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The Supreme Court of South Carolina S.C. SUPREME COURT

Daniel E. Shearburne, Clerk of Court

P.O. Box 11330

Columbia, South Carolina 29211

RE: (Appellate case 2016-001130)

Please find enclosed a copy of my Pro Se writ of certiorari to be filed with the court. Even though that your letter was dated for Nov. 23, 2016 giving me 45 days to submit it, I did not actually receive the notice to Dec. 1, 2016 due to it being mailed to the incorrect address

Jan W

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JAN 17 2017

S.C. SUPREME COURT

JRT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Deadra L. Jefferson Circuit Court Judge

JERONICA N. WILSON PETITIONER

V

STATE OF SOUTH CAROLINA RESPONDANT

APPELLATE CASE NO 2016-001130

PRO SE PETITION FOR WRIT OF CERTIORARI

Jeronica N. Wilson
Petitioner
MacDougall Correctional Institute
1516 Old Gilliard Rd
Ridgeville, SC 29472

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The PCR court erred by failing to find that trial counsel was ineffective for his failure to investigate the SLED procedures dealing with the handling and documenting of control substances and for failing to investigate how law enforcement's failure to comply with them affected the admissibility of the evidence.....

The court erred by failing to properly rule on the Petition's ineffective assistance of counsel issue based on his trial counsel's failure to investigate the SLED procedures dealing with the handling and documenting of control substance, and for his failing to investigate how law enforcement's failure to comply with them effected the admissibility of the evidence according to the facts as they were presented and the expressed conclusion of laws in the final order.....

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ISSUES PRESENTED

Did the court err by failing to find trial counsel was ineffective for his failure to investigate the SLED procedures dealing with the handling and documenting of control substances and for his failing to investigate how law enforcement's failure to comply with them affected the admissibility of the evidence?

Did the court err by failing to rule on the Petitioner's ineffective assistance of counsel issue based on his trial counsel's failure to investigate the SLED procedures dealing with the handling and documenting of control substances; and his failing to investigate how law enforcement failure to comply with them effected the admissibility of the evidence in accord to the facts as they were persecuted, and the expressed conclusion of laws in the final order.

Statement of Case

The Petitioner plead guilty to distribution of cocaine bases, third offense during the February 2014 term of the Charleston County General Sessions Court before Judge R Markeley Dennis, and was sentenced to confinement for a period of ten years App. 1-21. Jason King represented the Petitioner at the plea proceeding and solicitor Randall Stoney appeared on behalf of the state. The Petitioner did not appeal his conviction or his sentence.

On June 13, 2014 the Petitioner filed a PCR application with the Charleston County Office of the Clerk of Court App. 23-29. The respondent in response filed a returned dated April 5, 2015 requesting that a hearing be held concerning the matter. App. 33-37. The Petitioner would also file an amended PCR application dated October 30, 2015 App.30-32.

The evidentiary hearing was held on April 15, 2015 before the Honorable Deidra L. Jefferson.

The Petitioner was present at the hearing and was represented by James K. Faulk, Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state.

At the PCR hearing the Petitioner testified that after receiving and reviewing the material provided as part of Rule 5 that he discovered that the documents in connection to the handling of the control substance was insufficient, and then was not able to determine how the substance was handled by the law enforcement officials. Specifically, the Petitioner testified that when it came to certain officer's handling, of the substance that there were no documents provided and that the documents provided failed to show things

such as what type of container the substance was placed in against tampering or how and when the substance was submitted to the dept's evidence room. The Petitioner would also state that a provided chain of custody form was not created until five months after the incident date App. 46, 1.6- pg 49, 1.5.

The Petitioner stated that after he made the discoveries concerning the document that he was very persistent about asking his trial counsel to investigate. He stated that eventually that his trial counsel would explain the common law to him, about the matter, but that he was not satisfied, and asked his trial counsel to continue investigating. App. 54, 1.7-8 App.58, 12-17.

