

STATE OF SOUTH CAROLINA **RECEIVED**
In The Supreme Court

APR 07 2017

S.C. SUPREME COURT

CERTIORARI TO YORK COUNTY
Court of common Pleas

The Honorable Alison R. Lee, Circuit Court
Judge

Appellate Case No. 2016-001553

Trey A. Williams, # 341036, Respondent,

v.

State of south carolina, Petitioner,

RETURN FOR WRIT OF CERTIORARI

Trey A. Williams, #341036

Pro-se

P.O. Box 205

Ridgeville, SC 29472

Trey Williams

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The post-conviction relief judge ~~did not error~~ in finding Respondant satisfied his burden of proving that he did not properly waive his right to counsel.

The post-conviction Relief Judge did not error in finding Respondant satisfied his burden of proving that appellate counsel was ineffective for failing to raise the issue that his waiver of counsel was invalid.
PCR counsel was ineffective for abandoning amended PCR application in preparation for evidentiary hearing.

The state of South Carolina / Petitioner's petition for writ of certiorari / appeal is frivolous and serves zero purpose other than delay.

Conclusion

Questions Presented

- I. Was the waiver in compliance with due process of Law.
- II. Was Appellate counsel ineffective in compliance with PCR Judge Ruling.
- III. Is the states ^{APPEAL} able to be considered frivolous where it presents no debatable questions of Law and where there is no reasonable probability of a Reversal.
- III. WAS PCR counsel ineffective
- III. PCR transcripts invalid

STATEMENT

Respondent is incarcerated with the South Carolina Department of corrections pursuant to the York County clerk of courts order of commitment. Respondant was indicted at the May 2010 term of the York County Grand Jury for criminal sexual conduct with a minor, first degree (2009-GS-46-2646). This was one month after respondent waived or relieved counsel and waived a jury trial which establishes that the Respondent was not indicted at the time of counsel be relieved or jury trial being waived. On April 15-16, 2010, respondent appeared before the Honorable John C. Hayes, III, for pretrial hearing, respondent was represented by Erik Delaney, Esquire. At this hearing it was stated by the solicitor Ms. Colton that the respondent was indicted by the Grand Jury of York County True Bill Indictment 2009-GS-46-02636 on June 18th of 2009. App. 2. In this hearing it also reflected that respondents Attorney Mr. Delaney, the solicitor and the York County clerk of court obtained many request and motions for a fast and speedy trial since respondent was arrested by turning himself in on March 31, 2009, and that the Judges got the motions as well. App. 4. The rest of the hearing to relieve or waive counsel went as the PCR Judge expressed in the order granting PCR See App. 246. See App. 11, see App. 12 lines 18-25 where Judge says I can not get another attorney appointed. See App. 21 lines 9-11 when Respondant asked the Judge could he get another attorney. See App. 24.

Where Judge says that the respondent is avoiding, manipulating and using tactics to not face these charges. See App. 25. lines 8-11 where the state Amended Indictment right before trial started. Respondent filed a notice of appeal after being found Guilty at a Bench trial on May 26, 2010. Lanelle C. Durant, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal and the conviction was Affirmed State v. Williams, Op. No. 2013-UP-102 (S.C. Ct. App. filed March 13, 2013). Respondent filed a PCR Application on June 12, 2013 and it was Granted App. 246. The Attorney General J. Rutledge Johnson was represented by the state at this PCR hearing and he admitted that the waiver was invalid not in compliance with FARETTA. ~~2010~~ About one year after PCR hearing this Attorney General was off this case and Justin Hunter filed a frivolous notice of appeal and appeal despite the appeal having no probative value and testimony of the PCR Attorney General admitting the invalid waiver. Counsel on this appeal was so ineffective I was forced to go pro se preside in this case on appeal.

STANDARD OF REVIEW

The Supreme Court must Affirm the PCR Courts Findings if they are supported by any competent evidence of probative value in the record. e.g., *Webb v. State*, 281 S.C. 237, 314 S.E. 2d 819 (1984). The hearing courts finding of facts are binding on the appellate court under any evidence of probative value to support the PCR courts findings of facts standard. See *Greene v. State*, 276 S.C. 213, 277 S.E. 2d 481 (1981). Factual findings in state hearings carry a presumption of correctness in federal habeas corpus proceedings. *Sumner v. Mata*, 449 U.S. 539, 101 S.Ct. 764, 662 L.Ed. 2d 722 (1981)...

ARGUMENT

I. The Post-conviction Relief Judge did not error in finding Respondent satisfied his burden of proving that he did not properly waive his right to counsel.

Underlying Facts

The waiver was not in compliance with due process of Law, prior to Respondent's trial, a hearing was held before Judge Hayes on April 15-16, 2010 which was one month before the respondent was even "Indicted" by the Grand Jury on the case up for trial. This hearing was the hearing that relieved counsel and the mentioned Indictment on the record at that hearing was invalid, see App. 25. lines 8-11 where solicitor coltin called the case in the amended Indictment which changed elements, allegations and charge of the initial Indictment but kept the same charge creating a double jeopardy, and the trial Indictment was not certified ~~clock~~ stamped as an official document by the ~~supreme~~ clerk of court until two days after the York county ~~supreme~~ trial. Also the state did not elaborate on the Indictment Amendment which clearly on May, 26, 2010 one month after counsel was relieved on April 16, 2010 demonstrates that respondent did not know charge, possible defenses, allegations, nature and cause of accusation of the charge at trial being that counsel was invalidly relieved one month before being indicted. See App. 5. where counsel delaney states that Trey has written disciplinary counsel, see App. 7 where Mr. Delaney states Trey is going to want him off the case and that Mr. Williams has sent him letters, many letters, court members

