June 8, 2015

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JUN 12 2015
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Supreme Court, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RE: Evette Franklin v. State
Appellate Case No.: 2014-001948

Dear Clerk of Court:

Enclosed, please find for filing an original pro se Johnson Petition for Writ of Certiorari in the above mentioned case. Please file the original and return a stamp-clocked copy to me for my file.

With Kind Regards, I am

Sincerely,

Evette Franklin

Evette Franklin #284514
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUN 12 2015

S.C. SUPREME COURT

Certiorari to Richland County
L. Casey Manning, Circuit Judge

Appelate Case No.: 2014-001948

EVETTE FRANKLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI

EVETTE FRANKLIN #284514
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

PRO SE PETITIONER

ISSUES PRESENTED

Whether the Ciruit Court which decided Petitioner's case lacked jurisdiction?

Whether the PCR court erred in finding Petitioner's guilty plea was knowing, intelligent, and voluntary where plea counsel did not provide him with all of the discovery materials prior to the decision to enter a plea?

ARGUMENTS

The Circuit Court which decided Petitioner's case lacked jurisdiction.

Petitioner was tried, convicted, and sentenced in the Richland County Court of General Sessions. This court lacked jurisdiction to hear and decide Petitioner's case.

Article 3, Section 1 to the United States Constitution states in pertinent parts:

The judicial Power of the United States, shall be vested in one s supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts shall hold there Offices during good Behavior...

This means that the United States Supreme Court has original jurisdicton over Petitioner's case. However, that's not what happened in this case. The Richland County Court of General Sessions therefore, lacked jurisdiction to hear and decide Petitioner's case. Accordingly, Petitioner's conviction, and sentence is void and this Court shall mandate Petitioner's immediate release from custody. **Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (S.C.2001) (The acts of a court with respect to a matter as to which it has no jurisdiction are void)** ; see also, **State v. Guthrie,572 S.E.2d 309 (S.C.App.2002)**

The PCR court erred in finding Petitioner's guilty plea was knowing, intelligent, and voluntary where plea counsel did not provide him with all of the discovery materials prior to the decision to enter a plea.

Petitioner plead guilty to murder base upon the advice of his attorney that there were no viable defense to pursue at trial. However, Petitioner learne after his guilty plea that there were several inconsistency between statements from alleged witnesses that he was not provided with from counsel. Additionally, there were also photos from the crime scene the Petitioner was not provided as well.

At the PCR hearing, Petitioner testified:

Q: Okay. Applicant's Exhibit No.2, the next, what is that document?

A: these are photos of the inside the bar.

Q: **Have you ever seen those before?**

A: **No, ma'am.**

App.p.84, line 9-13.

Q:...Prior to your guilty plea, did you have a copy of your discovey?

A: Yes, ma'am.

Q: Okay. you were able to review the discovery?

A: Yes, ma'am.

Q: Okay. Were--did you have a copy-- were you given the reports from your private investigator?

A: **No, ma'am.**

Q: **So you did not see what the statements told your private investigator?**

A: **No, ma'am.**

Q: **When did you first see those statements?**

A: **This was--I think this was July the 11th of 2013, after I was admitted into the South Carolina Department of Corrections.**

Q: After your guilty plea?

A: **After my guilty plea.**

Q: So what you're telling the Court is that there was an inconsistency in her--the statements to law enforcement and to the private investigator, is that accurate?

A: **Yes, ma'am.**

Q: **And you didn't know about those inconsistency until after your plea?**

A: **Yes, ma'am.**
App.p.89, line 15-App.p.90. line 14

Q: Mr.Franklin, you testified that you didn't know about the witness inconsistencies until after you pled guilty?

A: **Yes, ma'am.**

Q: Had you known those inconsistencies prior to your plea, would you--would it have affected your decision to go to trial?

A: **Yes ma'am.**
App.p.103, line 7-14

Q: Had you received the private investigator statements prior to the plea, would you have wanted a trial?

