

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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OCT 27 2016

Certiorari to Greenville County
HONORABLE DANIEL D. HALL. CIRCUIT COURT JUDGE S.C. SUPREME COURT

DEVROSS McCROFT SULLIVAN, PRO-SE.

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDANT,

APPELLATE CASE NO: 2016-000620

Pro-Se RESPONSE TO
JOHNSON PETITIONER FILED BY APPELLATE COUNSEL

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 2nd DAY OF October 2016

NOTARY PUBLIC FOR SC

MY COMMISSION EXPIRES 9/16/2020

Devross M. Sullivan

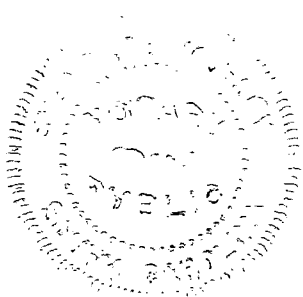
Devross M. Sullivan, #319615

Petitioner Pro-Se.

BRCI Mlt. Unit / Rm. 2082

4460 Broad River Rd.

Columbia, South Carolina 29210



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ISSUES PRESENTED

1) The PCR Judge erred by denying Petitioner's allegation of a Fourth Amendment Right's violation.

2) The PCR Judge abused his discretion by denying Petitioner a fair review of his claims.

3) The plea Counsel erred by not effectively representing petitioner.

STATEMENT

Petitioner Devross M. Sullivan, is incarcerated in the South Carolina Department of Corrections, pursuant to orders of commitment from Greenville County Clerk of Court.

The Greenville County Grand Jury indicted the Petitioner during the January 2014, term of General Session.

Petitioner Sullivan, was indicted for trafficking Cocaine, possession with intent to distribute a controlled substance, trafficking Heroin, possession of a Weapon during the commission of a violent crime, and possession with intent to distribute Cocaine base. Counselor Brehm, represented Petitioner on these charges.

On May 15th, of 2014, Petitioner Sullivan, entered into a negotiated plea agreement for an 18-year sentence, in which Petitioner Sullivan, plead guilty. Judge Verdin accepted the negotiation and sentence Petitioner to an aggregate eighteen years prison term. App. 1-16. James Brehm L. Monts and Jeffrey Weston, appeared on behalf of the State. The record will show that Petitioner's Attorney did not filed an appeal of his Conviction and sentence. App. 42, Ln-7.

On April 20, 2015, Petitioner file a PCR application with the Greenville County Clerk of Court. App. 18-32. The Respondent file a Return requesting an evidentiary hearing be held in this case dated, September 15, 2015, App. 33-39.

On February 16, 2016, a PCR hearing was convened at the Greenville County General Session Court, before Judge Danial

Dewit Hall. App. 4062. The Petitioner was present and represented by Brian P. Johnson Esq., Karen C. Ratigan Esq., of South Carolina office of the Attorney General representing the State.

The Honorable Judge Hall, issued an order of dismissal in the case there in denying Petitioner's allegations of ineffective assistance of trial Counsel. App. 66-70.

Petitioner appealed, Supplemental issue follows.

- SEE ARGUMENT -

ARGUMENT

Petitioner claims that the PCR Judge's review of issues surrounding Petitioner's Fourth Amendment Rights violation and the totality of plea attorneys representation, that prejudice Petitioner of a fair hearing in respect to plea, Counselors discussion with Petitioner. See Dismissal Order pg. lines 15-17. That a Suppression hearing was [Fruitless] and refused the Petitioner the Right to have the issue of an illegal search and Seize evidence, in violation of his Fourth Amendment Rights. Reviewed, Johnson v. U.S., 604 F.3d 1016. 1019-22(7th Cir. - 2010). Counsel failure to move to Suppress evidence was ineffective assistance because Reasonable Probability that Suppression would have resulted in different outcome. See dismissal order pg. 4., lines 14-16. Petitioner's sentencing issues, and denied. See pg. 3., lines 19-22, pg. 4., lines 1-2. See Gall v. United States, 552 38 (2007): State v. Franklin, 276 S.C. 240. 226 S.E. 2d 896 (1976).

Petitioner also argues that because Petitioner's Fourth Amendment claim was allegedly procedurally defaulted, by his plea attorneys failure to file a timely Suppression Motion. See Dismissal Order pg. 4., lines 15-17, any 6th Amendment claim based on this [Failure] is similarly defaulted. The United State Supreme Court disagree, So Stating:

Petitioner's Six Amendment claim is distinct from his Fourth Amendment claim and have never been defaulted. See. Katz v. United States, 389 U.S. 347 (1967). See. Rauwling v. Kentucky, 448 U.S. 98. 104 (1980).

