

State of South Carolina
In the Supreme Court

Certiorari to Aiken County
R. Knox McMahon, Circuit Court Judge

Anthony Sapp,

Petitioner,

v.

State of South Carolina,

Respondent

Appellate Case NO. 2014-002298

Pro-se Petition for Writ of Certiorari

Anthony Sapp

Broad River Correctional Institution
4460 Broad River Rd
Columbia S.C 29210

RECEIVED

SEP 23 2015

SUPREME COURT

INDEX

INDEX _____

ISSUE PRESENTED _____

STATEMENT _____

ARGUMENT _____

CONCLUSION _____

ISSUE PRESENTED

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty when Petitioner felt pressured into pleading guilty based on his belief that his attorney was not prepared for trial?

1.) Ineffective Assistance of Counsel
Plea counsel advice

2.) Ineffective Assistance of Counsel
Plea counsel unprepared to try my case

3.) Ineffective Assistance of Counsel
Failed to file an appeal or reconsideration on clients behalf.

4.) Ineffective Assistance of Counsel
Counsel failed to properly investigate and challenge the sufficiency of the trafficking charges.

PCR Application and Evidentiary Hearing

On March 14, 2013, Petitioner filed an application for post-conviction relief. App. 27-56. On June 13, 2013, the State filed a Return. App. 57-65. On August 1, 2014, an evidentiary hearing was held before the Honorable R. Knox McMahon. Petitioner was represented by Tommy Thomas and the State was represented by Assistant Attorney General David Golecki.

Testimony Petitioner

Petitioner testified that he met with defense counsel three times during the pendency of his case, but that counsel should have moved to suppress the evidence against him because of discrepancies between the confidential informant's statements and law enforcement's reports. App. 74, 11. 22-75, 11. 21.

Petitioner also stated that counsel should have challenged the drug weights as the amounts were close to the trafficking minimum and included the packaging weight. App. 76, 11. 9-24. Petitioner attested that defense counsel "coerced me into [pleading guilty] because . . . he was unprepared for trial." App. 85, 11. 24-85, 11. 17.

Petitioner further testified that he was insistent on going to trial and fighting the charges until defense counsel informed him that he could

"Go to trial and lose because we're not prepared or... you can take 15 years and get paroled."

App. 84, 11.1-19. To encourage a guilty plea, Petitioner stated that defense counsel advised that Petitioner would be eligible for parole after only five years of imprisonment because of unspecified sentencing reforms. App. 85, 11.7-22.

Testimony of Defense Counsel

Defense Counsel claimed that he was prepared for trial and that he had discussed the State's evidence with Petitioner. App. 106, 11.5-16. Counsel averred that the State had a stronger case with video footage of multiple transactions. App. 115, 11.7-15. Counsel believed this was excessive and eventually secured the State's recommendation for a fifteen year sentence. Id.

Counsel denied advising Petitioner that he would be eligible for parole after five years. App. 113, 11.15-23. Counsel alleged that he explained to Petitioner that he would have to serve eighty-five percent of the negotiated fifteen year sentence. Id. Counsel claimed that he reviewed the drug weight test conducted by SLED and did not believe there was any basis for

challenging the weights. App. 110, 11.5-113, 11.20; Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

Order of Dismissal

The PCR court denied Petitioner's application in an Order of Dismissal issued on September 12, 2014. App. 121-134. The PCR court concluded that defense counsel provided constitutionally effective representation. Specifically, the PCR Court ruled that counsel did not coerce Petitioner into pleading guilty. App. 130. The court also determined that defense counsel was not ineffective for failing to file a motion to suppress evidence and that counsel gave accurate advice on Petitioner's ineligibility for parole. App. 132-133.