A: **Yes, ma'am, I would have went to trial.**
App.p.104, line 4-7

Plea Counsel was the only other person who testified at the PCR hearing. She admitted that she did not go over the crime scene photos with Petitioner prior to the guilty plea. **App.p.116, line 6-App.p.117, line 7** Without a full understanding of what could be presented at trial, Petitioner could not have made an informed decision as to whether to go to trial or to plead guilty. **Hyman v. State(Opinion No.27105).** Petitioner testified thart if he had seen the crime scence photos, he would not have pled guily, but would have went to trial because there were a wall in the position were the witness said he was the shooting from. Therefore, there was no possible way for him to have seen the shooting from where he said he was. Even Plea Counsel admitted that there was a wall that was torn down when she went to the crime scene the second time. **App.p.116, line 21**

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. **U.S. Const. Amend. 6; Strickland v. Washington, 466 U.S. 668 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning**

of the adversarial process that the trial cannot be relied on as having produced a just result.'" Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland,466 U.S. at 686). As such, courts evaluate allegations of ineffective assistance of counsel using a two -pronged test. Cherry,300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668). First, the applicant must demonstrate counsel's represntation was deficient, which is measured by an objective standard of reasonableness. Stricland, 466 U.S. at 687-88. "Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Stricland, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Stricland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). In the guilty plea context, the inquiry with respect to the counsel's alleged deficiency turns on whether the plea was voluntary, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Furthermore, "[t]he second, or 'prejudiced,' requirement... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. 52 at 59. Therefore,

> A defendant who enters a plea on the advice of counsel may attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probility that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Holden, 398 S.C. at 572, 713 S.E.2d at 615 (citation omitted). "There is a strong presumption that counsel renered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citation omitted).

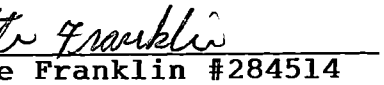
Petitioner did not receive the crime scene photos nor Dave Lawrence's investigation and interviews until after his guilty plea. See, Exhibit (A). This constituent deficient performance. Cleary, Petitioner testified had he seen the photos and the inconsistencies between the statements taking by law enforement and private investigator, Dave Lawrence, before he pled guilty, he would not have pled guilty, but would have went to trial. This constituents prejudiced.

Therefore, the PCR court erred in finding that Petitioner's claim that Counsel did not go over discovery with him is without merit because Counsel obtained discovery from solicitor and went over it with Petitioner. **App.p.137.** The PCR court's finding is not supported by the record. Accordingly, Petitioner conviction should be vacated.

CONCLUSION

Base upon all the foregoing reasons, Petitioner respectfully asks this Court to grant certiorari with the ultimate relief of a new trial.

Respectfully Submitted,



Evette Franklin #284514
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

PRO SE PETITIONER

June 8, 2015
Ridgeville SC

EXHIBIT (A)

RICHLAND COUNTY PUBLIC DEFENDER
RICHLAND COUNTY JUDICIAL CENTER

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2592
FAX (803) 929-6156

July 10, 2013

Mr. Evette Lavae Franklin
Inmate Number: 00284514
Kirkland Reception & Evaluation Center
4344 Broad River Rd
Columbia, SC 29210

Mr. Franklin;

I have received your letter and am filing your appeal. To get a copy of the transcript from the motion to relieve counsel you will need the following information: Judge: Hood, Court Reporter: Karen Ambroziak, Date: June 17, 2013. I am not sure how you go about requesting it or how you may obtain funding for it. I am sending you a copy of your discovery. This includes the warrant, incident report, investigators' notes, case summaries, followup reports, witness statements, autopsy, your statement, driving records, rap sheets, photo lineups, search warrants, CSI reports. I am also including a copy of Dave Lawrence's investigation and interviews. If you would like a copy of the cell phone data/text messages please let me know as it is quite large.

Sincerely,

Joanna K. Delany
Assistant Public Defender

jkd

inter-agency

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The Supreme Court of South Co
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