Furthermore, Petitioner assert because the PCR Judge did not take into account any of the issues raised by Petitioner prior to or during the plea (trial), or the PCR hearing. See., Appellate brief. App. 3., Lns. 14-22, and App. 4., Lns. 1-6., See. Gall v. State, 552 U.S. 38 (2007); State v. Franklin, 276 S.C. 240, S.E. 2d 896 (1976).

However, furtherance of the PCR Judge's discretion to deny, even to review Petitioner's claim that he was denied a direct appeal by plea Counsel, and the fact that plea Counselors refusal to file a Motion to Suppress in violation of Petitioner's 4th Amendment Rights illustrates error, had Counselor not erred by denying Petitioner the opportunity of a Suppression Motion, the probability the outcome would be different. As stated by the U.S. Supreme Court e.g. Gideon, 372 U.S. at 344 ("The right of one charged with a crime to Counsel may not be deemed Fundamental and essential to fair trials in some Countries, but it is in ours"). As plea Counsel refuse to investigate Petitioner's claim of a 4th, Amendment violation of illegal Search and Seized evidence. See. Order of Dismissal. App. 4., Lns. 1-3.. which prejudice defendant, had Counselors filed a Suppression Motion as Petitioner insistently requested. See. Order of Dismissal, App. 4., Lns. 5-7. See. Cronic Supra, at 652: United States v. Ash, 407 U.S. 25. 31-32 (1972); Gideon Supra, at 343-345:

Johbson v. Zerbst, 304 U.S. 458. 462-463 (1938). Powell v. Alabama, 287 U.S. 45. 68-69 (1985). See also, Sahafer Federalism and State Criminal Procedure. 70 Harv. L. Rev., 1. (1956), ("of all rights that an accused person has, the right to be represented by Counsel if by far the most persuasive, for it affects his ability to assert any other rights he may have").

The Constitutional guarantee of Counsel, however, cannot be satisfied by mere formal appointment. Avery v. Alabama, 308 U.S. 444, 446 (1940).

The question Petitioner presents, that had not for plea Counselor erred to file a timely Suppression Motion on Petitioner's behalf and a Direct Appeal as Petitioner insistently requested, the outcome would have been different.

The PCR Judge who refused to review all of Petitioner's claim objectively, abused his discretion implicitly by denying all other issues presented by Petitioner. See Order of Dismissal. App. 7., Lns. 1-20. See also Appellate Counselors, Johnson's Petition. App. 3., Lns. 19-22. App. 4., Lns. 1-2. See Strickland Supra, at 685. In other word , the right to Counsel is the right to effective Assistance of Counsel. See Evitts v. Lucey, 469 U.S. 387 395-396 (1985).

Petitioner assert, that as result of plea Counselors error(s) to file, (1) A Suppression Motion on Petitioner's behalf; (2) A refusal to file a Direct Appeal in violation of Petitioner's right to a Direct Appeal. See White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1975).

Also, Petitioner asserts that plea Counselor refused to investigate Petitioner's claim of his 4th, Amendment Right, being violated by an illegal Search and Seizer, which was Racially Motivated, and deprived Petitioner of aggressive defense, rather Amicus Curias.

Under the 4th Amendment, "every Search and Seizer by a Government agent must be reasonable," See U.S. Constitution Iv., and S.C. Constitution, Art. 1 §10., the officers in this case was not reasonable in light of Petitioner's 4th, Amendment Rights against an illegal Search and Seizer. As officers action towards Petitioner was Motivated by Race base profiling as a result, gave rise to the illegal Search and Seizer. As in Kimmielman v. Morrison, 477 U.S. 365. 106 S.Ct. 2574: 91 L. Ed 2d 305: U.S. Lexus 63: 54 U.S. L. W. 4789, the Judge erred in light of [h]is review of the entire record abused his discretion to acknowledge that there exist a reasonable probability that, but for Counselors unprofessional errors. See [PCR pg. 29., Lns. 14-19.], the result of the proceeding would have been different. As the review by the PCR Judge of the record is based on the premise, by the Respondent [State] review of his 4th Amendment claim, that his right against an illegal Search and Seizer. 4th Amendment Violation, for which Counsel in his discretion should have thourally investigated. However, defense Counsel's failure to litigate a Fourth Amendment claim, competently is the principal allegation of ineffectiveness. The defendant must also prove that his Fourth Amendment, claim is Meritorious and that there is a reasonable probability that the [verdict] outcome, would have been different absent the excludable evidence (resulting from the illegal Search and Seizer violation), in order to demonstrate actual prejudice. Thus, while Petitioner's

Fourth Amendment claim, is one element is one proof of Sixth Amendment claim. The two claims have separate (identities) and reflect different Constitutional values. See PCR Judge's order of Dismissal, App. 5., Lns. 19-22., Clearly illustrate in the PCR Judge's reviewing discretions, discarded the Petitioner's 4th Amendment claim, in favor of the Respondent. See (Dismissal Order), App. 5., Ln. 23., App. 6., Lns. 1-7.

