

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Sowell, Circuit Court Judge

RECEIVED
JUN 19 2015
SC SUPREME COURT

TRAVIS MONTGOMERY BROWN, JR.

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001874

JOHNSON PETITION FOR WRIT OF CERTIORARI

JOHN H. STROM
Appellate Defense

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ATTORNEY FOR PETITIONER

STATEMENT

I.

Procedural History

On April 27, 2011, a Search Warrant ~~JUN 19 2015~~ Executed at 113 Sterling Street Greenville County, house of Petitioner's Sister. Upon Petitioner's sister's boyfriend belated drug Commerce's, that dates March, 18, 2011 (I-3073129) (Case No. 01-2011-011256) An Arrest warrant was obtained for person of Interest "Christopher Charles Todd" The reason for Affiant's belief that the Property Sought is on the Subject Premise, Quot's "A Search Warrant was executed at 112B Taylor Street Greenville County on the date of March, 18, 2011. The Affiant identified Christopher Todd (Petitioner's Co-defendant) as the Subject who Sold the white rock substance to the Confidential Informant and an Search Warrant was executed at the said address, 'within the last 72-hours of the date listed on the March, 18, Arrest Warrant, the Affiant has located the residence of Todd at 113 Sterling Street Greenville S.E. 29601, and conduct a Controlled buy of a white rock substance, present as Crack Cocaine which filed test positive, from Todd at said residence." Exhibit Interest; A (1096), will best Rectify Petitioner's assertion's.

The Affiant Continued to state; "On April, 27, 2011, Investigator Griffin and I received information from a Confidential Informant, that Subject Todd was located at 113 Sterling Street, was said to be his address and that he was also on house arrest the Informant stated Todd was wearing an Ankle

Device commonly worn by individuals under house arrest. I previously investigated Todd for Distribution of a Cocaine base (crack cocaine) and held an Arrest warrant for said offense's.

A. Subjective expectation's is one: When subject had subjective expectation's of not being discovered in any of the drug Commerce's and two: Objective expectation is one that Society recognizes as reasonable. Christopher Todd admission's were witnessed before several Official's shortly after Miranda. State, v Missouri, 337 S.C. 548, 556-557, 524, S.E. 2d. 394, 398 (1990)

B. Where a person has claim of title, he will be presumed to be in possession of everything contained within limits of his deeds. Littleton v. Roberts, 187 S.E. 349, 181 S.C. 303.

C. This amendment, absent exigent circumstances, prohibits any intrusion upon a person's privacy without a prior judicial determination that the intrusion is justified. U.S. v. Burch, D.C. Del. 1977, 432 F. Supp. 961, aff'd 577 F.2d 729. Search warrant must stand or fall solely on the content's of supporting Affidavit, if it is the only matter presented to the issuing Magistrate. U.S. v. Sherwin, C.A. Cal. 1977, 572 F.2d 196, Certiorari 89, S.C.T. 1301, 437 U.S. 909, 57 L.Ed. 2d 1140.

During the execution of the Search warrant, the Official's made several key discoveries in the search related to the investigation. 0.93 grams of Marijuana.

Two bags of debris of rock substance, weighing 5.06 grams scale's, Government marked twenty-dollar bill, the purple rock substance, also located outside room window, and the inextricable warrantee "Christopher C. Todd" all perhaps, located in Room F Sought on exhibit-B(8) compared to the location of Petitioner, "Room A." Room B was found to be where the Pyrex, Fork + Knife were located. However, exhibit-B(9) will best raise the interest thereof, followed by exhibit-B(10) which indicates the complete Anfitness of both accusation against Petitioner. In fact, Proof of Constructive possession of drugs requires showing that accused had knowledge of, and Dominion or Control over either drugs, or premise upon which drugs were found, mere presence in area where drugs are found does not constitute Constructive Possession. State v. Bolton, 457 S. Ed. 2d 616, 318 S.C. 323. Exhibit-B(11) will layout the actual location of ever item seized and of the occupant who occupies the Residence. Exhibit-B(1 of 11) will rectify the intricateness of Assertion(s) that best prove the lack of Chain of Custody, Lack of Subject Matter of Jurisdiction, and of course, lack of probable Cause, to further both Charges (I-43318 Drug/distribution, possession with intent cocaine base 1st) and (I-433121 Drug/Manufactural Cocaine base 1st) upon Petitioner.

IV.

Indictment.

