State of South Carolina

In the Court of Appeals

Christopher William Seabrook
Appellant,

v

The State of South Carolina
Respondant,

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SC Court of Appeals

APPEAL FROM A SENTENCE IMPOSED BY THE COURT OF GENERAL SESSIONS

1. On the date of June 22, 2013 Appellant was arrested in the state of South Carolina, County of Charleston and charged with Possession With the intent to distribute a Controlled substance, Distribution of a Controlled Substance and Possession of A Controlled Substance within half Mile of A school.
2. Appellant was assigned Jason T. King, Assistant public defender for Charleston County as counsel on these charges
3. Appellant made bond June 26, 2013 and was rearrested May 8, 2014 for possession of cocaine base. Appellant again made bail May 9, 2014 but was again arrested May 12, 2014 and Charged with criminal Sexual conduct (1st Degree) and Kidnapping. Jason T. King represented appallant on all counts.
4. Appallant remained incarcerated in the Charleston County Detention Center until May 2, 2015 when Appallant accepted A plea deal and was sentenced to nine (9) years
5. Appallant now Appeals and claims his plea of guilty was involintary due to his Sixth Admendment Costitutional right to effective assistance of Counsel being violated in that :
   (a) Assigned counsel refused to provide appallant with a copy of his discovery on all drug charges, thus, refusing to inform appelant of evidence against him.

(b) Assigned Counsel refused to provide appallant with requested materials to include, but not limited to:

(I) bond hearing transcripts

(II) preliminary hearing transcripts

(III) copy of true bill indictments

(c) Assigned Counsel refused to contact any witnesses who could provide favorable testimony as well as produce evidence on appellants behalf. Due to assigned Counsels refusal to contact witnesses in a timely manner, evidence that could have been obtained, could no longer be obtained due to passage of time.

(d) Assigned Counsel encouraged Appellant to accept plea agreement and coached appelant on how to respond to judges questions about guilt even though Counsel had video bond recording in which victim admitted to lying about incident and requesting that charges be dropped because Appellant did not commit the offenses

(e) Assigned Counsel refused to file any requested motions on Appelants behalf, to include, but not limited to:

(I) Speedy trial

(II) Motion to dismiss

(f) June , 2013 Appellant contacted Assigned Counsel via Jail Kiosk informing him that his address changed from 4509 Ventura Drive to 1831 Dayton Street. Bench warrants were served on Appellant. May 14, 2014 and May 28, 2014 for failure to appear on cases 2013-GS-10-05-010 and 2013-GS-10-05008. According to warraits, appellants new address. As a result appellats scheduled court appearance date was sent to the wrong address causing Appellate to miss court and be issued bench warrant

(g) Assigned Counsel has consistantly refused to maintain contact with Appellant. He has never (not even once) responded to Appellants phone calls, fax, request or phone calls, fax and request from my family, friends and witnesses. Appellant has attempted multiple times to contact counsel to no avail

(h) Assigned Counsel Supplied appelant with plea information that was erroneous. Counsel advised appellant to plead guilty to concurrent plea agreement and appellant would be pleading to Assault and battery 1st degree and drug Charges would be concurrent, thus Appellant would have to only do the Sentence for Assault and battery. Appellant was under the impression that the Criminal Sexual Conduct 1st degree would be dismissed, not that the assault and battery was to be plead as a lesser included offense of the Criminal Sexual Conduct. If Appellant was advised properly, Appelant would have demanded jury trial on all Charges.

(I) Assigned Counsel Also informed Appellant that All the Charges had to be plead on at once per plea agreement and Appellant could not plead to Assault without pleading to All Charges. Appellant was forced to plead guilty on all Counts.

6. Appellant has Contacted D. Ashley Pennington, Circuit public defender on Several occasions to complain about the poor performace of Assigned Counsel, but got no responce. Appellant also states that he is Uneducated in law And legal procedure, however, when he got no responce from D. Ashley Pennington he attempted to file his own motions with the Charleston County Clerk of Court. When Pro Se Motions were filed but never ruled on, Appellant wrote the Supreme Court of South Carolina to complain. The Clerk of the supreme Court responded by telling the Appellant that as long As he was being represented by counsel, all pro se motions will be ignored save a motion to relieve Counsel. Appellant filed A motion to relieve Counsel February 12, 2015 but it was not ruled on by March 2, 2015 when Appellant plead guilty. Since Appellant's motion to relieve Counsel was not ruled on, Appellant felt as if he had no choice except accept plea or go to trial and be convicted because his Counsel refuse to defend him.

7. The Sixth Amendment provides, in pertinent part: "In all criminal prosecutions, The accused shall enjoy the right... to be informed of the nature and cause of

the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." 675 F.2d 1126, 1128 (CA10 1982)

"It has long been recognized that the right to counsel is the right to the effective assistance of Counsel." McMann V. Richardson, 397 U.S. 759, 771 n.14 (1970)

"If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated." United States V. Cronic 466 U.S. 648, 664

Whether A man is innocent cannot be determined from a trial in which, as here, denial of Counsel has made it impossible to conclude, with Any Satisfactory degree of certainty, that the defendants case was adequately presented" Betts V. Brady 316 U.S. 455, 476 (1942)

8. Appellant plead guilty to Assault and battery 1st Degree as a lesser-included offense of Criminal Sexual Conduct 1st Degree. Appellant claims that the trial Court did not have Subject matter juridistion to accept Appellants guilty plea because Assault and Battery 1st degree is not A lesser included offense of Criminal Sexual Conduct 1st degree.

9. Appellant was indicted of Criminal Sexual Conduct 1st degree. Both the caption of the indictment and the title preceding the text in the body of the indictment states that the offense is "Criminal Sexual Conduct 1st Degree."

"A criminal defendant is entitled to be tried only on indicted offenses" State V. Jones, 342 S.C. 248, 251, 536 S.E.2d 396, 397 (Ct. App. 2000). "It is A rule of Universal observance in administering the criminal law that A defendant must be Convicted, if Convicted at all, of the particular offense Charged in the bill of indictment" State V. Cody, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)

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State V. McFadden 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000) states: "The test for determining if a crime is a lesser included offense is whether the greater of the two offenses includes all the elements of the lesser offense" Hope V. State 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997) says "If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense." Also, Knox V. State 340 S.C. 81 530 S.E.2d. 887 (2000) states " If, under any circumstances, a person can commit the greater offense without being guilty of the purported lesser offense, then the latter is not a lesser-included offense."

Assault and Battery 1st degree includes the element of "serious bodily injury" which is NOT an element of Criminal Sexual Conduct 1st degree, thus, it is not a lesser included offense

Anderson V. Anderson 299 S.C. 110, 115, 382 S.E.2d. 897, 900 (1989) says "The jurisdiction of a court over the subject matter of a proceeding is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties and should be taken notice of by the court." Carter V. State 329 S.C. 355, 495 S.E.2d 773 (1998) states "It is well settled that subject matter jurisdiction may be raised at any time, including for the first time on appeal in this court." State V. Funderburk 259 S.C. at 261, 191 S.E.2d at 522 states: "The acts of a court with respect to a matter as to which it has no jurisdiction are void."

The state did not have subject matter jurisdiction to offer Assault and Battery 1st Degree as a lesser included offense of Criminal Sexual Conduct 1st degree. Since subject matter jurisdiction cannot be waved, the acts of the court are void. The Appellant request that the conviction of Assault and battery 1st degree be vacated. And the remaining charges which were part of a plea agreement including this charge, that they also be either vacated or reversed.

3-10-15