

Willie Jerome Lopez #275027
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DEC 04 2015

November 20, 2015

S.C. SUPREME COURT

The Supreme Court of South Carolina
The Honorable Daniel E. Shearouse
The Clerk of Court
Post-office Box 11330
Columbia, South Carolina, 29211

Re: Willie Jerome Lopez v State
Appellate Case No: 2015-002216

Dear Clerk of Court,

Enclosed please find for filing in your office. The original copy of The Petitioner's, "Petition For Explanation", in support of The Notice of Appeal filed on October 12, 2015 with The Supreme Courts...

Thank you and your office in advance for any and all assistance that may be provided in this matter...

Sincerely,

Willie Lopez
Willie Jerome Lopez

cc: Daniel E. Shearouse, Clerk of Court
cc: Brenda F. Shealy, Chief Deputy Clerk
cc: Karen C. Ratiqan, Respondant of State

State of South Carolina
In The Courts of Appeals
[In The Supreme Courts]

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Appeal from Pickens County

DEC 04 2015

Court of Common Pleas

S.C. SUPREME COURT

Robin B. Stilwell, Circuit Court Judge

Appellate Case No: 2015-002216

Willie Jerome Lopez _____ Appellant

v.

State of South Carolina _____ Respondent

Petition for Explanation

[Other Counsel of Record]
Ms. Karen C. Ratiqan
Senior Assistant Deputy Attorney General
Post-office Box 11549
Columbia, South Carolina, 29211
"Attorney for Respondent"

Willie Lopez
Willie Jerome Lopez # 275027
Allendale Correctional Institution
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Table of Authorities

Cases

Strickland v Washinaton	466 US 668, 104 S.Ct 2052 (1984)
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Judge v State	321 SC 554, 471 SE2d 146 (1996)
Clair v State	324 SC 144, 478 SE2d 54 (SC 1996)
Whitner v State	328 SC 1, 492 SE2d 777 (1997)
Gibson v State	334 SC 515, 514 SE2d 320 (1998)
State v Kelsien	331 SC 60, 502 SE2d 63 (1998)
Pittman v State	537 SC 597, 524 SE2d 623 (1999)
State v Gentry	363 SC 101, 610 SE2d 499 (2000)
State v Gregory	364 SC 150, 612 SE2d 449 (SC 2000)
Brown v State	343 SC 342, 540 SE2d 846 (2001)
State v Patterson	359 SC 115, 597 SE2d 150 (2004)
Robinson v State	380 SC 201, 699 SE2d 588 (2008)
Berry v State	381 SC 630, 675 SE2d 425 (2009)
State v Spratt	383 SC 212, 678 SE2d 266 (ct. App 2009)
Kolle v State	386 SC 578, 690 SE2d 73 (2010)
State v Moses	390 SC 502, 702 SE2d 395 (2010)
Missouri v Frie	WL-932020, 132 S.Ct 1398 (2012)
Hafley v Cooper	WL-932019, 132 S.Ct 1376 (2012)
State v Scott	WL-23274796 (2003)

Statutes

South Carolina Code Ann:	17-27-45 (c)
South Carolina Code Ann:	17-27-70
South Carolina Code Ann:	17-27-90
South Carolina Code Ann:	6-11-2040
South Carolina Code of law	Title # 15, Chapter # 27

Other Authorities

Sixth (6) Amendment of The United States Constitution...
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Statement of issue's on Appeal

1. Ineffective assistance of PCR Counsel:

(A). Counsel failed to "adequately" investigate, research and prepare sufficient evidence to support Petitioner's argument of an illegal enhancement of a Third (3) offense drug violation, when it should have been a Second (2) offense only... PCR Counsel's actions prejudice Petitioner's ability to present evidence to the Court to have the unlawful enhancement of the offense reviewed... The evidence the uncounseled enhancement used for conviction — would have shown beyond a reasonable doubt that Courts lack subject matter jurisdiction to except the guilty plea and Petitioner is entitled to relief...

(B) Counsel failed to give a *ius actionis* of due process during the PCR proceeding to support Applicant's Rule # 5 Brady violation, before a guilty plea... This issue supports hidden facts of illegal enhancement of Applicant's prior drug offense...

2. PCR Court Error:

The PCR judge "erred" in denying Applicant's PCR application and his motion for reconsideration and to reopen the evidentiary portion of the case... Clear convincing evidence shows beyond all account Courts erred in the use of Petitioner's uncounseled marijuana charge to enhance a drug charge from second offense to third and convicting Petitioner of illegal offense...

