

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
R. Keith Kelly, Circuit Court Judge

Case No[#] 2015-000057

JUAN CARLOS VASQUEZ

Petitioner

vs

STATE OF SOUTH CAROLINA

Respondent

PETITIONER'S PRO-SE BRIEF

RECEIVED

JUL 23 2015

S.C. SUPREME COURT

Juan Carlos Vasquez[#] 351021
McCormick Corr. Inst.
386 Redemption Way
McCormick SC 29899

Appellate Defender for petitioner
Benjamin John Tripp

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ISSUES PRESENTED

WHETHER THE P.C.R COURT ERRORED
IN RULING THAT COUNSEL WAS NOT
INEFFECTIVE AND PETITIONER'S
GUILTY PLEAS(S) WAS KNOWING,
VOLUNTARILY AND INTELLIGENTLY
MADE.

STATEMENT

For the record of this brief, the Petitioner agrees with his Appellate Defender's statement upon his Johnson petition for writ of certiorari

ARGUMENTS

Petitioner argue that the PCR Court errored in ruling that counsel was not ineffective and that his guilty pleas was knowing, voluntarily and intelligently made

Petitioner testified through an interpreter that he and plea counsel had always had problems communicating because of a language barrier. Petitioner further testified that at his guilty plea he did not even know to which offense he was pleading guilty to and did not know the elements as well SEE: App 99 L2 - L3; App-p

100 L11 - L21; App.p 106 L4 - L23; App.p

107 L2 - L11; L19 - L25; App.p 111 L13 -

L17 Also see Boykin v Ala 89 SC. 1709

Nor did Petitioner know the consequences
with the new charges ACCESSORY
before and after murder SEE: App.p 106

L25 - p 107 - L1; App.p 112 L4 - L5

App.p 100 L11 - L16; App.p 111 L13 - L17

App.p 106 L16 - L23 Also see Pittman v State 524

SE 2d 623.

In response plea counsel Mr Harbin
simply testified that he told petitioner
how to answer questions at the plea
"Yes" and "no" and he was very
comfortable with their communication

because Petitioner did not, you know
question things SEE: App 124 L19 - p 125

L1

plea counsel admitted this even after
Petitioner testified.... that he always
had problems communicating with counsel,
that he always wanted to go to trial
SEE: App. 106 L14 - L15; App 115 L8 - L11

And, that he felt course when
counsel pounded on the table, so
he would plead guilty SEE: App 111
L18 - L23. Which counsel told
Petitioner that he did not have
no more time SEE: App 100 L24 - p 101

L3. And told Petitioner that he did not have to give any explanations to the judge - just to say "yes" or "No"

But Petitioner was to answered that nobody had promised him anything SEE:

App 113 L13 - p 114 - L1. App 116 L9 - p

117 - L1

Petitioner further testified that he was only following what his counsel had told him SEE: App 117 L5 - L23

And, that was the reasons he did not tell the judge that he wanted to go to trial. Because his counsel told him, to believe him and that he

was working for him. And, that it was the first time that he had appeared in court - that he did not know about the law or anything - just being guided by his counsel SEE: App. p 117 L 16 - L 23

Although, counsel admitted that Petitioner certainly could not survive court because Petitioner don't / did not speak English well SEE: App. p 131 L 16 - L 23.

Petitioner further testified that his plea was not voluntarily nor intelligently made, where he had problems communicating with counsel and there was not enough search done - only seen counsel about 4 times SEE:

App.p 100 L2, L12 and had not seen
the DISCOVERY yet. But counsel
told Petitioner that he did not have
no more time SEE: App.p 100 L21-L24

Even after a whole year and a half
had went by after hiring counsel, without
seeing DISCOVERY or counsel. given it
to him SEE: App.p 101 L11 - p102 - L1

Petitioner first and only seen or got
his discovery in Nov 2012 after he
had went to prison "S.C.D.C." by writing
the Supreme Court to get MR. Harbin
to send it to him SEE: App 104 L11 -
L20 Although, MR. Harbin sent
Petitioner his discovery it wasn't complete

because it didn't have statements
from his co-defendants SEE: App
104 L21 - p106 - L4.

As the state had claimed they did
SEE: App p 63 L18 - p64 - L1

Counsel admitted, testified that he
did not give Petitioner a copy of
his discovery while at the jail.
and Petitioner first request a copy
after his sentencing SEE: App 122
L15 - L23.