Argument

Ineffective Assistance of Counsel Plea Counsel Advice

UNDER MY PLEA COUNSEL'S ERRONEOUS ERRORS AND advice to PLEA GUILTY, FOR ME NOT HAVING THE TRUE facts before me, ABOUT ME BEING ELIGIBLE FOR PAROLE a 3rd of MY TIME. I WOULD NOT HAVE PLEAD GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL, SEE → STRACLER V. GARRISON 611 F.2d 61 (4th Cir 1979) AND HINSON V. STATE 377 S.E.2d 238 (1989). WE, ME AND MY PLEA COUNSEL DID NOT HAVE THE TIME TO GO OVER THE PLEA AT ALL. MY PLEA COUNSEL TOLD ME THAT I HAD TO PLEA TODAY, AND TO SAY YES TO WHAT THE JUDGE WILL ASK AND DON'T SAY NO OR HE WILL TAKE AWAY THE PLEA. EDWARDS V GARRISON 529 F.2d 1374 (1975) HE ALLEGES THAT HE MADE THIS STATEMENT SOLELY BECAUSE HIS ATTORNEY HAD ADVISED HIM TO GIVE THIS ANSWER. I DO KNOW THAT COUNSEL CAN NOT ANTICIPATE POTENTIAL CHANGES IN THE LAW, PLEA COUNSEL SHOULD KNOW THE LAW, IN WHICH WHOSE IN EXISTENCE AT THE TIME OF PLEA. THERE IS A "REASONABLE PROBABILITY", WHICH IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME. THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT HAD COUNSEL HAD THE TRUE FACTS BEFORE ME ABOUT ME BEING ELIGIBLE FOR PAROLE AT THE TIME OF PLEA, I WOULD NOT HAVE PLEAD GUILTY AND WOULD

have insisted on going to trial see Hill v Lockhart
474 U.S. 52 106 S.Ct. 366 88 L.Ed.2d 203 (1985).

Ineffective Assistance of Counsel

PLEA COUNSEL UNPREPARED TO TRY MY CASE

On August 6, 2012 my plea counsel told me that he was not prepared to go to trial at that time. How am I expected to go to trial if he is unprepared? If plea counsel / defense counsel is unprepared to try a case, he or she is also inadequately prepared to advise me, his client about the case, or he or she cannot intelligently advise me to plead guilty and accept a plea bargain, calling for a substantial sentence. This is more of the prejudice that I suffered with my plea counsel's advice. It is on the record that my lawyer ask for more time to prepare and go over the case with his client on August 6, 2012. The Judge denied his request, so now I was forced into a plea on August 7, 2012. It's my right to expect that my "Lawyer Plea Counsel" will use every skill expected every energy and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representations on the clients behalf. see Thomas v Municipality Court 878 F.2d 285 289 (9th Cir 1989) Also there is a "reasonable probability", which is a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, result of the proceedings would have been different had counsel been prepared to try my case. I would not have pled guilty, but would have insisted upon a trial.

Effective assistance of Counsel

Failed to file an appeal or reconsideration on client behalf.

A Lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal, in convenience to the lawyer and take lawful and ethical measures are required to vindicate a client's cause. In Re Swanner 408 S.C. 191, 758 S.E. 2d 711 (2014). My Lawyer has violated the following provision of the rules of Professional conduct, Rule 407 SCACR; Rule 1:3 (Lawyer shall act with reasonable diligence and promptness in representing client. After sentencing my lawyer fail to consult with me to see if I want to file for a appeal or reconsideration, I tried to get in touch with him within the 10 days. The Presiding Judge told me that I could appeal my plea. AIA counsel has an affirmative duty to determine if a client wishes to appeal, and to advise him or her of the method and manner of taking an appeal. See → White v state, 263 S.C. 110 208 S.E. 2d 35 (1974), Cherry v state 300 S.C. 386 S.E. 2d 624 (1989) matter of Anonymous member of the bar 303 S.C. 306 400 S.E. 2d 483 (1991) where counsel failed in this case to determine in a timely fashion if petitioner wished to appeal. In my case three wherg calls made to AIA counsel in a timely manner.

State of South Carolina
In the Supreme Court

Certiorari to Aiken County
R. Knox McMahon, Circuit Court Judge

Anthony Sapp

Certificate of Service

Petitioner

v.