Statement of The Case

Petitioner (Willie Jerome 1002) is Confined in The South Carolina Department of Corrections Pursuant to orders of Commitment of The Clerk of Court for Pickens County... The Applicant Waived Presentment to The Pickens County Grand Jury for Two (2) Counts of distribution of Cocain Indic. No: 2008-65-39-1934, 1937 and distribution of Cocain within proximity of a School or Park Indic. No: 2008-65-39-1936, He was represented by James S. Erwin, III, Esquire...

On November 20, 2008, The Applicant pled guilty... The Honorable Edward W. Miller Sentenced The Applicant to Concurrent terms of Seventeen (17) years for each Count of distribution of Cocain Third offense and Ten (10) years for distribution of Cocain within proximity of a school or Park... The Applicants Counsel Did Not Appeal...

The Applicant filed a PCR Application on February 4, 2009 Case No: 2009-CP-39-0223... An evidentiary hearing was conducted on November 9, 2009 at The Pickens County Courthouse, Frank Epps, Esquire represented Applicant... The Honorable G. Edward Welmaker denied and dismissed The PCR application by order filed December 18, 2009... By order filed March 5, 2010 Judge Welmaker denied The Applicant's subsequent motion for Reconsideration and Reopen Evidentiary portion of The Case...

The Applicant filed notice of Appeal, Karelle C. Durant, Esquire of The South Carolina office of Appellate Defense perfected The appeal... The South Carolina Supreme Court of Appeal, denied The Petition by order filed July 12, 2013 and Applicant received The remitter on July 31, 2013...

Applicant filed His Second PCR application on April 16, 2015 Case no: 2015-CP-39-0501. Applicant was denied a Procedural Hearing, Respondent MS. Karen C. Ratigen of The Attorney Generals office filed for Conditional order of

dismissal dated 28 day of July 2015, Applicant Responded to Conditional order of dismissal on August 20, 2015, Applicant received from The Honorable Robin B. Stilwell on September 21, 2015, The remitter for Final order of dismissal...

Applicant Filed Notice of Appeal with The South Carolina Supreme Court of Appeals on October 12, 2015. Appellate Case No: 2015-002216 ... On November 5, 2015 Appellate Court requested The Applicant File Explanation pursuant to SCACR- Rule 243(c), This Petition follows:

facts

The Petitioner Appeals The Summary dismissal of His Second Application for Post-Conviction Relief. Asserting That The Court erred in finding, without a evidentiary hearing, That his application is barred Successive... *Land v State* 274 SC 243, 262 SE2d 735 (1980)...

The Arguments presented in The application "could Have not been raised in The previous application" and is based on evidence That Has not yet been adjudicated before a Court Due to PCR Counsels ineffective assistance... *Clair v State* 324 SC 144, 478 SE2d 54 (SC 1996)

Aswell, PCR Court erred in failing to grant Petitioner's motion for Reconsideration and to Reopen The evidentiary portion of The case, Where, The evidence of a uncounseled conviction used for enhancement will show beyond a reasonable doubt The Courts had no Subject matter Jurisdiction to except Petitioner's guilty plea and he is entitled to relief... *Brown v state* 343 SC 342, 540 SE2d 846 (2001)... *State v Gentry* 363 SC 101, 610 SE2d 499 (2000), *Strickland v Washington* 466 US 668, 104 Sct 2052 (1984), *Austin v. state* 305 SC 453, 409 SE2d 395 (1991), *Aice v state* 305 SC 448, 409 SE2d 392 (1991)... and many more...

Arguments

Petitioner, moves for The South Carolina's Supreme Court of Appeals Consideration of review on basis That Current Application should not be barred as Successive...

South Carolina Code Ann: 17-27-70 and 17-27-90 is not The Controlling law in The instant case in determining whether or Not Applicant is entitled to a Post-Conviction Evidentiary hearing as is required by chapter #27: "Uniform Post-Conviction Procedural Act".

Pursuant to South Carolina Code Ann: 17-27-45-c) and 17-27-110, The Collateral review of The Current Application would be base under The South Carolina case law in Aice v State 305 SC 453, 409 SE2d 395 (1991), Austin v State 305 SC 448, 409 SE2d 392 (1991)... Aswell, is supported Through The South Carolina Supreme Court rulings in Robinson v State 386 SC 201, 699 SE2d 588 (2008)...

Foremost, we begin with The framework established with in South Carolina Supreme Court ruling in Robinson v State. To be The Controlling case in This matter... In Robinson, The Supreme Court ruled, That Plea Counsel's failure to object to The introduction and or use of an uncounseled magistrate's Court Conviction to enhance a Current offense is illegal enhancement and is construed to be ineffective assistance of Counsel... Strickland v Washington 466 US 668, 104 S.Ct 2052 (1984)... Aswell, The Sixth (6) and The fourteenth (14) Amendments, Due Process, requires guilty Plea's To be entered voluntarily, knowingly and intelligently... In Robinson, Although Courts found That plea was entered voluntarily, rather Than vacating The Conviction of The illegal enhancement. Courts remanded The case for resentencing under The properly categorized offense... Robinson v State 380 SC 201, 699 SE2d 588 (2008), State v Spratt 323 SC 212, 628 SE2d 266 (4 App. 2009)...

