

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Certiorari to Spartanburg County

MAY 18 2016

Honorable Roger L. Couch, Circuit Court Judge

S.C. SUPREME COURT

JASON WILLIAMS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2015-001963

PRO. SE. BRIEF

JASON WILLIAMS, # 298412

M^cC. I. F. 3 - 217 - B

386 Redemption Way

M^cCORMICK, SC 29899

- PETITIONER PRO. SE.

INDEX

STATEMENT

2

ARGUMENTS

3-9

CONCLUSION

10

STATEMENT

Petitioner Jason Williams ('Williams'), in Pro. Se. capacity, agrees with the substance of the statement within Appellate Defender Wanda H. Carter ('Appellate Defender Carter')'s 'Johnson Petition For Writ Of Certiorari' as concerns the instant Appellate action brought for review of the propriety of the lower Post-Conviction Relief ('PCR') denial of relief by way of the Order of Dismissal of the Honorable Roger L. Couch ('PCR Judge Couch'), filed on August 17, 2015, as relates to Williams' allegations against Trial Counsel J. Roger Poole ('Trial Counsel Poole').

Williams was notified by this Court on March 31, 2016 of the opportunity to file the instant Pro. Se. Brief. He essentially moves for Remand pursuant to Bryson v. State, 328 S.C. 236, 493 S.E.2d 500 (Mem.) (S.C. 1997) as regards an effective review in accords with Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

ARGUMENTS

I. - PCR Judge Couch's Order of Dismissal fails to properly assess Williams' Ineffective Assistance of Trial Counsel claim alleging Trial Counsel Poole failed to properly investigate his case, and should constitute grounds for remanding back to PCR Court based on an abuse of discretion.

(a)- The APPENDIX ('APP') before this Court discloses that PCR Judge Couch stated "[t]he gravamen of the Applicant's complaint is that Counsel failed to investigate his medical records and the impact that such could have had upon his trial." (see APP. Pg. 352, ln.(s) 10-11 (main text)). PCR Judge Couch erred in such assessment of Williams' PCR testimony where:

(i)- Williams alleged there were errors in the witness's identification regarding the clothing worn by the alleged perpetrator that did not match what Williams was wearing (see APP. Pg. 303, ln. 3 to APP. Pg. 304, ln. 7), and was obviously not investigated by Trial Counsel Poole; Williams specifically testified, "I don't know why my lawyer didn't get the evidence cause see, the clothes I had on

was a tan Carhartt, Carhartt jacket and a, a Carolina hat on and it had my name on the back of it, Mr. Williams." (APP. Pg. 303, In.(s) 16-19). Also, Trial Counsel Poole's PCR testimony (APP. Pg. 323 to 343) reveals no type of response to Williams' allegation of witness's identification regarding the clothing worn by the alleged perpetrator differs from what Williams was wearing.

(b)- The applicable law on this point exists in the South Carolina Court of Appeals' opinion in Marlar v. State, 373 S.C. 275, 644 S.E. 2d 769 (S.C. App. 2007) where the Court found error in the lower PCR Court's finding of Marlar failing to present evidence to support his claims when viewing the record revealed that "... Marlar presented evidence to support his claims." < see Marlar, 373 S.C. at 281, 644 S.E. 2d at 772 (reversed on other grounds, 375 S.C. 407, 653 S.E. 2d 266 (S.C. 2007)) >.

(c)- Out of an abundance of caution on this point, considering PCR Judge Couch failed to include an assessment of Williams' testimony above-noted, Williams moves for this Court to vacate PCR Judge Couch's Order of Dismissal and remand this case back to PCR Judge Couch for that Court to

make "... specific findings of fact and conclusions of law..." in accord with Bryson, supra.

II. - PCR Judge Couch's Order of Dismissal inappropriately assessed credibility to Trial Counsel Poole, in light of all testimony given, and should therefore constitute grounds for remanding back to the PCR Court based on an abuse of discretion.

(a) - The inappropriate credibility assessment appears where PCR Judge Couch states:

"This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was credible, while the Applicant's testimony was not credible."

- See APP., Pg. 354, ln. 7-8.

• Testimony, regarding the specific PCR issues ["... Mr. Poole failed to properly investigate the case, failed to advise him correctly during trial, failed to make proper objections during trial, and failure to, to request a different charge than was given." (see APP. Pg. 291, ln. (s) 3-6)], was given by

Williams as follows:

(i)- Trial Counsel Poole was alleged to not 'properly' have investigated and used the Medical records to show that Williams' statement was involuntarily given, thus worthy of suppression, if not to aid in Williams being acquitted by the jury. (see APP. Pg. 306, ln. 8 to APP. Pg. 307, ln. 16); and amazingly, Trial Counsel Poole's PCR testimony reveals an admission that he didn't introduce the Medical records which would've possibly shown Williams' statement was taken involuntarily (see APP. Pg. 326, ln. (s) 12-25), thereby testifying in support of Williams' testimony supporting the allegation.