Compare each Supplement report Exhibit's B (2 of 11) with the Affiant's Supplement report located on Exhibit-B(1) and you will find Closure to this investigation that perhaps, points out the only Matter that were brought to the Magistrate "Christopher Charles Todd Illegal Commences," and or belated Offenses dated March, 18, 2011 (Case No# 2011-01-011256) (I-373129) for same Offense which held an active arrest warrant for Mr. Todd (Petitioner's co-defendant). Not only were there any other Confederate mentioned but perhaps, Petitioner's sister (Lindy Brown) were not similarly situated against, do to the type of conduct forming basis of Charge towards Petitioner U.S. v Bustamante, 805 F.2d 201 (6th Cir 1986) Aff'd. Wayne v. U.S., 105 S.Ct. 1524 (1985) Affirmed

Simply because Petitioner had been singled out for prosecution on the basis of some "Invidious Criterion" referred to as an "immutable personal characteristic" such as a mere propinquity coincidentally at the target location, perhaps, charged with a common crime "the Black Race" are highly to participate in. Exhibit-B(10) 2 of 2, points out the contradiction of both Arrest warrant Affidavit's (I-433118) and (I-433121) Exhibit-C(1) and C(2) dated 4/28/2011

Signature of the Affiant, who states Exonerating facts in his Supplement report Exhibit-B(1) 3 of 3, Compared to both defective Arrest Warrant, Exhibit-C(1) (I-433115) and Exhibit-C(2) (I-433121) which withheld the Factual information that were leading out the reliance of it's truth to be replaced with falsity propaganda, leading Magistrate no other reasons but to assume Probable Cause exist. The facts of the matter, is that the Affiant launched an investigation on suspect Christopher Todd, (I-373129) (Case No 01-2011-11256) On the date of March, 18, 2011 Affiant used an Confidential Informant to buy a Controlled Substance from 112B Taylor Street, where he discovered Christopher Charles Todd as the person who sold the white rock substance to the Confidential Informant. Afterwards, Obtained an Arrest Warrant for person of interest "Todd," after some time, the Affiant located the residence of Todd at 113 Sterling Street, a Controlled buy of Crack Cocaine was made once again by Todd at the said address to the Informant, a Search Warrant was later Obtained and executed at the Residence. During the execution of the warrant Officers found Todd in possession of the drugs seized, as well trying to throw the purple rock substance out of the room window. Perhaps, the

VI.

Only drugs present at the scene, were located in Room F, Soughted in Exhibit-B(8) 1 of 1. The threshold Show's important information were withheld from Magistrate to find any "Indicia" of probable cause to further both offenses (I-43318 Drug/distribution, possession with intent cocaine base 1st) and (I-43321 Drug/Manufacture Cocaine base 1st) upon Petitioner. At a Minimum, Show's, Petitioner should had been charged with Drug paraphernalia, if in fact, Statute's and Constitution's were not the case. Instead, on February, 21, 2012, the Greenville County Grand Jury indicted Petitioner for said offense's.

Soughted on Exhibit-E(1) and Exhibit-E(2).

Guilty plea.

Decision to Prosecution may not be deliberately based upon unjustifiable standards such as "Race" "Religion," or other "Arbitrary Classification," including exercise of protected Statutory and Constitutional Rights. *Wayte v. U.S.*, 105 S.Ct. 1524 (1985) Affd.

However,

Possession of Controlled Substance may be actual or constructive. "Actual Possession" occurs when drugs are found to be in actual physical custody of person, while constructive possession occurs when person charged with possession, has dominion or control over either "Drugs or Premise." *State v. Wolfson*, 459 S.Ed.2d 88, 319 S.C. 41,

Throughout the Matter of the Case, Shows the Lack of Subject Matter Jurisdiction, Chain of Custody, and Lack of Probable Cause. Plea Counsel breached her trust of the Contract, while deliberately refusing to withhold to those Ministerial Duties. Undermining the principles of her Clients good faith exception, leading Petitioner Astray of Statutes and Constitution's, while bequiling Petitioner into believing constructive possession applied only to those who were found in possession of the drugs and were prepinguity, Moretheless, the Owner of the residence (Lindy Brown Petitioner's Sister). On December, 3, 2012, Petitioner were Coerced into Plea by Counsel as if her only advise she seen fit. If only Counsel would had procured pertinent discovery within the exact Material, she filed and received proclaiming she reviewed. Counsel would have easily recognized the intricateness of the offense and imbued the strong probabilities before a suppress evidence Judge.

PCR Application and Evidentiary Hearing.