As set forth, The case above is very similar to The one involved here... The case at hand, Counsel's belated presentation of Petitioner's Brady materials and failure to give a objection to The use of a Prior uncounseled conviction to enhance The Current offense, significantly limited Petitioner's ability to

Know whether he could Plea an acquital or not... Aswell, would Question The Plea as knowing and intelligently made... Patterson v. State 359 SC 115, 597 SE2d 150 (2004)... State v Gregora 364 SC 150, 612 SE2d 449 (SC 2000)...

Further more, Like in Robinson, Post-Conviction relief Counsel's Failure to give a jus actionis objection over The Petitioner's Rule 5, Brady violation and The use of a Prior uncounseled Drug Conviction to illegally enhance The Current offense, violated Petitioner's Constitutional rights to a Fair proceeding... Where The Sixth (6) Amendment guarantecs a defendant The right to have effective Counsel present at all Critical stages of The Criminal proceedings... USCA Const. Amend. 6, Missouri v. Frye wk-932020, 132 S.ct 1399 (2012)... Lafler v Cooper at wk-932019, 132 S.ct 1376 (2012)...

Petitioner respectfully request Appeals Courts grant The Applicant's, Post-Conviction relief application a Procedural Evidentiary Hearing, where, evidence not yet adjudicated by Courts, Due to PCR Counsel's ineffective assistance... Would provide specific legal understanding and reasoning to support Argument of Constitutional violations of illegal conviction... Aswell, would provide specific and legal evidence That Courts lack Subject matter Jurisdiction to except Petitioner's unintelligently made guilty Plea... State v Scott 2003- wk-23274796, Brown v state 343 SC 342, 540 SE2d 846 (2001)...

Here, Petitioner contends Courts erred in denying his motion for reconsideration and to reopen The Evidentiary Portion of The case... Evidentiary hearing would provide Petitioner with The opportunity to prove beyond a reasonable doubt That Counsel's failure to furnish his Rule 5, Brady material prior to trial, violated his Constitutional right to a fairly knowing and intelligent guilty Plea... Gibson v state 334 SC 515, 514 SE2d 320 (1998)... Judge v. State 321 SC 554, 471 SE2d 146 (1996)... The rulings of The

United States Constitution and South Carolina Constitution state in The sixth and fourteenth Amendment, Aswell as ~~const~~ Article 1.14 and 1.3, That due Process Clause clearly requires That all guilty plea's are to be entered voluntarily, knowing and intelligently... Pittman v state 537 SC 597, 524 SE2d 623 (1999), State v Moses 390 SC 502, 702 SE2d 395 (2010)...

Further more, Petitioner Arque's A Evidentiary hearing of The unadjudicated evidence would show beyond a reasonable doubt, That one of The Petitioner's uncounseled Prior Drug Convictions for possession of marijuana was unlawfully used to enhance his previous drug violation to a Third offense when it should have only been a Second offense... Robinson v. State 380 SC 261, 669 SE2d 588 (2008). Scott v state 334 SC 248, 513 SE2d 100 (1999)... Rainu v state 307 SC 130, 414 SE2d 131 (1992)... Berry v State 381 SC 630, 675 SE2d 425 (2009),

Thus, Courts lack Subject matter Jurisdiction to except The guilty plea and Petitioner would be entitled to a Evidentiary hearing by law to adjudicate The matter... Whitner v State 328 SC 1, 492 SE2d 777 (1997), Kalle v state 386 SC 578, 690 SE2d 73 (2010), State v Kelsey 331 SC 50, 502 SE2d 63 (1998)... Clair v. State 324 SC 144, 478 SE2d 54 (SC 1996)... State v Gentry 363 SC 101, 610 SE2d 499 (2000)...

Conclusion

Based on The foregoing, Petitioner respectfully submits he has met his burden of proof in showing he is entitled by law to a fair Post-Conviction Relief hearing based on new and unadjudicated evidence stated above... Petitioner respectfully request Appeals Courts to grant his Application for Relief...

November 20, 2015

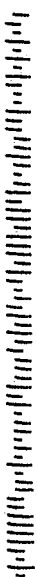
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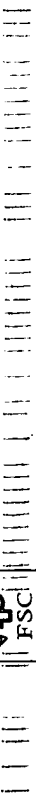
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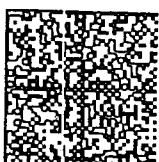


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