STATEMENT OF FACTS

On July 18, 2013, Petitioner, (an African American Male) was profiled because of his ethnic (Color and Race), as the Greenville County Police targeted Petitioner prior to the confrontation at Homedepot, that gave rise to illegal Search and Seizer of evidence from a vehicle Petitioner was driving in violation of his 4th Amendment Rights, as stated by the Supreme Court. Citation Omitted;

"Under the Fourth Amendment, every Search and Seizer by a Government Agent must be reasonable." See. U.S. Constitution Iv., and S.C. Constitution. Art. 1 §10."

The officers in the case, See officer(s) 1) Chad Ayers, Supplemental report narrative. App. 1 of 5, Lns. 1-3., and 2) officer Michael Derosa's Supplemental report narrative. App. 1 of 5, Lns. 1-26., dated 7/18/13, and narrative App. 1 of 1., Lns. 1-11 8/12/13, was unreasonable, because Petitioner was targeted before he arrived at Homedepot. Petitioner never attempted to elude any

officer(s) as a result of being followed or chase, because Petitioner was not in Greenville or the area at the time as reported by the officers in this case, as well as the prosecutor whom further this interpretation of the facts.

Petitioner asserts, Crosby Circle is a middle class neighborhood, and not a drug ridden area. The Petitioner was harrassed constantly by the police department, was arrested, placed in jail on similar charges, which was dismissed, to be re-charged, placed on house arrest, and harrassed weeks later by the very police department, leading up to the Narrative outlined by the officers that was involved with Petitioner's case, as well as the Solicitor(s) of the case adopting verbatim the police Narrative as facts, as follows:

See Guilty plea. App. 12., Lns. 9-25,, Lns. 1-20.

See also Respondent's Return App. 33-39;

See also Order of Dismissal App. 64-70.

The PCR Judge refusal to review all of Petitioner's claim, prejudiced Petitioner of due process 4th Amendment, also that the PCR Judge refusal to address Petitioner's claim of a Brady Violation, by the non disclosure of all the video sureillance tapes by the Greenville County police department. See officer Michael Derosa's Supplemental report on 7/18/13, and in bad faith, refused to disclose exculpatory evidence to Petitioner of the video surveillance tapes between the hours of 9-8 pm., on 7/18/13, whereas, the outcome of Petitioner's case. See home deport Subpoena response regarding the above matter, which clearly illustrated that home deport turned over to Greenville County police

department, all of the videos in their possession that was recorded on 7/18/13, in which home deport not once stated to officer Derosa in his Supplemental report, that home deport excised redact, or destroyed any of the video surveillance tape(s) on 7/18/13, before and at PCR evidentiary hearing, which would have resulted in a different outcome. See Brady v. Maryland,

The Supreme Court held that due process requires the prosecution to disclose, upon request, evidence favorable to an accused when such evidence is material to guilt or punishment. Brady 373 U.S. 83,87 (1963).

A Brady Violation, occurs when:

- 1) evidence is favorable to accused because it is exculpatory or impeaching; 2) evidence was suppressed by the State, either willfully or inadvertantly, and prejudice ensued.

See also United States v. Bagley, 473 U.S. 667. 676 (1985).

See also kyles v. Whitley, 514 U.S. 419. 433 (1995). "[R]egardless of request, favorable evidence material..." (Citing Bagley, 473 U.S. at 682).

Petitioner request for the home deport surveillance video, which would have exculpate Petitioner and exposed the misconduct by the Greenville County police department in violation of Petitioner's 4th, 5th, and 14th Amendment. See also Strickler v. Greene, 527 U.S. 449. 469 (2009) (When the State with holds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law in violation of the 14th Amendment.").

Had the PCR Judge, not abused his discretions to deny all of Petitioner's claim(s), the outcome of Petitioner's case would have been different.

CONCLUSION

Based on the fact(s), that Appellant Counselor presented to this Most Honorable Court a legally arguable issue, which clearly illustrate(s) error(s) within Petitioner's case, in the aspect to Appellant Counselor Johnson's Petition, Petitioner Pro-Se respond to Counselors Petitioner, by submitting to this Honorable Court within the proscribed time. Petitioner's meritorious, Supplemental issues with argument to be reviewed.

IN GOD NAME WE PRAY.

Respectfully Submitted,

SWORN TO AND SUBSCRIBED BEFORE ME

THIS ___ DAY OF _____ 2016.

NOTARY PUBLIC FOR SC

MY COMMISSION EXPIRES: _____

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cc/c

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STATEMENT OF ISSUES ON DIRECT APPEAL

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A. SULLIVAN. 319615

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