

Dated: 10-26, 2016

The Honorable Daniel E. Shearouse,
Clerk of the S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

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OCT 31 2016

RE: Bernardo J. Evans, #361706, Petitioner,
v. State of South Carolina, Respondent,
Appellate Case No. #2016-000604

S.C. SUPREME COURT

Dear Mr. Shearouse:

Enclosed please find the Petitioner's pro-se petition for
Writ of Certiorari to be filed with the S.C. Supreme Court.
Please file and send back an clocked stamped copy for my records.

Sincerely,

/s/ 

Bernardo J. Evans, #361706

LCI. Wando-A#112

P.O. Box 205

Ridgeville, S.C. 29472

Pro-Se Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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OCT 31 2016

Certiorari to Horry County **S.C. SUPREME COURT**
Honorable D. Craig Brown, Circuit Court Judge

Bernardo J. Evans, #361706,Petitioner,

v.

STATE OF SOUTH CAROLINA,Respondent,

APPELLATE CASE NO. #2016-000604

PRO-SE PETITION FOR WRIT OF CERTIORARI

Bernardo J. Evans
LCI. Wando-A#112
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

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ISSUES PRESENTED

1. Whether the Petitioner's Sixth Amendment rights to effective assistance to counsel was violated when counsel pressured him into pleading guilty and depriving him of his rights to an fair trial?
2. Did the PCR Court make a reasonable determination of its fact-finding and conclusion of law according to the S.C. Code Ann. §17-27-80 statute?
3. Whether the Petitioner's plea was made intelligently, knowingly, or voluntarily?

STATEMENT

Indictment and Guilty Plea

Petitioner was charged with armed robbery and assault and battery of a high and aggravated nature (ABHAN). App. 3,11,4-16. Petitioner was coerced into an plea agreement under duress and wishes to withdraw his plea based upon being deprived of effective assistance of counsel. Petitioner did not enter into his plea knowingly, voluntarily, nor intelligently.

On October 7th.,2014, the Petitioner enter into an guilty plea without full understanding of the consequences of his plea before the Honorable Benjamin Culbertson, Circuit Court Judge.

Petitioner was represented by Johnny McCoy and the State was represented by Martin D. Spratlin. Judge Culbertson, sentenced the Petitioner to (10) ten years for the armed robbery and (15) fifteen years for the ABHAN. App. 26,1,15-27,1,3.

Post-Conviction Relief and Evidentiary Hearing

Petitioner filed an application for post-conviction relief on January 27th.,2015. App.30-39. The Respondent filed its return on August 28th.,2015. App.40-45. An hearing was convened on February 11th.,2016, before the Honorable D. Craig Brown at the Horry County Courthouse. The Petitioner and his PCR counsel James Falk were present and the State's Assistant Attorney General Jessica E. Kinard represented the State. The PCR Court Judge D. Craig Brown, denied the PCR application on March 7th,2016. Petitioner filed an application for "Access to Justice Post-Conviction DNA Testing Anaylsis" on August 29,2016 still pending.

ARGUMENT

1. Petitioner's Sixth Amendment rights to effective assistance of counsel was violated when his plea counsel pressured him into pleading guilty and depriving the Petitioner of the right to an fair trial.

Appellate counsel's allegations of relevant facts are speculation and not genuine. Based upon the State's response to the Petitioner's application for DNA Anaylsis, there was no physical evidence. Plea counsel made the Petitioner believe that there were actual video footage that identifiy the Petitioner as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the Petitioner has been coerced to plead guilty by duress or made or is alleged to have made incriminating statements or admission as to the identity. DNA evidence is infallible. This proves why the State decided to destroy the evidence. Counsel known or should have known that an proper investigation and discovery were necessary elements to prepare an defense. The deficient performance by plea counsel not only prejudice the Petitioner but deprived him of the rights to an fair and impartial trial therefore violating his Sixth Amendment rights to effective assistance. Appellate asserts that this argument is without merit. For the record, this issue has merit and constitutional consequences. The allegations were based upon hearsay and according to the Rules of Evidence Rule#802 is not admissible.

1. CONTINUED ARGUMENT

Guilty Plea

Petitioner did not want to plead guilty. He had no independent recollection of the robbery. At the guilty plea the State assumed to outline the facts of the robbery and assault based upon a theory. When asked by the Court whether the State's facts were accurate the Petitioner did not know how to respond. The plea ^{Counsel} interjected and entered an guilty plea on the behalf of his client. Judge Culbertson sentenced the Petitioner to fifteen years for ABHAN and ten years for armed robbery.