The Petitioner explained that when it came to the handing of the control substance and the analyzing of it that the SLED procedures had required that the law enforcement officers complete certain chain of custody forms that covered the information that he made complaints about. He explained that the law enforcement officer's had violated the regulations by substituting the required forms with computer generated forms in violation of it. App 59, 1.13 - pg. 61, 1.16 The Petitioner testified that had his trial counsel investigated that he would have discovered that the law enforcement officials had violated the SLED regulations as well as the statute dealing with the admissibility of the evidence, and that as a result the evidence was inadmissible. App.59, 1.2-12, App.60, 3-7. The Petitioner testified that if not for the inactions of his trial counsel that he would have went to trial. App.55, 1.19-21

Trial counsel testified that the Petitioner did show concerns about the documents

connect to the handling of the control substance. Trial counsel would state the Petitioner was preoccupied with the matter his entire case. App. 78, 1.23- pg. 79, 1.12, App. 116, 1.25- pg 117, 1.10

Trial Counsel testified that in response to the Petitioner's concern that he along with the prosecutor went to the law enforcement agency. He testified that the Petitioner's previous counsel had requested the chain of custody documents and was provided with computer generated forms, and that even though the record was written when he first became a lawyer that he discovered that it was all done electrically. He stated that the Petitioner's that the Petitioner's main concern was about signatures proving who possession of the substance so he received a computer printout it and provided it to the Petition App. p.79, 1.15- pg.80, 1.14

Trial counsel would then admit that he had not investigated the regulations. He would state he was not aware of the regulations. App.80,1.5-pg81,1.1 As well as trial counsel would admit that ~~had he~~ ^{he had} not investigated the statute which required that they be complied with to determine ~~of~~ ^{if} they were applicable to the Petitioner's case App.84, 20-24. Before ending his testimony trial counsel would admit ~~they~~ ^{that} he was aware that there was no written record when it came to the chain of custody and that it was all computer generated App. 90, 1.12-17

The PCR judge would address the Petition and advise him that the regulations that he referred to was a substitute procedure and that no lab has original signatures that they are all computer generated. The PCR judge would advise the Petitioner that she was not even certain if the regulations applied to the city lab, but don't think that it would

raise to impediment upon suppression App.99, 1.17- pg.96, and 1.11

The PCR judge would further advice the Petitioner that even though the regulations spoke about a written record that it could be computer generated forms, that it was her experience that the city had the record, and that the requirement of the statue was not mandatory. App. 100, 1.15- pg 105, 1.12

The PCR judge would then rule that the Petitioner had failed to meet his burden of establishing that trial counsel's performance was defiant App. 118, 1.18-22

The judge stated that the Petitioner's trial counsel was very adverse in the chain of custody laws, and that there was no need for him to had investigate the regulations App. 125, 1.7-11 The judge then advised the respondent to create the final order and submit it to the court App.126, 1.4-6

The order was entered denying the Petitioner's application April 26, 2016, and notice of Appeal was filed on June 2016. The Petitioner now seeks a writ of certiorari to review denial.

Argument 1

The PCR court erred by failing to find that trial counsel was ineffective for his failure to investigate the SLED procedures dealing with the handling and documenting of control substances, and forms failing to investigate how law enforcement's failure to comply with them affected the admissibility of the evidence.

When ineffective assistance of counsel is alleged as grounds for relief the applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial can not be relied upon as having produced a just result. Strickland v. Washington 466 U.S 668, 104 S.Ct.2052; Butler v. State 286 S.C 441, 334 S.E2d 813 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in a criminal case. Strickland v. Washington Supra; State v. Butler Supra A two part pronged test is used when evaluating claims of ineffective assistance of counsel. The applicant must first prove that counsel's representation was deficient and fell below a standard of reasonableness; and second that but for counsel's unprofessional errors the result would have been different. Cherry v. State 300 S.C 117-118, 386 S.E 2d 629 (1989)