State of South Carolina

Petitioner, declares under the penalty of
that he mailed a copy of his Pro-se Petition for
writ of certiorari, to the listed below
by placing in the U.S. mail addressed
as below.

9/18/15

Anthony Sapp

CC: File

S.C. Supreme Court
1015 Sumter St
Columbia SC 29201

ALAN Wilson
Attorney General
Daniel Cozley
Assistant Attorney General
P.O. Box 11549
Columbia SC 29211

CONCLUSION

For the above stated reasons Petitioner
moves this Honorable Court for an order
granting a NEW trial.

Respectfully

Anthony SAPP
Beard River Core Insti
4460 Beard River Rd
Columbia S.C 29210

9/18/15
CC: file

STATEMENT

Indictment

On August 2, 2012, Petitioner was indicted by the Aiken County Grand Jury for three counts of trafficking in cocaine, three counts of distribution of cocaine base within the proximity of a school, and one count of distribution of cocaine base
APP. 135-148.

Plea Hearing

On August 7, 2012, a plea hearing was held before the Honorable Doyet A. Early, III. APP. 1-26. H. Wayne Floyd represented Petitioner and Assistant Solicitor Elizabeth Young represented the State.

Pursuant to a negotiated plea deal, Petitioner pled guilty to all seven indictments in exchange for the state recommending concurrent fifteen year sentences on all offenses. APP. 3-5. The State explained that SLED in conjunction with the Aiken County Sheriff's Department used a confidential informant to make a series of drug purchases from Appellant. APP. 15, 11. 13-23. 11. 8 The transactions were recorded on video. Id.

The plea court found that there was a factual basis for the plea and that Petitioner freely, voluntarily, knowingly, and intelligently pled guilty. APP. 24, 11. 4-24. The plea court sentenced Petitioner to seven concurrent terms of fifteen years imprisonment. Id.

8-16-12

Hello, to the CLERK of Court of Aiken,

My name is Anthony Salik Sapp I'm currently an Inmate at Kirkland CORR INST RNE I was sentenced on 8-7-12 on Tuesday. My reason of written is that the Judge "Jack EARLINE" requested that I could appeal this case in 10 days and Monday will be my last day. I have had know way of contacting my lawyer or nobody in 9 days up to this moment. I just call my girlfriend and she said the lawyer said that ~~he~~ couldn't do it, but the Judge told me, it's on Record. So I was trying to request myself and to retire another

lawyer. ~~CASE~~ number ON CRACK Distribution - opix scho

ZONE 2nd I don't have. I was sentence to 15 yrs my first conviction, I am 36 yrs of age live in Monetta S.C. If somebody can respond back to me I would Thank you here is my Address -

Anthony S. Sapp, SCDC # 00351929
Kirkland Reception and Evaluation Center, C1-5:
4344 Broad River Rd
Columbia S.C 29210

I didn't get a sentence sheet neither, so
I don't have case numbers or legal papers
or nothing indicating my case. I would
like to appeal this case, so if somebody
can respond back to me my address
is at the bottom of the first sheet
and again my name is Anthony. Salik Sapp
last for at my SSI # 12442
home address is P.O. Box 132, Monetta, S.C.
my Inmate address is on the front
Thank you for your time.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Mr. Nestly	TITLE: LAW LIBRARY	DATE: 8-15-12
INMATE'S NAME: Anthony Salik Sapp	SCDC #: 00351929	
INSTITUTION: Kickland Institution R N E	LIVING QUARTERS: C1-53	

Hello, My name is Anthony Sapp I was sentenced to four last week on 8-7-12 and I was taken back to the county without legal mail or paperwork of my sentence.

The Judge requested I can appeal the case in 10 days from sentence. I got ship-out Friday on 8-10-12 haven't had no way to contact nobody or my lawyer, last I heard he was taken PCR from a cousin that did a 3-way in the county. To be honest I just want to go back in front of the Judge on the 10 day appeal, I have now until Monday to do so. I really need help on getting a letter to the clerk of court on this case to let them know I want to appeal this case. I need a case number or a copy of my sentence sheet or something that indicate my case, I really need this information by today and ready to mail out PLEASE!!!