PCR Evidentiary hearing

Plea Counsel testifies that he did not advise his client to turn himself, but calls the police department to offer the Petitioner's guilt to committing the crimes. See PCR Trans. p#50 Line#17. Line#22 when asked about an preliminary hearing and his advice to his client was that its best for rape victims not ^{to} have an hearing. Page#51 Counsel admitted testimony about the surveillance video and seeing the rape or criminal sexual conduct. He also stated that the evidence was overwhelming. Petitioner relied on his counsel for competent advice. Page#61 lines 17-19 of the PCR Trans. Counsel said that he would meet ~~the~~ ^{to} Petitioner at the police station, but did not show. Page#68 Counsel's opinion that there is no need to properly investigate because of the alleged video. Page#78 PCR Counsel argues that the Petitioner was forced into plea and being threatened

1. CONTINUED ARGUMENT

Petitioner was forced into an plea and being threatened that if he were to take his case to trial he would receive (90) years. Plea counsel stated that if he wanted to go forward with trial and wanted an full investigation, it would cost him \$5,000. In the Plea Transcript counsel gave his based opinion on his client's guilt on Page#4 which relieved the State of its duty and deprived the Petitioner of his constitutional right under the Sixth Amendment to the U.S. Const. the right to an fair trial by jury.

Discussion

Plea counsel was ineffective and pressured the Petitioner into entering into an guilty plea and violated his Sixth Amendment rights to effective assistance. In the case of * Berry v. State, 381, S.C. 630, 635, 675, S.E.2d. 425, 427, (2009), holding that the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.

ARGUMENT

2. The PCR Court made an unreasonable determination of its judgment of fact-finding and conclusion of law inconsistent with the S.C. Code Ann. §17-27-80 statute.

According to the S.C. Supreme Court ruling in the case of * Bernardo J. Evans, #361706, v. State of South Carolina, Appellate Case No#2016-000489, and Lower Court Case No.#2015-CP-2600709, order remanded to the circuit court to enter a written order that complies with the statute signed on March 10th., 2016. See Petitioner's Exhibit-5. The Petitioner asserts that the Courts fact-finding is without merit based upon newly discovered evidence received from the State admitting to in its response to the Petitioner application for Forensic DNA Analysis relevant facts of the case which are irrefutable. Counsel's testimony is also unreliable based upon the evidence gathered from SLED and the Solicitor's Office in its response. According to the S.C. Rules of Evidence Rule#608 plea counsel should be impeached.

But, for the erroneous advice of plea counsel it is a strong possibility that the results would have been different. The Petitioner would have considered going to trial on the defense of mistaken identity. Petitioner had a constitutional right to present a defense. The Petitioner asserts that there was a conflict of interest between him and his attorney. The counsel acted as both counselor and witness for the prosecution. The duty of loyalty is perhaps the most basic of counsel's duties. The right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.

ARGUMENT


3, The Petitioner's plea was not made intelligently, knowingly, nor voluntarily.

Involuntary and Unknowing Guilty Plea

This indicates that the Petitioner's guilty plea is invalid. In the case of * Boykin v. Alabama, 395, U.S. 242, 23, L.Ed.2d. 274, 89, S.Ct. 1709 (1969) and the case of * Brady v. United States, 397, U.S. 742, 25, L.Ed.2d. 747, 90, S.Ct. 1463 (1970). Holding that a defendant's decision to plead guilty must be knowingly and voluntarily made. Counsel cannot make his plea for him. Also see the case of * State v. Hazel, 275, S.C. 392, 271, S.Ed.2d. 602, (1980), provides that the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea. Appellate counsel stated in its opinion that the Petitioner struggled when asked whether his guilty plea was knowingly, voluntarily, and intelligently because it appears that the Petitioner did not have full understanding of the relevant circumstances and likely consequences of his guilty plea. A knowingly plea can only occur if the Petitioner receives reasonably competent advice. Similarly, the decision to plead guilty is one that must be made by the Petitioner and is not one in which an attorney may speak for his client without consultation. In the case of * Cobbs v. State, 305, S.C. 299, 408, S.E.2d. (1991), provides that the failure to investigate possible defenses constitutes ineffective assistance of counsel.

CONCLUSION

For the forgoing reasons, this Court should grant certiorari by reversing the Petitioner's conviction and sentence and setting aside for new trial.

/s/ 
Bernardo J. Evans, #361706
Pro-Se Petitioner

This 26th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County **S.C. SUPREME COURT**
Honorable D. Craig Brown, Circuit Court Judge

Bernardo J. Evans, #361706,Petitioner,

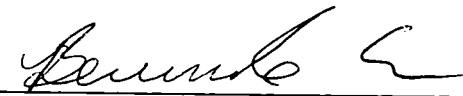
v.

STATE OF SOUTH CAROLINA,Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petitioner's petition for Writ of Certiorari has been served upon Caitlin Hastings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room#519, Columbia, S.C. 29201; and the original has been filed with the Clerk of the South Carolina Supreme Court for the purpose of filing at Daniel E. Shearouse, P.O. Box 11330, Columbia, S.C. 29211.

Dated: 10-26, 2016.

/s/ 

Bernardo J. Evans, #361706
LCI. Wando-A#112
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Petitioner

Mr. Bernardo J. Evans #361706

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MAIL ROOM
LIEBER C.L.

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk

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Columbia, S.C. 29211

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