With respect to guilty plea counsel the applicant must prove that there is probability that but for counsel's alleged errors, that he would not have plead guilty and would have insisted on going to trial. Hill v Lockhart 474 U.S 52, 106 S.Ct 366, L.Ed 2d 203 (1985)

When the applicant alleges that the reason for his counsel's ineffectiveness is

based on counsel's failure to investigate, the applicant must first establish what it was that counsel would discovered had he investigated, and second, had ^{the} discovery been made that there is a probability that the applicant would not have plead guilty, but would have instead proceeded to trial. Stall v. State 375 .SC. 289, 652 S.E 2d 402 (207) In order to satisfy the requirement of the second prong the applicant must establish that the discovery would have likely changed the outcome of proceedings Id.

At the PCR hearing trial counsel acknowledge, that the Petitioner had problems with the documents connected to the handling of the control substance and made him aware of it. He testified that the Petitioner was preoccupied with the matter his entire case App. 78, 1.25- pg 79, 1.3

Trial Counsel also acknowledges that he was aware that the entire record connected to the chain of custody was done electronically. He would explain that as a result of the Petitioner's concern that he went down to the law enforcement agency and that at that time it was explained to him that the record was all done electronically. He would testified that the Petitioner's previous counsel was provided computer generated documents when she looked into the matter, and that he was provided the same in the form of a chain of custody form when he asked for proof of who handled the substance. App.79, 1.15- pg.80, 1.12 App 89, 1.13- pg 90, 1.1 Trial would also admit that when it came to his investigation that he had not investigated the SLED procedures, or the statute under which authority the procedure fails to determine if there were, applicable to the Petitioner's care. He advised that he had never investigated the regulations before and that he was not familiar with them. App. 80, 1.15- pg 81, 1.1 App. 84. 1.20-pg 85, 1.3

As a result of the Petitioner's arrest for the offense of distribution of cocaine base, S.C Code Ann 44-53-485 (A) made it mandatory that the substance be handled, reported, stored etc in accord to S.C Code of regulations 73-70-to-150 when it comes to its admissibility ^{as} of evidence.

As part of the requirement of the regulations, it was required that the enforcement officials create a written record when handling the substance. R73-72(a) As part of the record keeping requirement when it came to the officer's transferring of the substance amongst themselves as was done for various reasons they were required to complete the initial and subsequent chain of custody forms that the regulations prescribed to be completed. R73-80 (D) and (E) See also R73-90 (D) and (E)

The regulations then as part of the analysis procedure required that the officer's had keep the forms along with the substance when it was being transferred to be submitted to the Forensic Laboratory for analysis and required that the form be submitted along with the substance. R73-80(F); See also R 73-90(F) and (G)

The regulations prohibited the forms from being substituted with computer generated forms. R73-72(C) (1) and (2) Had trial counsel investigated the statute and the regulations in connection to its requirement he would have discovered that both the explanation provided to him by the law enforcement officials as well as the computer generated custody forms represented a violation of the regulations when it came to the handling and the analysis due to the failure to comply with the statutory requirement that it be handled ^{IN} to accord to the SLED procedures. Id.

The discovery would have definitely affected the outcome of the proceeding whereas trial counsel himself stated that without the evidence the Petitioner would have been acquitted. App.86, 1.22-25

The court erred when it found that trial counsel was not ineffective. Trial counsel was made aware by the Petitioner that the documents connected to the handling of the substance were insufficient and failed to investigate the area of law that dealt directly with the matter. It is clear that had he done so that it would have lead to the discovery that the evidence was inadmissible which would have effected the outcome of the proceeding State v. Stalk Supra. The Petitioner testified had it not been for that counsel's inaction that he would not have pleaded guilty, but would have proceeded to trial.

Argument 2

The court erred by failing to properly rule on the Petitioner's ineffective assistance of counsel issue based on his trial counsel's failure to investigate the SLED procedures dealing with the handling and documenting of control substances, since the Petitioner properly raised the claim in his amended application and provided exclusive testimony about it.