DISPOSITION BY STAFF MEMBER: You need to write your clerk of court regarding both issues. You also need to contact your lawyer to see if he filed your appeal. I cannot help you with getting a letter to your lawyer. You will need to write him yourself. That is unauthorized practice of law.

8 like c/c & Weekly

DATE: 8-15-12	SIGNATURE: Anthony Sapp
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FILED
Aug 23 2012
CSCC/AGS
Dorothy
Deputy Clerk

FILED Aug 23 2012

Liz Godard
C.C.P. & G.S.
Sherry Langley 28
Deputy Clerk

8/17/2012

ANTHONY SAPP #351929
Kirkland, corr, inst. C-1-53
4344 Broad River Road
Columbia, S.C. 29210

RE: Notice of an appeal

AIKEN County Clerk of Court
LIZ GODARD, P.O. Box 583, AIKEN, S.C. 29802

Dear Clerk,

I am in need of your help. I would like to appeal my case. I was sentenced 8-7-12. I got ship to my institution on 8-10-12. I had no way to contact my lawyer. My girl friend called him and he say that he can not appeal my case. My lawyer have all of my paper work. I have no docket numbers to give you concerning my indictments nor sentence sheet. I'm sending you everything I have showing you that I have been trying to appeal my case, just incase I miss the dead line, the ten days. please find for filing in your office (D) letter of notice

of an appeal (2) Certificate of service by stamped copy of the same be served upon the respondents.

Thank you sincerely,

Please send a stamped clocked copy back. I'm thanking you in advance for your assistance. MAY GOD bless you,

Anthony Sapp #
351929

Mr. Sapp,

I have enclosed a copy of all your sentencing sheets and indictments. A copy of your letter has been forward to your attorney, Mr. Wayne Floyd. To file an appeal you will need to file the motion with the SC Court of Appeals, PO Box 11629, Columbia SC 29211. That is the court system that handles this matter.

Sherry
Deputy Clerk



Aiken County Sheriff's Office Forensic Lab

Michael E. Hunt, Sheriff

Phillip Anders
Aiken County Sheriff's Office
420 Hampton Avenue, NE
Aiken SC 29801

8/11/11
8/24/11
9/14/11

DRUG ANALYSIS DEPARTMENT

Date: 08/24/2011
Lab Number: L11-0370
Incident Date: 08/11/2011
Your Case #: 11-050972
Control #: A007979
(S): Sapp, Anthony

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L11-0370

Item 1: Plastic bag containing rock-like substance.

Results:

Cocaine Base (Crack) found 11.22 gram(s) C-II

I am a Forensic Chemist employed by the Aiken County Sheriff's Office, certified by the South Carolina Law Enforcement Division (SLED) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

I used the following legally reliable forensic laboratory procedures in this analysis:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Chemical Test | <input type="checkbox"/> Ultraviolet Spectroscopy | <input type="checkbox"/> Physical Test |
| <input type="checkbox"/> Microscopic Test | <input type="checkbox"/> Gas Chromatography | <input type="checkbox"/> Published Literature |
| <input checked="" type="checkbox"/> Infrared Spectroscopy | <input type="checkbox"/> Mass Spectrometry | <input type="checkbox"/> Other: |

With Bag → 11.7
WET
Field tested = _____
Bag weight = _____

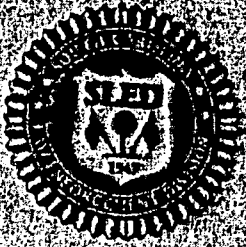
Signature:

