. Petitioner admitted to smoking crack cocaine immediately prior to the offense as well as prior to his arrest as well as being a long-term drug addict, within seventy-two

hours of the interrogation.

Had defense counsel correctly advised petitioner that his drug-induced psychosis or withdrawal from long-term drug use [crack cocaine, powder cocaine and MDA] and his trust in Detective Billy Hilton whom petitioner had known since childhood and trusted rendered petitioner's statement involuntary and unknowing as well as his guilty plea involuntary and unknowing, had defense correctly advised him that these facts required the exclusion of petitioner's statement to Detective Billy Hilton.

Petitioner would not have pled guilty but would have have insisted on going to trial had he been properly advised. see Hill v. Lockhart, 474 U.S. 52 (1985).

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

Respectfully Submitted,

Rodney Thompson

Rodney Thompson

This 20th day of January, 2015.

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Inter-Agency

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