

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
LETTIA H. VERDIN, CIRCUIT JUDGE

Willie James Poole,

Petitioner,

v.

State of South Carolina,

Respondent.

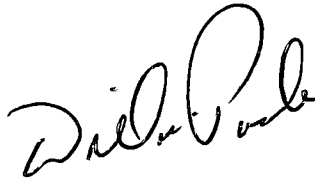
Appellate Case No. 2015-000088

PETITIONER'S PRO-SE BRIEF

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SEP 30 2015

S.C. SUPREME COURT



Willie James Poole
Perry Corr. Inst.
430 Oaklawn Rd.
Pelzer, S.C. 29669
Pro-Se Petitioner

1. Was petitioner's guilty plea involuntary due to incorrect sentencing advice by trial judge?
2. Did the trial court lack subject matter jurisdiction to accept a plea of guilty when it was entered?
3. Did the PCR Judge err by finding trial counsel was not ineffective for failure to subpoena alibi witness?
4. Was trial counsel ineffective for failure to interview potential witnesses on his behalf?
5. Was the PCR Judge's decision an unreasonable determination of the facts in light of the evidence presented?

STATEMENT

In December 2009, the Greenville County Grand Jury indicted Willie Poole on the charges of murder poss/w during a violent crime. On January 17, 2012, Poole entered a guilty plea before the Honorable Robin Stillwell on a voluntary manslaughter and poss/w during a violent crime. Poole was represented by Timothy Sullivan and the State was represented by Judy Munson. Poole was sentenced to thirty-years on the manslaughter, to run concurrent with the twenty-five years Poole was currently serving for armed robbery, and five years on the gun charge to run consecutively to the other sentences. An appeal was filed which the Court of Appeals dismissed. On May 22, 2013, Poole filed an application for Post-Conviction relief. An evidentiary hearing was held on October 21, 2014 before the Honorable Letitia H. Verdin. Poole was represented by Karen Ratigan. On December 8, 2014, Judge Verdin issued an order denying Poole's PCR and dismissing it with prejudice. Poole's attorney filed a notice of appeal. This pro-se brief follows.

I.

WAS PETITIONER'S GUILTY PLEA INVOLUNTARY DUE TO INCORRECT SENTENCING
ADVICE BY TRIAL JUDGE?

During the hearing, the trial judge stated on page #19 9-11 of the plea transcript: For voluntary manslaughter do you understand you could receive up to thirty years incarceration, Sir?

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the nature of the charges and the consequences of his plea. Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In Dover, the Court reversed where the defendant, who pled guilty to twenty-nine indictments involving various counts of larceny and burglary and received a sentence of twenty-five years, did not previously understand that he could have received a prison term in excess of two hundred years, and that his case was a major case. Compare, Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991), where the Court held that counsel was ineffective in advising a defendant that he could receive a maximum sentence of fifty years when a sentence of thirty two years would have been the maximum sentence he could have received. Moreover, in Hinson, the Court ruled that counsel was ineffective in incorrectly advising a defendant that he would be eligible for parole after serving ten years if he pled guilty to common law murder.

Petitioner directs this Court's attention to Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), a criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.

§ 16-3-5 Manslaughter

A person convicted of manslaughter or the unlawful killing of another without malice, express or implied must be imprisoned not more than thirty years or less than two years, which is not what the trial court stated in the hearing. See, page #199-11.

Here, petitioner's guilty plea was given involuntarily because he was not adequately advised of the sentencing consequences of his plea. Pitioner's guilty plea was given in violation of Boykin v. Alabama, 395 U.S. 238 (1969), and the Fifth and Sixth Amendments of the United States Constitution and Article 1, § 12 and § 14 of the South Carolina State Constitution.

In Hill v. Lockhart, 474 U.S. 52 (1985) the Supreme Court held that a claim that counsel's assistance was s defective as to require a reversal of a conviction mandates that the defendant show that counsels errors, the defendant might not have pled guilty. Clearly, counsel's failure to object and adequately advise petitioner regarding sentencing consequences in the instant case constituted deficient legal representation in violation of Hill v. Lockhart, supra, and the Sixth and Fourteenth amendments of the United States Constitution. But for counsel's error and the trial court's incorrect advise in this regard, a reasonable probability exists that petitioner would have elected a trial by jury and not pled guilty to the state's charge.

II.

DID THE TRIAL COURT LACK SUBJECT MATTER JURISDICTION TO ACCEPT A PLEA OF GUILTY WHEN IT WAS ENTERED UPON THE TRIAL JUDGE'S INCORRECT ADVISE THAT THE APPLICANT HAD A RIGHT TO APPEAL HIS SENTENCE?

During the plea colloquy, the trial judge told the applicant: All right you've got ten days to appeal your sentence. Transcript page #22 L.3-4.

