

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY

EDWARD W. MILLER, CIRCUIT COURT JUDGE

LARRY D. MILLER

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

RECEIVED

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PETITIONER CONTENDS THAT THE PCR JUDGE ERRED IN FINDING THAT HE RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT

ON SEPTEMBER 9, 2009, PETITIONER APPEARED BEFORE THE HONORABLE G. WELLMAKER IN GREENVILLE COUNTY AND PLED GUILTY TO VOLUNTARY MANSLAUGHTER. A TWENTY (20) YEAR SENTENCE WAS IMPOSED. RANDALL L. CHAMBERS, ESQUIRE WAS PLEA COUNSEL.

PETITIONER FILED AN APPLICATION FOR POST-CONVICTION RELIEF ON MARCH 3, 2010. AN EVIDENTIARY HEARING WAS HELD ON NOVEMBER 9, 2011, BEFORE THE HONORABLE EDWARD W. MILLER. PETITIONER WAS PRESENT AND WAS REPRESENTED BY CAROLINE HORLBECK, ESQUIRE, RESPONDENT WAS REPRESENTED BY KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL, BOTH PETITIONER AND PLEA COUNSEL TESTIFIED AT THE HEARING.

ON DECEMBER 20, 2011, JUDGE MILLER ISSUED AN ORDER DENYING AND DISMISSING PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF.

THIS PETITION FOLLOWS:

ARGUMENT

PETITIONER CONTENDS THAT THE PCR JUDGE ERRED IN FINDING THAT HE RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

MR. R. CHAMBER TESTIFIED AT THE EVIDENTIARY HEARING IN A DIRECT EXAMINATION BY MS. RATIGAU: DID YOU FILE THE USUAL BRADY RULE 5 MOTION FOR DISCOVERY? MR. CHAMBER A. I DID PG. 56 LINES 23-25 DID YOU RECEIVE THOSE ITEMS. THOSE MATERIALS FROM THE STATE? MR. CHAMBER A. I DID PG. 57 LINE 1-3 DID YOU REVIEW THEM WITH MR. MILLER? I DID LINES 4-5 DO YOU REMEMBER WHETHER OR NOT MR. MILLER VIEWED THAT TAPE. HE NEVER SAW THE VIDEO TAPE PG. 57 LINES 22-24 PG. 58 LINES 18-23. DEFENSE OF SELF-DEFENSE. BECAUSE THERE WAS CLEARLY, AT LEAST, POTENTIAL FOR HIM TO HAVE BEEN THREATENED WITH GUN VIOLENCE, I DO RECALL. BECAUSE THERE WAS CLEARLY AN ALTERCATION IN THE CLUB. THEN THERE WAS STUFF IN THE DISCOVERY THAT WOULD HAVE LED IT SELF TO THAT DEFENSE AS WELL. SO HE AND I TALKED ABOUT THAT.

IN THE TTR PG. 16 MR. CHAMBER TO THE COURT: SOLICITOR DID INDICATE THAT WE WERE FREE TO ARGUE FOR LESS. LINES 15-16

COUNSEL MUST ARTICULATE A VALID REASON FOR EMPLOYING A CERTAIN STRATEGY TO AVOID A FINDING OF INEFFECTIVENESS ROSEBORO V. STATE 317 S.E. 292. 454 S.E. AD. 312.313 STOKE V. STATE 308. S.E. 546. 419. S.E. AD 778 "NEGLIGENCE" CAN ONLY BE PREDICATED UPON KNOWLEDGE. ACTUAL OR CONSTRUCTIVE, AND IGNORANCE OF FACTS EXONERATES FROM LIABILITY UNLESS SUCH IGNORANCE IS CULPABLE IGNORANCE WHICH RESULT FROM A FAILURE TO EXERCIZE ORDINARY CARE TO ACQUIRE KNOWLEDGE.

COUNSEL CONFLICT, WHICH CAUSE COUNSEL TO FAIL TO EXPLORE PLEA NEGOTIATIONS MAY GIVE RISE TO SIXTH AMENDMENT CLAIM FOR IN-EFFECTIVE ASSISTANCE OF COUNSEL U.S.C.A. 6. MR. MILLER STATES: THAT HE WAS PREJUDICED BY THAT DEFECTIVE PERFORMANCE OF TRIAL COUNSEL. THAT FOLLOWING PROVISION OF THE RULES OF PROFESSIONAL CONDUCT. RULE 407. SCACR: RULE 1.1 A LAWYER SHALL PROVIDE COMPETENT REPRESENTATION TO A CLIENT. RULE 1.3. A LAWYER SHALL ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING A CLIENT. RULE 1.4 A LAWYER SHALL KEEP A CLIENT REASONABLY INFORMED ABOUT THAT STATUS OF A MATTER PROMPTLY COMPLY WITH REASONABLE REQUEST FOR INFORMATION. RULE 8.4 (A) IT IS PROFESSIONAL MISCONDUCT FOR A LAWYER TO VIOLATE THE RULES OF PROFESSIONAL CONDUCT. AND 8.4 (E) IT IS PROFESSIONAL MISCONDUCT FOR A LAWYER TO ENGAGE IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

THERE WERE NO EVIDENCE OF PROBATIVE VALUE WHICH SUPPORTS THE PCR JUDGE CONCLUSION THAT TRIAL COUNSEL WAS EFFECTIVE