But when asked did he "counsel"
have a copy of Petitioner's co-defendants
statements in his files. Counsel didn't
have Ms. Cortez or Mr. Reyes statements

And, counsel could not offer any details what Ms. Cortez statement said or Mr. Reyes SEE: App 128 L25- p130 - L11.

Which counsel only further speculated as to what the co-defendants testimony would have been "if" they testified against Petitioner SEE: App. 134 L25- p 136 - L12

Here, although the State had alleged that they had given counsel all of the documentation on the case SEE: App 25 L6 - L10; App 27 L15 - L16.

And, counsel had been subpoenaed to bring these documents by the State. There

was no proof that counsel actually went over those documents with Petitioner when the statements, simply was not in counsel's files SEE: App 129 L25-p130-L9 And, conversation with Petitioner and interpreters didn't really go well SEE: App 131 L11-L23.

Moreover, although the State alleged that Petitioner was in phone contact... with his alleged co-defendants SEE: App 24 L23-p25-L5.

Which counsel tried to confirm SEE: App 134 L4-L9; App 136 L24-p137-L3

But counsel also testified that he did not have any substantive recordings of what was said or phone records

itself SEE: App p 134 L21 - L24

Moreover, there was no evidence of phone calls to Ms. Cortez SEE:

p 136 L17 - L23; Also See App p 139

L14 - L16; and p 140 L2 - L4.

Further the petitioner testified that his statement was involuntary made because he had asked for an attorney 4 or 5 times before he gave statements to the police, but he not provided an attorney.

And, although he had told his counsel about this, his counsel did not say anything SEE: App 99 L10 - p 100 - L1

Also, Petitioner had informed counsel that he had the money at the time to pay for an interpreter because the interpreter(s) that they had or that he provided were just not working, but Counsel did not answer anything SEE: App 108 L2 - 611.

Petitioner testified that the Sheriff's office interpreter did not sit and explain to Petitioner what he wanted to say would write alot that Petitioner did not know what he was writing. And Mr. Harbin's interpreter never went over Petitioner's statement with Petitioner with Mr. Harbin SEE: App 102 L14 - p

Petitioner also testified that after reviewing his own statement in the discovery - it wasn't very legible, that things was there that he (Petitioner) never said - And that he did not remember signing so many sheets - but his statement were involuntary
SEE: App 109 L5 - App 110 - L24

Here counsel Harbin admitted, testified that Petitioner had talk to him about the voluntariness of his statement, that he had asked for an attorney - but he "counsel" figured out - they would have to go to trial

to challenge that SEE: App 120 L5 -
L18

But here counsel did not have
any motions in Petitioner's discovery
after a year and a half - challenging
Petitioner's statement even when counsel
was more concerned with Miranda SEE:
App 120 L16 Also see Miranda v
Arizona 384 U.S. 436

Moreover, counsel never tried to talk
to law enforcement or the employee that
took Petitioner's statement SEE: App. p.
132 L3 - L24.

Here, counsel admitted there may have
been a dialect issue, but failed to look

into why Petitioner signed the waiver of right forms in the first place, Or why Petitioner cooperate with the State / gave statements to the police. SEE: APP-99 L4 - L13.

Here, Petitioner was never required to expound on the fact that the interpreter told him by signing the waiver forms would not hurt him, even after he had asked for an attorney.

Counsel's testimony further clearly shows that he prejudiced Petitioner when he testified as to why it was in Petitioner's best interest to plead guilty which was because his defense would have been to admit guilt... his defense was.

hiring folks to come shake his friend down... the evidence I believe showed that there was plenty of knowledge that they were willing to quote/unquote Do whatever it takes to, you know, physically harm him, threaten him, during the course of the commission of that getting the money. SEE App-p 133 L 15-25.

Here, there was no evidence that Petitioner had any knowledge that his alleged co-defendants were willing to do whatever it takes to do, physically harm... threaten him, during the course of the commission of getting the money back. When in fact counsel had submitted

a motion to reconsider sentence June 4, 2012 Stating in part:

It is the defense's position that Ms. Cortez-Ramirez and her cohorts from Georgia decided on their own to murder the victims, even though their task requested had been no more than the collection of money. Mr. Estrada-Jasquez at no time asked Ms. Cortez-Ramirez to murder Mr. Hernandez nor his wife

Mr. Estrada-Jasquez never had any intentions beyond collecting a debt and he was neither present at the scene, nor responsible for the shootings SEE: Ex A.