(ii)- Trial Counsel Poole was alleged to not advise Williams correctly as regards going into the trial versus pleading guilty, and specifically gave Williams inaccurate information (see APP. Pg. 300, ln. 13 to APP. Pg. 301, ln. 5), utilized Williams' prior record to convince Williams not to testify before the jury when Williams wanted to (APP. Pg. 301, ln. 18 to APP. Pg. 302, ln. 24); to which Trial Counsel Poole did not refute.

(iii)- Williams alleged that Trial Counsel Poole

failed to object for exclusion of statements given by law enforcement officers testifying during trial because there were no police reports turned in by those witness in order to be received in Discovery by Williams before trial (see APP. Pg. 305, ln. 11-24), and Trial Counsel Poole's PCR testimony doesn't even address the matter.

(iv)- Williams' PCR testimony finally reveals an allegation of Trial Counsel Poole failed to request a different charge to the jury after the time granted (see APP. Pg. 304, ln. 8 to APP. Pg. 305, ln. 2), and Trial Counsel Poole did not testify contrary thereto.

- Also notable on this point, what Trial Counsel Poole did testify to not doing is:

(i)- Failing to review the Medical records with Williams (see APP. Pg. 330, ln.(s) 1-3) and specifically admitted that there may be other discovery which Williams have not seen (APP. Pg. 330, ln.(s) 11-13).

(ii)- Failing to move for suppression of the In-Court Identification on the ground of

that being the very first time that witness made an identification in the case (see APP. Pg. 330, ln. 17 to APP. Pg. 332, ln. 19).

(iii) - Failing to investigate how Williams got from the Hospital to the Police Department (in order to determine if any coercion occurred regarding the statement) (see APP. Pg. 339, ln. 9 to APP. Pg. 340, ln. 25).

(b) - Established caselaw following Strickland hold that an attorney's failure to investigate into the circumstances of a client's mental faculties at the time of giving a statement to police only prove prejudice when it is 'reasonably likely' to alter the course of the case < see United States v. Willsey, 105 Fed. Appx. 910, 912, 2004 WL 1663525 (9th Cir. 2004) (Denying relief for failing to prove prejudice prong of Strickland where the alleged motion to suppress "... would not have been reasonably likely to alter course of plea negotiations or affect defendant's decision to plead guilty."); but see Mason Balcom, 531 F.2d 717 (5th Cir. 1976) ("Failure of appointed trial counsel to investigate whether the police were

guilty of any misconduct, in addition to allegedly physically coercing the teenage suspect into confessing, which might have been the basis for a suppression motion, was considered indicative of ineffective assistance."). > .

(c) - Judge Couch's noted Order of Dismissal thus gave Trial Counsel Poole credibility over Williams, on pertinent points of the PCR allegations, when the record contains absolutely no PCR testimony from Trial Counsel Poole refuting (or even simply justifying) Williams' testimony in PCR.

CONCLUSION

WHEREFORE, Williams submits that Appellate Defender Carter's noted Johnson petition should be considered with the substance of the instant Pro. Se. Brief, and that this Court should Deny Appellate Defender Carter's 'Petition To Be Relieved As Counsel', should Grant Williams relief by Remand back to the PCR Court for correct rulings in accords with above-noted arguments.

Respectfully Submitted,

151 Jason Williams

Jason Williams, # 298412

M.C.I. F.3-217-B

386 Redemption Way

McCormick, SC 29899

5 - 12 - 16

DATE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Certiorari to Spartanburg County

MAY 18 2016

Tanya A. Gee, The Honorable Tanya A. Gee

S.C. SUPREME COURT

JASON WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2015-001963

AFFIDAVIT OF SERVICE

I, Jason Williams, Declare before below-signed Notary Public on below-noted date, that I Did deposit an Original Draft of my 'Pro.Se. Brief' into the custody of the M.C.I. Mail Room Clerk (below-signed Notary Public) for said material(s) to be immediately forwarded by sufficient U.S. Postage to Clerk, South Carolina Supreme Court, P.O. Box 11330, Columbia, SC 29211, and Alicia Olive, Esq., Ass't. Atty. Gen., P.O. Box 11549, Columbia, SC 29211,

Sworn and Subscribed to before me this 12th

day of May, 2016

[Signature]
Notary Public, South Carolina

Michael Capone

* My Commission Expires: July-09-2026

1/s/ Jason Williams
Jason Williams, #298412
M.C.I. F.3-217-B
386 Redemption Way
McCormick, SC 29899

100-217
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Clerk South Carolina S

PO Box 11330, Columbia S