When it comes to creating the final order and providing a PCR Applicant with a ruling on their issue, S.C Code Ann 17-27-80 makes it mandatory that the court provides a ruling in the final order that is based on specific facts ^{presented} ~~persecuted~~ and expressed conclusions of laws used to either grant or deny the Applicant's application. Marlor v. State 375 S.C 407, 653 SE.2d 266 (2007)

In the Petitioner's case the final order was created by the Attorney General after the courts advised him to do so; and a review of it shows that the Attorney general failed to provide the Petitioner with a ruling in accord to the PCR Act's requirement. App.126, 14-6 App 128-137

In the order when it came to the findings of fact to support the denial of the Petitioner's application instead of relying on the record, the Attorney General relied solely on the guilty plea record to establish the findings of facts, and then stated the Petitioner had failed to present any specific compelling evidence to show that his counsel had committed either errors or omissions. App. 133-136

A review of the PCR record clearly shows that the Petitioner did in fact provide the court with testimony when it came to his counsel's failure to investigate the SLED

procedures dealing with handling of control substances, and for his failure to investigate how the law enforcement officer's failure to comply with them affected the admissibility of the evidence. Furthermore the record also demonstrates that trial counsel also provided testimony and that the PCR judge had a discussion with the applicant in regards to the applicability of the regulations and then provided findings.

The fact that Attorney General disregarded the testimony and the ruling provided and instead relied on the guilty plea transcript violated the requirement of 17-27-80 as well as violated the court's findings that ^{the} voluntariness of a guilty plea is not determined by the guilty plea transcript, ~~above~~, but by both the guilty plea transcript and the PCR record. Harres v. Lecke 282 S.C 131, 318 S.E 2d 360 (1984). In the case McCray v. State 305 S.C 329, 408 S.E 2d 241 (1991) the court has established that when a final order fails to meet the requirement of 17-27-80 that it is required that the order be vacated and remanded so that the requirements can be met.

The respondent may argue that the Petitioner was required to file a Rule 59 (e) motion in accord to the S.C Rules of Civil Procedure in order for the court to be able to address his issue but that is not the case for two distinct reasons.

In the case of Simmons v State 416 S.C 584, 788 S.E 2d 220 (2016) the court has established that when a final order fails to meet the requirements of 17-27-80 that it creates an extraordinary circumstance that allows the court to address the Petitioner's issue without the filing of the motion. As well ~~as~~ when it comes to the application of Rule 59(c) it conflicts with the requirement of 17-27-80 whereas the statute places a mandatory responsibility on the court to automatically provide the Petitioner with a ruling on the specifics facts presented at the hearing and the expressed conclusions of law, but

the Rule allows the court to by-pass the mandatory requirement and then places the responsibility on the Petitioner making him request a ruling when the procedures made it automatically mandatory that he be provided a ruling if the issues was presented.

In the case of Hendrick v. State 387 S.C 221,692 S.E 2d 892 (2010) the S.C Supreme court made it clear that when the PCR Act provides a certain procedure to handle a matter and a rule of the civil procedure conflicts with the procedure that the rule is not applicable and that the procedure must be complied with.

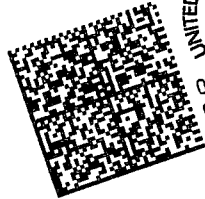
In accord the court erred when it failed to provide the Petitioner with a ruling in accord to the facts as they were presented, and by relying solely on the guilty plea transcript for the findings of facts where the PCR record clearly shows that testimony was provided concerning the issue. It is required that the order be vacated and remanded so that the requirement of the statue can be met when it comes to providing the Petitioner with a ruling on his issue.

Conclusion

Based on the foregoing arguments, the Petitioner would request that this court grant the petition and allow full briefing on the above issue with the case.

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