Contrary to the judge's statement, pleas of guilty are unconstitutional and if an accused attempts to attach any condition or any qualifications thereto, the trial judge should direct a plea of not guilty. State v. Truesdale, 296 S.e. 2d 528 (1982); State v. Easler, 471 S.E.2d 766. Contrary to the judge's statement, there is no right to appeal a guilty plea. Weathers v. State, 459 S.E.2d 833 (1995). Counsel is not required to inform a defendant

of the right to appeal absent extraordinary circumstances. The effect of the judge's advising the accused that he had a right to appeal was to render the plea conditional.

In State v. O'Leary, 393 S.E.2d 186, this Court reversed and remanded a guilty plea. In that case the trial court permitted the accused to condition his guilty plea upon the right to appeal the constitutionality of the statute under which he was pleading. As this Court held, Truesdale, supra, guilty pleas are unconstitutional and if an accused attempts to attack any conditions, the trial court must direct a plea of not guilty. This Court went on to hold that it is thus, impermissible for a defendant to preserve constitutional issues while entertaining a guilty plea; the trial court must not accept the plea on such terms; the trial judge's advise to the accused in this case had a right to appeal had the same effect. Just like O'Leary, the petitioner here entered his plea thinking he had the right to appeal. Rather it was a plea entered by an accused who thought that based on what the judge told him he had a right to appeal. This plea and sentence should be vacated because the trial court lacked subject matter jurisdiction to accept his conditional plea. See, Laycock v. New Mexico, 880 F.2d 1184, Marrow v. United States, 772 F.2d 525; Corey v. Leverette, 605 F.2d 745 (4th Cir.), cert. denied, 444 U.S. 983, 100 S.Ct. 488, 62 L.Ed. 2d 411 (1979).

III.

DID THE PCR JUDGE ERR BY FINDING TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILURE TO SUBPOENA ALIBI WITNESSES?

Petitioner gave his trial attorney several names well in advance of potential alibi witnesses and addresses to contact them. Their testimony could have changed the outcome of the petitioner's trial. Petitioner's trial attorney failed to investigate and interview potential alibi witnesses. See, Bryant v. Scott, 28 F.3d 1411. An attorney must engage in a reasonable amount of pretrial investigation and at a minimum interview potential witnesses and make an independent investigation of the facts and circumstances in the case. Nealy, 764 F.2d at 1177.

Counsel's failure to investigate potential alibi witnesses was not a strategic choice that precludes claims of ineffective assistance. See, Nealy, 764 F.2d at 1178. Petitioner's trial attorney didn't even attempt to interview potential witnesses. See, Kemp v. Leggett, 635 F.2d 453 (granting habeas relief where counsel failed to interview single eye witness) or character witness; Gaines v. Hopper, 575 F.2d 1147, 1149 affirming habeas relief where inter alia, counsel failed to interview eye witness. Petitioner's trial coun-

sel restricted his pretrial investigation to discussions with petitioner and examination of prosecutor's file.

In this petition, if trial attorney would have located the alibi witnesses and interviewed them, their testimony could have changed the outcome, or at least changed his decision to plead to the charges. This evidence that petitioner introduced at trial demonstrated that counsel was ineffective for not interviewing his alibi witnesses.

IV.

WAS TRIAL COUNSEL INEFFECTIVE FOR FAILURE TO INTERVIEW POTENTIAL WITNESSES ON HIS BEHALF?

In this petition, petitioner asserts ineffective assistance of counsel due to trial attorney failing to interview and subpoena potential witnesses before advising him to plead guilty. If petitioner's case had gone to trial rather than to the guilty plea proceeding, the potential witnesses could have changed the outcome of the proceeding or at least changed his decision to plead to the charge. This evidence which the trial attorney omitted have demonstrated prejudiced the outcome of the case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. Cobb v. State, 408 S.E.2d 223. But for the ineffectiveness of his counsel, he would have request a jury trial rather than entering a plea. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, Jordan v. State, 374 S.E.2d 683. Petitioner have demonstratedly testified that any evidence supports the grant of PCR.

CONCLUSION

For the foregoing reasons stated, Petitioner's conviction and sentence should be reversed and the case remanded back to the Greenville County Court of General Sessions for a new trial.

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SEP 24 2015

P.C.I. MAILROOM

Respectfully submitted,


Willie James Poole, #270914

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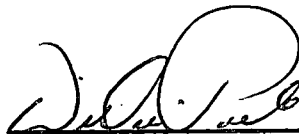
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CERTIFICATE OF SERVICE

I certify that a true copy of my Pro-Se petition for Writ of Certiorari have been served on the Respondent Karen Ratigan and the S.C. Supreme Court by placing the same in the Perry Correctional Institution mailroom hands for mailing, postage prepaid.

I, Willie James Poole, #270914, certify under the penalty of perjury that the foregoing is true and correct. §§ U.S.C.A. §1746



Willie James Poole
Pro Se Petitioner

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