

Supreme Court of S.C.
P.O. Box 11330
Columbia, S.C. 29211-1330

RE: Green v. State, Appellate case NO. 2016-000994

Dear Clerk,

Enclosed for your filing is my PRO SE writ of certiorari. Please return to me a copy of same.

1/17/17, se
dated

Thank You,
X. Darius L. Green
Darius L. Green

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Issue Present

Did the (P.C.R.) Court erred in holding that Petitioner guilty Plea was intelligently, knowingly, and voluntarily, entered in light of Petitioner's testimony?

The (P.C.R.) Court Judge denying continuance where Petitioner did not have all his evidence (Rules) at the (P.C.R.) evidentiary hearing?

Did the Court and Plea Counsel informed Petitioner at Plea hearing about ineligibility of Parole and having to serve 85%?

Did Plea Counsel Failure to Prepare for trial?

Was Plea Counsel ineffective?

Statement

On February 25, 2013, Petitioner Pled guilty to voluntary Manslaughter in front of the Honorable Stephanie P. McDonald in Charleston County. Ted Smith and Megan Ehrlich represented Petitioner, and Jennifer Shealy served as the Assistant Solicitor.

The facts presented at the guilty Plea by solicitor shealy are as follows; Petitioner allegedly stabbed David Moultrie on September 28, 2011. App. 2 lines 20-23. Moultrie was employed at a wal-mart located in mount Pleasant and got to work around 7:00am on the morning of September 28, 2011. App. 2 lines 24-25; App. 3 lines 8-12. According to one of Moultrie's friends and coworkers, Damien Noel, a crown victoria with three men drove into the wal-mart parking lot. App. 3 lines 17-App. 4 line 15. The three men got out of the car and Petitioner approached the decedent, David Moultrie. App. 4 lines 16-18.

Witnesses to the ensuing fight indicated that Petitioner was the first aggressor. App. 5 line 20-App. 6 line 6. According to witnesses, Petitioner punched and/or stabbed Moultrie. App. 6 lines 4-24. Moultrie suffered four stab wounds and died at the scene. App. 7 lines 2-4; App. 8 lines 6-7.

Petitioner rode away in the same vehicle in which he arrived, and he discarded his bloody undershirt at a nearby Food Lion. App. 9 lines 13-22. After interviewing witnesses, law enforcement located Petitioner and took him into custody. App. 10 lines 3-6.

Petitioner was indicted for Murder. App. 15 lines 18-24; App. 99. He Pled guilty to voluntary manslaughter. The guilty Plea was subjected to a negotiated sentence of twenty five years. App. 2 lines 5-7. Judge McDonald accepted Petitioner's Plea and sentenced him to twenty five

imprisonment. App. 27 lines 12-23. Petitioner did not seek an appeal. He filed a timely application for post-conviction relief on July 16, 2013. App. 29. Petitioner's application contained allegations of ineffective assistance of counsel, including failure to advise of the right to appeal and involuntary guilty plea. App. 31. The state made its return on or about March 20, 2015. App. 26-40.

An evidentiary hearing was conducted on December 14, 2015 before the Honorable Deadra Jefferson. App. 42. Christopher L. Murphy represented Petitioner, and J. Rutledge Johnson represented the state. App. 43. Petitioner and Plea Counsel testified during the hearing.

On April 20, 2016, Judge Jefferson issued her order denying Petitioner relief. App. 90-98. The order was filed April 22, 2016. This petition follows.

Argument

The (P.C.R.) Court erred in holding that Petitioner's guilty Plea was intelligently, voluntarily and knowingly entered in light of Petitioner's testimony that he and Plea Counsel, and also the court never discussed the elements of murder of voluntary manslaughter coupled with the fact that he did not wish to Plea guilty. The Petitioner's does not reflect that the Pleas were knowingly and voluntarily entered with a full understanding of the choices and consequences of the Plea, and also because the court failed to inform him of ineligibility of Parole and the elements of murder, manslaughter and self-defense or having to serve 85%. Judge erred in denying continuance where applicant did not have all his evidence (Rule 5) at the (P.C.R.) Evidentiary hearing. Boykin v. Alabama, 395, us. 238; A defendant who enters a guilty Plea simultaneously waives several Constitutional rights; including his Privilege, against compulsory self-incrimination, his rights to trial by jury and his right to confront his accusers. For this waiver to be valid abandonment of a known right of privilege. Consequently, if a defendant's guilty Plea is not equally voluntary, knowingly it has been obtained in violation of Due Process clause, it must be an intentional relinquishment or abandonment of a known right or Privilege. Consequently, if a defendant's guilty Plea is Process and is therefore void. Moreover, because a guilty plea is an admission of all elements of a formal Criminal charges, it can not be truly voluntary unless the defendant Possesses an understanding of the Law in Relation to the facts.

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Due Process of Law requires that before a guilty Plea can be entered voluntarily and intelligently, a defendant must be advised of his Privilege against compulsory self incrimination, the right to a trial by Jury, and the right to confront one's accusers. Boykin v. Alabama. The record must show with certainty that the Plea is "an intentional relinquishment or abandonment of a known right or Privilege. State v. Patterson, 278 S.C. 319, 322, 295 S.E. 2d 264, 265 (1982) Overruled on other grounds by State v. Torrence, 305 S.C. 45, 406, S.E. 2d 315 (1991).

