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AUG 30 2016

CASE NO. 2015-CP-37-0225
Notice of 59^e New Trial Alter or
Amend.

August 25, 2016 Judgement

S.C. SUPREME COURT

I Dan Laverf Temple, Do Certify that the same
has been served/forwarded to. Johanna C.
Valenuela. Senior Assistance Deputy Attorney
General. Office of the Attorney General.
P.O. Box 11549 Columbia, SC 29211 and
Beverly H. Whitfield. Oconee County Clerk of Court
P.O. Box 678 Walhalla, SC 29691 and The South
Carolina Supreme Court, Clerk of Court
Daniel E SHENEDUS P.O. Box 11350 Columbia, SC 29211

I Thank you in advance
for your assistance

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Dan L Temple #240638

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STATE OF South Carolina

County of Oconee

STATE OF South Carolina

v Respondent

Dan Laveret Temple

SCDC # 240638

Applicant,

In The Court of Common Pleas

For The Tenth Judicial Circuit

CA NO. 2015-CP-37-0225

AUG 30 2016

Rule 59^e NEW Trials Motion

S.C. SUPREME COURT TO Alter or Amend judgement

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This Matter comes before the Court by way of the applicant PCR filed March 16, 2015 Respondent made its return on May 6, 2016 An Evidentiary hearing was held on June 6, 2016 at the Oconee County Courthouse applicant was appointed by Hugh W. Welborn, Esquire Senior Assistant Deputy Attorney General. Johanna C. Valenzuela represented Respondent.

Applicant and his trial Counsel, E Delane Roseman, Esquire testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Correction pursuant to order of commitment of the Oconee County of Court Applicant was indicted by the

January 2013 term of the Oconee County Grand jury for Manufacture, distribution, ect. of cocaine base, third or subsequent offense (2013-65-37-0184) and possession of other controlled substance in Schedule I to V, second or subsequent offense (2013-65-37-0185). R. Delane Rosemond, Esq., represented Applicant. On March 18-21, 2013, Applicant proceeded to a trial before the Honorable Alexander S. Macaulay and a jury. He was found guilty of the lesser included offense of possession of crack cocaine; and as indicted for possession of other controlled substance, second or subsequent. Judge Macaulay sentenced Applicant to a term of imprisonment for ten (10) years for possession of crack cocaine; and to a term of imprisonment for one (1) year possession of other controlled substance. These sentences were to be served consecutively.

A timely notice of appeal was filed and perfected on Applicant's behalf. Carmen Ganjehsani Esq., represented Applicant on appeal.

The South Carolina Court of Appeal affirmed the applicant conviction. State v Temple Op. NO 215-up-061 (SC Ct. App Filed February 5, 2015)
The Remittitur was issued on February 23, 2015
On June 6, 2016 The applicant testified at the PCR hearing to the following issues.

1. Ineffective assistance of Counsel
 2. Trial counsel failed to inform the trial judge, at the suppression hearing that counsel reviewed the alleged controlled buys video with the applicant, before trial in that's alleged in the search warrant affidavit dated July 24, 2012. that led to the search of applicant Motel room 103 and there was not a controlled buy in the video that could ~~not~~ not be established.

b. Trial Counsel was ineffective for not motioning to the court to recuse, Magistrate judge, William F. Derrick From presiding over the preliminary hearing dated October 29, 2012 since he was the same judge, Magistrate who signed off on the search warrant affidavit dated, July 24, 2014 that led to the applicant conviction.

c. At the outset of trial, Trial Counsel filed a motion in limine seeking the suppression of the evidence discovered during the search. Where the affidavit in support of the search warrant was not supported by probable cause and lacked any information as to the informant's reliability.

Trial Counsel ^{failure} ~~was ineffective~~ to properly object to the admission of drug evidence such that the

suppression was not preserved for appellate review.

ARGUMENTS

ONE.