Counsel also testified that he thought there may have been an interesting

argument to make - whether he was
an accessory before the fact to murder
SEE: App-p 123 & 4 - 45.

But, although counsel knew, Petitioner
wanted to go to trial. Counsel still
misadvised Petitioner to plea guilty.

Petitioner also testified that counsel
never discussed he would be deported
because of his guilty pleas SEE:
App-p 107 L12 - L18.

SEE: App-p 130 L10 - L18 although counsel
alleged that he had told Petitioner
about deportation.
There was no proof of this before judge

Cole SEE: App. p 1 - p 35 or Judge Hayes

SEE: App. p 36 - p 68.

The above arguments clearly shows that
but for counsel's unprofessional errors
he would not have plead guilty but
would have insisted on going to trial
SEE: U.S. Const. amend. 5th 6th and 14th.

Strickland v Washington 466 U.S. 668;
Hill v Lockhart 474 U.S. 52.

the plea recorder) - in response to the
Judge's questions at the guilty pleas) -
Petitioner said very little other than
"Yes" or "No". But Petitioner was never
required to expound on his level of

Understanding-

Here there is no evidence of probative value to support the findings of the P.C.R. court SEE: Bright v State 618 5Erd 296; Magazine v State 606 5Erd 761 and Holland v State 470 5Erd 378. Nor the Judge's credibility.

- (1) Where counsel admitted that they had problems communicating
- (2) Where counsel admitted that he told Petitioner to plea, and how to answer for the judge "yes" or "no" when he knew Petitioner wanted to go to trial
- (3) Where counsel never really had a legal reason per Strickland why he did not go to trial.
- (4) Where counsel never explain the deportation issue. to Petitioner

- (15) Where counsel admitted that he did not give Petitioner his discovery in a timely manner to help in his own defense.
- (16) Where the atty/counsel did not even have Petitioner's alleged co-defendants statements Nor Petitioner's and or said alleged co-defendants phone records.
- (17) Where counsel never challenge Petitioner's statement, when counsel knew Petitioner had told him that his statement was involuntary made

SEE: Shumpert v State 661 SE2d 369; Solomon v State 443 SE2d 540; Caprod v State 525 SE2d 514; Cagle v Branker 520 F3d 320 and Marshall v Conberger 103 S Ct. 843

CONCLUSION

Based on the foregoing arguments, Petitioner's Counsel's motion to be relieve as Petitioner's counsel should be denied. therefore ordered to fully brief his issue and or Petitioner's pro-se issues.

Where Petitioner case should be remanded for a New PCR hearing and or new trial.

Date 20-07-19

Respectfully submitted
s/ ~~Varquez~~ Juan C

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County
R. Keith Kelly, Circuit Court Judge

JUL 23 2015

S.C. SUPREME COURT

Case No[#] 2015-000059

JUAN CARLOS VASQUEZ

Petitioner

vs

STATE OF SOUTH CAROLINA

Respondent

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Petitioner proposes the following be included in
the Record on Appeal

(1) Motion to reconsider Sentence dated June 4, 12

I certify that this designation contains no matter which
is irrelevant to this appeal. Vasquez Juan C.

Date: 20-07-15

cwa

Ex A

STATE OF SOUTH CAROLINA)	
)	IN THE GENERAL SESSIONS COURT
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	Case #: 2010-GS-42-3207
)	2010-GS-42-3207A
State of South Carolina,)	2010-GS-42-3207B
Plaintiff)	2009-GS-42-2337
)	2009-GS-42-2338
)	
-vs-)	MOTION TO RECONSIDER
)	SENTENCE
)	
Juan Carlos Estrada-Vazquez,)	
Defendant)	

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 2012 JUN -4 PM 12:45
 M. HOPE BLACKLEY

Juan Carlos Estrada-Vasquez, by and through his undersigned attorney H. Chase Harbin, respectfully requests that the Court reconsider its sentence handed down on May 23, 2012 on the above-listed indictments.

