

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Presiding Judge

Case No: 2013-CP-40-5121

Rakeem S. Hill Appellant,

S.C.D.C. 355085

v.

THE STATE OF SOUTH CAROLINA Respondent.

INITIAL BRIEF OF APPELLANT

RAKEEM S. HILL

Appellant proceeding Pro se

386 Redemption Way

McCormick, SC 29899

Appellant proceeding Pro se

STATEMENT OF THE ISSUE ON APPEAL

I.

Did attorney/counsel, Mr. Overture E. Walker violate Appellant's Sixth and Fourteenth Amendment Rights to the United States Constitution, in which guarantees Appellant the right to effective assistance of counsel, by failing to interview Appellant's codefendant, Mr. Deion ~~Walker~~ ^{Mitchell}, and further by failing to adequately investigate the two conflicting statements Mr. ~~Walker~~ ^{Mitchell} gave to Law enforcement pertaining to Appellant's involvement in the alleged crimes.

STATEMENT OF THE CASE

Rakeem S. Hill, the Appellant herein, was indicted in Richland County for murder (2010-GS-40-2867) and armed Robbery (2010-GS-40-2869). On April 18, 2013, the Appellant entered a plea of guilty to these offenses, although, Appellant maintained that he was actually innocent of these offenses to his attorney/counsel, Mr. Overture E. Walker. Pursuant to the plea deal, Appellant pleaded guilty to the lesser included offense of voluntary Manslaughter and to Armed Robbery, as indicted, before the Honorable James R. Barber, III. Judge Barber accepted the parties' negotiations and sentenced Appellant to twenty (20) years imprisonment for Voluntary Manslaughter and twenty (20) years imprisonment for Armed Robbery. The sentences were to run concurrently. Appellant requested that Mr. Overture E. Walker, Esquire

appeal the decision, however, Mr. Walker failed to appeal.

On August 28, 2013, the Appellant filed an Application for Post-Conviction Relief (2013-CP-40-2013), alleging that attorney/counsel, Mr. Walker was ineffective for failing to interview his (Appellant's) codefendant, Mr. Deion Mitchell in this case. Appellant further communicated to his (PCR) counsel, Ms. Kristy G. Goldberg that he was actually innocent of the alleged crimes, and has maintained his innocence from the inception of this case. The Honorable J. Ernest Kinard, Jr., presiding judge, denied the application for post-conviction relief, and further dismissed the application with prejudice. See enclosed order, marked as, Exhibit - A. (PCR) counsel for Appellant, Ms.

Kristy G. Goldberg failed to file a Motion to Alter or Amend Judgement pursuant to Rule 59(e), and subsequently failed to appeal the (PCR) judge's order dated February 13, 2015, advising appellant that her representation concluded with the final order of the PCR judge's Final order dated February 13, 2015, although Appellant maintained that he was actually innocent of the offenses of murder and armed robbery, and had requested that Ms. Goldberg file for a Motion to Alter or Amend Judgement pursuant to Rule 59(e) and if the Rule 59(e) motion was denied, to appeal the decision.

see. Letter to Appellant from attorney/counsel Ms. Goldberg, marked as Exhibit-B.

ARGUMENT

I. Attorney / counsel, Mr. Overture E. Walker violated Appellant's sixth and Fourteenth Amendment Rights to the United States Constitution, in which, guarantees Appellant the right to counsel / effective assistance of counsel by failing to interview Appellant's codefendant, Mr. Deion ~~Walker~~ Mitchell, and further by failing to adequately investigate the two conflicting statements Mr. Walker gave to Law enforcement pertaining to Appellant's involvement in the alleged crimes.

A. How the issues arose below

Appellant was indicted at the August 2010 term of the Richland County Grand Jury for Murder (2010-GS-40-2867) and Armed Robbery (2010-GS-40-

2869) Appellant was represented by Overture E. Walker, Esquire. On April 18, 2013, pursuant to a negotiated plea deal, Appellant pleaded guilty to the lesser included offense of Voluntary Manslaughter and to Armed Robbery, as indicted, before the Honorable James R. Barber, III. Judge Barber accepted the parties' negotiations and sentenced Appellant to twenty (20) years imprisonment for Voluntary Manslaughter and twenty (20) years imprisonment for Armed Robbery. The sentences were ordered to run concurrently. Mr. Walker failed to appeal.

From the inception of these allegations being brought against Appellant, he has maintained his innocence to Law Enforcement and Mr. Overture E. Walker, Esquire that, he did not commit these crimes.

No physical evidence implicates Appellant in the crimes of murder and armed robbery against the victim in this case. The statement given by Appellant's codefendant, Deion Leroy Lloyd Mitchell to Law Enforcement on May 20, 2010 was a false and fabricated statement and was clearly in conflict with a subsequent statement given by Mr. Mitchell on May 15, 2014 ~~to~~ to INFO, INC. Investigations. See both ~~attached~~ attached statements, marked as Exhibits - C and D.

Attorney / counsel, Mr. Overture E. Walker failed to investigate and discover potentially exculpatory evidence, in which, prejudiced Appellant by causing him to adhere to the coercing advice of Mr. Walker and ^{plead} guilty

rather than ~~assert~~^{pursue} his absolute right to trial. Mr. Walker persuaded an innocent client, Appellant to plead guilty to offenses that Appellant had maintained his innocence in regards, without exploring any investigation of Appellant's codefendant's statements. Statements that clearly would have altered the outcome in this case.

The two-part standard adopted in Strickland v. Washington, 466 U.S. 668, for evaluating claims of ineffective assistance of counsel-- requiring that the defendant show that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different -- applies to guilty plea challenges

based on ineffective assistance of counsel. In order to satisfy the second, or "prejudice," requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty, and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 56-60.

In the ~~present~~ ^{current} case, clearly defendant meets the requirements held in Strickland v. Washington and further Hill v. Lockhart, in that one (1) - Mr. Walker representation of Appellant fell below an objective standard of reasonableness, by persuading Appellant to plead guilty to offenses that he had maintained his innocence in regards from the inception, and further all evidence collected in the case confirms that Appellant was ~~is~~ actually innocent of the crimes of
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murder and Armed Robbery. Had Mr. Walker adequately investigate Appellant's codefendant statements, he would have discovered that the only reason Appellant's codefendant gave the false and fabricated statements against Appellant was, due to, the state threatening Appellant's codefendant with criminal prosecution of certain offenses and subsequent incarceration. There is clearly a reasonable probability that, but for Mr. Walker's unprofessional errors, the result of the proceeding would have been different.

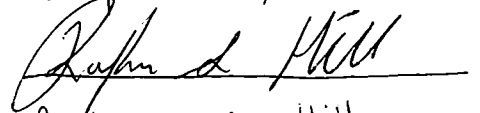
Mr. Walker's incompetence clearly prejudiced Appellant, and had Mr. Walker adequately investigated Appellant's codefendant's conflicting ^{statements} and why he provided ^{those} statements, surely Mr. Walker would have never advised Appellant, who maintained his innocence from

the inception, an innocent man, to plead guilty to offenses he was actually innocent of, there is a reasonable probability that, but for Mr. Walker's errors, Appellant in this case would not have pleaded guilty, and would have insisted on going to trial.

Conclusion

The (PCR) Judge's order dated February 13, 2015, should be reversed. The matter should be remanded for a new trial.

Respectfully submitted



Rakeem S. Hill

McCormick, South Carolina
This 12 day of March 2015

McCormick Correctional Inst.

386 Redemption Way

McCormick, South Carolina 29899

Proceeding Pro se