Amber Way
Amber Way
9.14.11

Date

WARNING: ATTEMPTS TO OPEN THIS SEAL WILL DISTORT THESE GRAPHICS

CONTROL NUMBER **B 222240**



SLED DRUG ANALYSIS SECURITY ENVELOPE

AGENCY _____ DATE SEALED _____

PRINT NAME OF PERSON SEALING ENVELOPE _____

SIGNATURE OF PERSON SEALING ENVELOPE _____

NOTES/SPECIAL INSTRUCTIONS:

INSTRUCTIONS

- 1) **DRUG EVIDENCE** and **ONLY DRUG** with this envelope.
- 2) Enter the **AGENCY AND DATE SEALED**.
- 3) Fill out - **SLED DRUG ANALYSIS REQUEST FORM**.
- 4) Insert **REQUEST FORM** so that information can be read through **BACK OF SECURITY ENVELOPE**.
- 5) Insert evidence **BETWEEN FRONT OF ENVELOPE AND REQUESTED FORM**.
- 6) Remove liner strip from adhesive area. Smoothly press along the mouth of bag to seal it securely.
- 7) **ENVELOPE IS NOW SEALED. DO NOT ATTEMPT TO REOPEN.**
- 8) Print, then sign your official signature on the space provided above. Space is provided for any notes/special instructions you wish to note.
- 9) Submit envelope to **SLED LAB.**

Handwritten: 9-25-11



CHECK FOR PROPER ENTRY AND REMOVAL OF SEAM TAMPERING

DO NOT WRITE IN SPACE BELOW

REPORT:

On September 15, 2011, Confidential Informant (CI # [REDACTED]) (hereinafter "CI"), met with law enforcement in Aiken County in reference to the CI making a purchase of one half ounce of crack cocaine from Anthony Sapp. Upon meeting with law enforcement the CI and the CI's vehicle were searched for contraband with negative results. The CI then made a recorded telephone call to Sapp at 803-604-6642 in reference to Sapp providing the CI with approximately one half ounce of crack cocaine for \$550.00. Sapp told the CI to meet him around 5:15pm at the trailer (near the area of 10 J. P. Kneece Dr. Monetta, Aiken County, SC). The CI was then outfitted with surveillance equipment and issued \$550.00 in state documented funds. The CI was then followed by Agents to the area of J.P. Kneece Dr. The CI arrived at the location and parked in the front yard area beside a black in color Honda occupied by two unknown white females and one unknown white male. The unknown white male in the Honda advised the CI that they were waiting on Sapp. While in the yard area, the CI received a phone call from Sapp at which time Sapp and the CI agreed that the deal would only be for (12) twelve grams of crack cocaine for \$525. Sapp then arrived at the residence in a grey in color four door vehicle and exited the front passenger seat. Sapp walked to the area of the CI and gave the CI a clear plastic bag containing a red in color rock like substance. Sapp then handed the CI a digital scale and the CI and Sapp then entered the kitchen area of the residence. The CI then weighed out the package in the kitchen and gave Sapp \$525.00 in state funds. The CI then left the residence and met back with Agents. The CI relinquished the evidence to S/A B. Moss. The CI was searched for contraband with negative results and the surveillance equipment removed. The CI then provided S/A Moss with a statement of events.

On September 16, 2011, S/A Moss relinquished B203956 to the SLED laboratory to be submitted for analysis (L11-10698). All recordings and photographs of the transaction were downloaded to DVD/CD and remain with the file.

END OF FILE

trailer
369
white,
Gray Trim,
Black
shutters

10.6
11.3
What did he do with the
Drugs

ANTHONY SAPP #351929
Lieber Correctional Inst. WB-239
P.O. Box 208
Ridgerville S.C. 29472

9-23-13

To. S.C.L.E.D.
P.O. Box 21398
Columbia S.C. 29221-1398

Re. Copy's of Best Kit Bag # B203956 and Drug
ANALYSIS Request Form.

SLED FOIA Office

Date Received 09-26-13

Dear Thomas W. BERRY
and whom this may concern,

Due Date 10-17-13

2013-663

I hope this letter of request finds you in
Good Health. Under the Freedom of Information
Act 30-4-40, At this time I am requesting a
copy of the photo of the Best Kit evidence
Bag # B203956, SLED Lab # L11-10698, Incident
date 9/15/2011. Also the Drug Analysis
Request Form, I am thanking you in
advance and MAY God Bless you.