On May 23, 2012 the Honorable J. Mark Hayes, II heard the guilty pleas of Mr. Estrada and his co-defendants involving a Burglary Conspiracy and Murder charges, along with a drug trafficking charge for Mr. Estrada. Mr. Estrada was sentenced to life in prison, for the three indictments for Accessory Before the Fact to a Felony (10-3207, 10-3207A, 10-3207B). He was sentenced to the maximum allowable sentences on the remaining indictments, for which this Motion does not ask for reconsideration.

In the recitation of facts, the Solicitor's Office asserted, and the defense admitted, that Mr. Estrada had an illicit drug business relationship involving the sale of drugs with the deceased victim, Mr. Hugo Hernandez and his wife, Teresa Martinez. After a dispute arose over payment of money from Mr. Hernandez to Mr. Estrada-Vasquez, Mr. Estrada-

cus

Ex. A

Vasquez enlisted the help of Ms. Cortez-Ramirez and a group of men travelling from Georgia to collect the sum of approximately \$50,000.

Mr. Hernandez and Ms. Martinez were murdered by Ms. Cortez-Ramirez, and specifically by the "crew" of men she assembled. It is the defense's position that Ms. Cortez-Ramirez and her cohorts from Georgia decided on their own to murder the victims, even though their task requested had been no more than the collection of money.

Mr. Estrada-Vasquez at no time asked for Ms. Cortez-Ramirez to murder Mr. Hernandez, nor his wife, Ms. Martinez. The defendant, upon information and belief, is aware that Ms. Cortez-Ramirez admitted to the court that she did in fact gather a group together with the intention of killing Mr. Hernandez and Ms. Martinez. For that crime, she was sentenced to 50 years in prison.

Because Mr. Estrada-Vasquez never had any intentions beyond collecting a debt, and because he was neither present at the scene, nor responsible for the shootings, we would respectfully request this Honorable Court to reconsider Mr. Estrada-Vasquez's sentence. The defense would respectfully ask the Court to take into specific consideration that Mr. Estrada-Vasquez lacked any murderous intent, unlike Ms. Cortez and those men that entered the dwelling. His contrition is evidenced by his swift cooperation and timely guilty plea. It is the Defense's understanding that the State NOT believe that Mr. Vasquez had any intention beyond the collection of a debt, and did not authorize, ask for, pay for, or acquiesce to the killing of Mr. Hernandez nor Ms. Martinez.

It is the Defense's belief that the State was not asking for a life sentence - or any other particular term of years - and thus would ask that Mr. Estrada-Vasquez'

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M. HOPE BLACKLEY

EX A

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cooperation, testimony, and guilty plea be taken into consideration. The Defense hereby moves this Honorable Court to reconsider Mr. Estrada-Vasquez' sentencing to a term of years not to exceed that of Ms. Cortez, who clearly intended not only to commit a crime involving drugs or drug money, but ultimately decided to take the life of Mr. Hernandez and Ms. Martinez.

Respectfully submitted,



H. Chase Harbin, S.C. Bar No. 70074
Attorney for Defendant
419 Vardry St.
Greenville, SC 29601
(864) 235-7788

IT IS SO ORDERED,

The Honorable J. Mark Hayes, II

Spartanburg, S.C.
June __, 2012

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M. HOPE BLACKLEY

AFFIDAVIT OF SERVICE

I Vazquez Juan P. hereby certify that
I have served my pro-se brief upon the
below Hon Clerk of Ct. By placing the above
said into the Me Corr. Inst. mail room on
this 20 day of July 2015 to be placed in the
U. S. mail with postage prepaid
the Supreme Ct. of S. C.
Daniel E. Shearouse
P.O. BOX 11330
Colg, SC 29211

SUBORN to before me Vazquez Juan P.
this 20 day of July 2015

J. Franklin
Notary Public

my Commission Expires 12-16-2019

Re[#] 2015 - 000057

Date 20-07-15

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JUL 23 2015

Dear Hon. Clerk

S.C. SUPREME COURT

Please find in enclosed my pro-se brief.
Would you please send me back a filed
copy.

Thank you

Sincerely

Vazquez Joan E.

cc: Personal file

Vazquez Juan C # 351021 F-4-214-B
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

The Supreme Ct. of SC.
Daniel E. Shearson
P.O. BOX 11330
Columbia, SC 29224

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