On June, 19, 2014, an Evidentiary Hearing was held before the Honorable Robin B. Spillwell. During the procedures of Evidentiary Hearing, Plea Counsel deliberately Confessed to

Numerous Allegation, (1) Counsel was not aware of Todd's admission's. In response, if Counsel properly investigated with in the Material, Document's and or report's Collected in the Motion of Discovery, Counsel would had first an foremost, Notice Several Official's narrative's of Todd's admission and (2) Plea Counsel recalled that the State's case were based on Cookware and other items used in the Manufacture of Crack Cocaine, and Petitioner's fingerprint's on them. In response, if Counsel independently investigated State's evidence as well scrutinized with in Document's, Material, and or other report's Collected in the Motion of Discovery, Plea Counsel would have recognized, the Subject matter of Jurisdiction were lacking Chain of Custody and probable Cause to further arrest based on (Drug/Distribution, possession with intent Cocaine base) and (Drug/Manufacture Cocaine base). Those discovery's could have raised the terms of Drug Paraphernalia, Simply because those type testings strongly requires scrupulous exactitude in order to determine person of interest, in fact, Forensic Inv. Adam Davis proceed the evidence on May, 20, 2011. Soughted on Exhibit-D (1 of 2)

Plea Counsel also stated at P.C.R Hearing, "She understand what Petitioner is saying about the possession charge and certainly agree with Petitioner."

Argument, Reiterated.

IX.

The PCR Court erred in finding Petitioner knowingly and intelligently plea guilty to a drug offense where the PCR record revealed that defense counsel was not even aware that co-defendant, Christopher Todd, had admitted that the drugs seized from the home of Petitioner's sister belonged to him. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). At a minimum, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Walker v. State*, 407 S.C. 400, 406, 756 S.E.2d 144, 147 (2014) (citing *Strickland*, 466 U.S. at 691).

Involuntary Guilty Plea. Reiterated.

In this case, plea counsel's performance was deficient, as it fell below an objective standard of reasonableness and resulted in Petitioner entering into an involuntary guilty plea. See *Hill*, 474 U.S. at 57-59. Plea counsel should have investigated Todd's admitted ownership of the drugs found in the house he shared with Petitioner's sister. See *Lounds v. State*, 380 S.C. 454, 460 S.C. 646, 649 (2008) (The scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the case).

Accordingly, the PCR court erred in finding that plea counsel's representation was reasonable under "prevailing professional norms" where counsel failed to investigate whether Todd claimed ownership of the crack cocaine. See *Strickland*, 466 U.S. at 687-88; see also *Cherry*, 300 S.C. 115, 386 S.E.2d 624.

Prejudice. Reiterated.

As to prejudice, the PCR Court erred in concluding that "Petitioner has failed to prove... that he was prejudiced by plea Counsel's performance." Petitioner unambiguously stated that he would have gone to trial if plea Counsel had interviewed Todd. See Hill, 474 U.S. at 57-59. At the evidentiary hearing, plea Counsel had no recollection of Todd's confession. Counsel's deficient representation prevented Petitioner from presenting potentially exculpatory testimony and denied Petitioner a full understanding of the charges against him. See Boykin, 395 U.S. at 238.

Accordingly, the PCR Court erred in finding Petitioner knowingly, voluntarily and intelligently plea guilty when "there is a reasonable probability that, but for Counsel's error's, Petitioner would not have pled guilty and would have insisted on going to trial." See Hill, 474 U.S. at 57-59; see also Boykin, 395 U.S. 238.

Proposal Memorandum.

With profound reverence, Petitioner hereby request the Honorable Court of such Omnipotence, take adequate steps that are necessary for finding factual basis with in Merits provided. That are also "inextricably intertwined," with a State Criminal case that already been concluded, reason's being, Petitioner could have challenged the April, 27, 2011 investigation at a state level. Petitioner's good faith exception loused him to believe plea Counsel's advise may had been in his best interest at the time. August, 11, 2014, Judge Stillwell denied Petitioner's application by an Order of Dismissal, while concluding that plea Counsel had adequately consulted with Petitioner and conduct a proper investigation in the case. Although, perhaps the burden of proof were Petitioner's obligation to establish, during the evidentiary hearing, however, were not presented before the Honorable Judge Stillwell. But yet, the rulings were partially in plea Counsel's favor, undermining Counsel's admittance of Deficient performance. Petitioner's failure of presenting merits were

not deliberate based upon promptness, however, lack Cultural knowledge of Courtroom procedure's. Therefore,

Conclusion

For the foregoing reason, this Court should grant the petition with the ultimate relief of a new trial for Petitioner, Travis Brown. Allowing the necessities under the law in which, protect's a panoply of individual rights, including the right to contract, the right to earn a living, the right to participate in public benefit programs, the right to fair use and access to justice, the right to sue, and the right to give evidence. Which rectify's the deficiencies within these Ambiguous litigations, and hopefully each parties reach a peaceful solution according to justice, and or while Justice prevail. I will remain in steadfast faith perhaps, "Prayerfully and Respectfully."

Subscribed and sworn before me
this 8th day of June, 2015
Katherine Lott

Notary Public

County of Spartanburg

State of South Carolina

My commission Expires 9/28/2022

cc

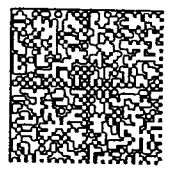
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