PS Also CAN you make a copy of
this letter and send Back Also Thank you.

The 23rd Day of Sept 2013
Ridgerville S.C.
Dorchester County

Respectfully Requesting
Anthony Sapp #351929
Anthony Sapp #351929

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

September 26, 2013

Anthony Sapp #351929
Lieber Correctional Institution WB-239
P.O. Box 205
Ridgeville, SC 29472

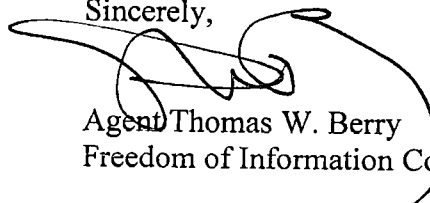
RE: Freedom of Information Act Request #2013-663

Dear Mr. Sapp:

Please find enclosed the information you have requested under the S.C. Freedom of Information Act.

There is no photograph of the Best Kit Evidence Bag #B203956.

Sincerely,



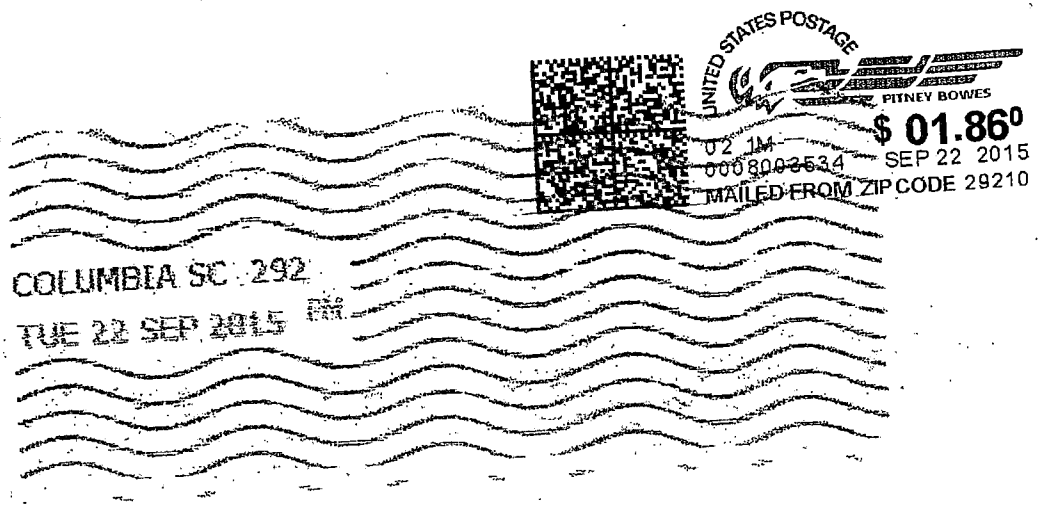
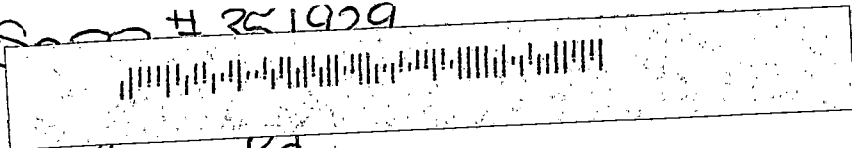
Agent Thomas W. Berry
Freedom of Information Coordinator



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

WY. Form # 251929
C.I.
Broad River Rd
Columbia S.C. 29210



COLUMBIA SC 292
TUE 22 SEP 2015 PM

RECEIVED
SEP 22 2015
BRCA

S.C. Supreme Court
1015 Sumter St
Columbia S.C. 29201
P.O. Box 11330

RECEIVED
SEP 23 2015
OFFICE OF
DISCIPLINARY COUNSEL