(a) During pre-trial Motion, defense Counsel Moved to suppress the drugs found in the applicant Motel room 103 where the affidavit in support of the Search warrant was not support by probable cause and lacked any information as to the informant's reliability Tr. 42 ll. 7-16; 46 l. 7- 47; l. 2. During the pre-trial hearing, the State relied upon State v. Dupree 354. se 676, 583. se 2d 437. (ct. App. 2003) in support of its argument that the Magistrate had a substantial basis for concluding probable cause existed to issue the search warrant Tr. 47. ll. 4-17. In Dupree the Court observed that "an informant's controlled

buy of the drugs can constitute Probable cause sufficient for a Magistrate to issue a warrant Id at 687,583 SE 2d at 443. The Court went further to state: If the controlled buy was properly conducted, it alone can provide facts sufficient to establish Probable cause for a search warrant Id at 689,583 SE 2d at 444.

Trial Counsel did argue that there was no indication in the search warrant that the informant receive drugs from applicant in a properly conducted buy Tr. 48, l. 13-49
1.10 The Trial Court disagreed and denied the applicant motion to suppress the drug evidence Tr. 57, ll 2-3

Trial Counsel failure to inform the trial judge at the suppression hearing, that Counsel reviewed the alleged controlled buy that's listed on the dates July 17, 2012 and July 23, 2012 in the search warrant affidavit dated July 24, 2012 before trial

and there was no controlled buy from the video that could be established to support the search warrant Affidavit. Trial counsel denied the applicant the right to inform the trial judge of all the facts surrounding the "alleged" video of the controlled buy that clearly showed, that there wasn't a controlled buy that was properly conducted. applicant was prejudiced by counsel lack of effectiveness at trial had counsel informed the trial court of this information, the applicant believe the Motion to suppress on March 18, 2013 would have been granted. and the outcome would have been different the applicant 4th amendment right was violated.

ARGUMENT

two

(b) On October 29, 2012 The applicant went before Magistrate judge William F. Derrick, for his preliminary hearing. for distribution of crack cocaine to an undercover operative, on two occasions on July 17, 2012 and distribution of crack cocaine to an undercover operative on July 23, 2012. All above states listed in the Search warrant affidavit, dated July 24, 2012.

The applicant also, went before Magistrate, judge William F. Derrick on October 29, 2012 for possession with intent to distribute crack cocaine and possession of other controlled substance. Scheulde 1-v. from the illegal search of his Motel room 103 dated July 25, 2012.

The applicant "alleged" Trial counsel was ineffective, because he should have asked that Magistrate Judge William F. Derrick to recuse himself. Since he was the Magistrate Judge who issued the search warrant, by the Magistrate Judge presiding over the preliminary hearing prejudice the applicant. The Magistrate had first hand knowledge of the alleged facts pertaining to the search warrant affidavit, he couldn't have been detached, ^{are} ~~nor~~ impartial by the Magistrate Judge recusing

The applicant has had the opportunity to review the court order of dismissal dated August 12, 2016. The applicant alleges, the order of dismissal doesn't address the issues, applicant testified to at the PCR hearing. The Order of Dismissal has side step the applicant testimony. The PCR transcript will reflect the issues raised at the hearing. Also please take notice, that the record will reflect that PCR Counsel

Hugh W. Welborn appointed to represent the applicant at the PCR hearing dated June 6, 2016. However Counsel was ineffective at the hearing. Counsel failed to research and investigate issues and raised all available grounds for relief under rule 71.1.d. The applicant must be seen to be without Counsel at the PCR hearing.

Him self from presiding over the Preliminary hearing. and allow another Magistrate judge to presid over the hearing. could have increased the applicant chance of having all, are some of his charges dismissed.

C. Trial Counsel Failure to Object to the admission of the drug evidence at trial and preserve the issue for appellate review, prejudice the appellate, the South Carolina Court of appeals affirmed the applicant conviction, and was not able to rule on the motion to suppress the drug evidence. also counsel failure to object led the jury to believe that all the drugs was the applicant, when his codefendent was charge jointly for the drugs. and testified for the state, had counsel. Made 2 timely objection the applicant would have receive 2 different out come. his 4th 2mendment was violated.

unprotected, so that the

In CONCLUSION

The applicant respectfully ask this Court to address each issues that the applicant testified to at the PCR hearing accordance to title 17-27-80 and Make a specific finding of fact on each issue raised at the PCR hearing. see also pruitt v. state cite as 423 SE 2d

127 (SC. 1992) Petitioner shall be entitled to file an amended application if necessary and the order shall address all issues properly raised at the hearing. McCray v. state 305 SC 329, 408 SE 2d 241 (1991) SC. Code Ann 17-27-80 (1991)

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