Judges are required to give the defendant explanation of the defendant's waiver of constitutional Rights; and a realistic Picture of all sentencing Possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E. 2d 899, 891 (1975).

Entering a guilty Plea results in a waiver of several constitutional rights; therefore the due Process clause requires that defendant enter into guilty Plea was not voluntary, knowingly and intelligently (Pgs. 12, 13, 14, 15, 16, 17 lines 1-25 on each Pages the Court questioned the Petitioner in Plea transcript).

To be knowingly and voluntarily, Plea must be entered with awareness of consequences of Plea, i.e. Proper advice on mandatory Sentencing. See Dover v. State 304 S.C. 433, 405 S.E. 2d 391 (1991) Appears to hold it's the Judge obligation to inform of sentencing Possibilities) Hinson v. State

297 S.C. 456, 377 S.E.2d 398 (1989) incorrect Parole eligibility advice induced Plea, new trial granted). Parole eligibility. Normally, Parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. If a defendant is actively misinformed about Parole eligibility he must prove he relied on this information in order to receive "Post conviction relief". Griffin v. Martin, 278 S.C. 670, 300 S.E.2d 482 (1983); see Hinson v. State 297 S.C. 456, 377 S.E.2d 398 (1989) relief granted on this ground) Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) plea vacated where trial judge misinformed defendant about Parole eligibility. Petitioner's guilty Plea entered because of belief that judge will impose certain sentence is not involuntary. Harris v. State Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984) Facts that defendant "thought" judge would give lighter grounds for relief.

The court nor Plea counsel discuss the elements of murder of voluntarily manslaughter or culpable with the facts, nor did the court or Plea counsel discussed Parole ineligibility to Petitioner. (see pages, 12, 13, 14, 15, 16, 17 each page lines 1-25, and also pages 22 lines 10-25, pages 23 lines 1-25 and pages 24 lines 1-25.) see Plea transcript also see pages 25 line 1-25 page 26 lines 1-25, and page 27 lines 1-5

The Eight Amendments, Prohibit of cruel and unusual Punishment guarantees individuals the right not to be subjected

To excessive sanctions which right flows from the basic precept of justice that Punishment for crime should be graduated and Proportioned to both of the offender and the offense.

The sixth Amendments to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984) The right to the effective assistance of counsel extends to the Plea bargaining Process. *Hill v. Lockhart* 474 U.S. 52, 57-59 (1985)

Appellate court give great deference to the (P.C.R.) court findings of fact and conclusions of law. when reviewing a (P.C.R.) court decision, a reviewing court is concerned only with whether any evidence of Probative value exists to support the decision.

In order to show ineffective assistance of counsel as a ground for relief Petitioner must Prove that counsel's conduct so undermined the Proper functioning of the adversarial Process that the trial can not be relied upon as being Produced a just result. The proper measure of performance is whether the attorney Provide representation within the range of competence required in criminal case.

Petitioner was Prejudice due to the fact he was unaware

And that Petitioner told Plea Counsel that he acted in self-defense, and Plea Counsel told him that Judge will see that he won't have to do alot of time. Petitioner was Prejudice due to fact Judge nor Plea Counsel informed Petitioner's of eneligibility of Parole and 85% because a sentence of 21 years 85% without Parole is not a little bit of time, when counsel told Petitioner he will be doing 19 years off. He negotiated 25 years.

Petitioner was Prejudice due to the fact Plea Counsel failure to prepare for trial nor did counsel investigate the hearsay between victim and Petitioner, and Plea Counsel did not spoke to Particular witnesses that relevant to the hearsay and altercation. (see pages 27 lines (1-25), Pages 28 lines (1-7), Pages 31, lines 10-25, Pages 32 lines (1-25), Pages 33 lines 16-25, Pages 34 lines 1-25, Pages 35 lines 1-4) see (P.C.R.) Transcript cross exam) If counsel had investigate and interview the young lady who is relevant to altercation, she would have told him what was the reason for altercation.

Conclusion

For the foregoing reasons, Petitioner request that the court grant his Petition for writ of certiorari to allow full briefing on issue, reverse the charges against him and remand the case for a new trial.

Respectfully Submitted,
x. Darius L. Green
Darius L. Green
PRO SE Petitioner

This 19 Day of January 2017

State of South Carolina in the Supreme Court

APPEAL from Charleston County

Honorable Debra L. Jefferson, Circuit Court Judge

Darius L. Green ✓

Petitioner

v.

State of South Carolina

Respondent

Certificate of Service

I, certify that a true copy of this PRO SE writ of Certiorari have been served on; Ruston NEELY; Assistant Attorney General; P.O. Box 11549, Columbia, S.C. 29211.

Subscribed and sworn to before me X. Darius L. Green

This _____ day of _____, 2017

Darius L. Green ✓
PRO SE Petitioner

(L.S.)

Notary Public for South Carolina

My Commission Expires: _____

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JAN 24 2017

S.C. SUPREME COURT

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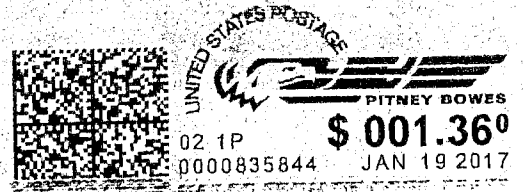
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Supreme Court of S.C.

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