letters saying that Mr. Delaney needs to be off this case
see App. 8. where counsel Delaney states that Trey does not trust
him, does not believe counsel is honest, truthful etc. About case
and that is client attorney relationship and privilege being broken
into a conflict of interest, actual conflict of interest that
was not looked into by the judge and zero option of Mr.
Williams being able to get another appointed counsel to resolve
this matter which was an available remedy and option was
never discussed or acknowledged to safeguard such an
fundamental, substantial, essential constitutional right as
having effective assistance of counsel. see App. 10. where the court tells
respondent if ~~respondent~~ respondent convince the court that the court
should let Mr. Delaney cease to represent respondent that respondent
would be without attorney see App. 11 also where Mr. Williams is
clearly not understanding the nature of these circumstances. see
App. 12. lines 1-25 and the court aggressively declares that
he is not going to appoint respondent another counsel. see App. 20 -
21 where the court questions respondent and talks of his rights to an
attorney and then respondent asks could he get an attorney
now if he wanted to and the court denies appointed counsel
to the respondent who is clearly poor and indigent and demands that
respondent will go to trial on Wednesday pro se or if he pays for an
attorney but Wednesday would be the trial regardless which the
defendant cannot get an attorney hired to agree too. see App. 22.
when respondent waives jury trial invalidly and the court accepts.
see App. 23. when respondent wants the jury trial like he asked
again about counsel which is what standby counsel is suppose to
recommend and judge is bias showing prejudice to an innocent
person see App. 24. On May 26, 2010 the day of trial counsel
was already relieved and the judge was clear on respondent
not getting another appointed attorney from the court or state

So only on April, 15, 16 is up for review on the INVALID WAIVER
issue on Appeal. ~~Respondent~~ The PCR court was correct when
it found that the Trial court did not specifically address the
disadvantages of respondent appearing pro se or by some other
source, and that respondent did not have a sufficient
background to understand these dangers. The PCR court
also found appellate counsel ineffective for failing to
Raise the issue of Respondents waiver of counsel on direct Appeal.
In the Amended PCR Application filed by PCR attorney Charles
Thomas Brooks, III, it was requested that mental health records be
present for PCR and they were filed for, it was requested for
witnesses, expert witnesses, discovery mechanisms all to be
available at PCR to demonstrate INVALID WAIVER, actual innocence
and documents to prove ineffective assistance of appellate
counsel. See Amended PCR Application that PCR Judge discussed
various times in PCR order titled "Judicial Notice of
Adjudicated Facts" which was mentioned in PCR transcripts.
Respondents' allegation that the waiver of trial counsel was involuntary,
unknowing and unintelligently made. As such respondent was denied
the opportunity to present meritorious defenses, objections, forensic
specialist or to adequately cross-examine witnesses etc, testimony
and evidence presented by the state. Respondent asserts that
the record is void of the courts or standby counsel ever explaining
to respondent what, why, when and how to object to testimony or
evidence or likewise with cross examining witnesses, therefore
is not in compliance with due process and constitutional standards,
See Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461,
Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed. 2d 70;
Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, For the courts
have made it clear that this right cannot be foregone without

deliberate choice by defendant. See *Stevenson v. State*, 522 S.E. 2d 343 S.C. (1999) To establish a valid waiver of counsel the accused must be advised of the Right to Counsel, and Adequately warned of the dangers and disadvantages of proceeding pro-se. See *Watts v. State*, 556 S.E. 2d 368 (SC 2001) If the record fails to demonstrate an informed choice to proceed pro-se with eyes wide open, then the defendant did not make a knowing and voluntary waiver, Trial Judge failed to make a meaningful inquiry into defendant's background to determine whether he had sufficient experience or knowledge to waive counsel. ~~Respondent asserts~~ ^{Respondent asserts} that the trial court did not ask Respondent for his Age, educational level, criminal history or competency. See *Gardner v. State*, 351 S.C. 407 (2002). When determining if an accused has a sufficient background to understand the dangers of self representation, the courts must consider 1) Age, educational background, and physical and mental health, (Respondent filed with pro counsel to gather mental records for PCR hearing in application. 2) Whether he was previously involved in any criminal trials, (that was respondent first charge), 3) Nature of the charges, possible penalties (was not indicted with trial infirmity at time of trial/Record is void). 4) Whether counsel explained the dangers (Respondent had conflict of interest with counsel and made several complaints). 5) Whether he was attempting to delay or manipulate the proceeding (the record is void of any attempts of either) 6) whether court appointed standby counsel; (the record reflects the trial court instructing standby counsel to do nothing, 7) whether respondent knew he would be required to comply with the rules of procedure at trial; (the record is void of being informed. 8) whether he knew of any legal challenges he could raise in trial. (Again the record is void and respondent was not indicted yet.

9) whether the exchanges between the accused and the court consisted merely of pro forma answers to pro forma questions, (the record reflect little else) and 10) whether his waiver resulted from either coercion or mistreatment, (the record reflects the trial courts tone and demeanor was bias, prejudice, aggressive and hostile to the defendant as well as counsel being ineffective). Also see U.S. Co. A. Const. Amend 6, 14th Appellate court Rule 407, Rules of Prof Conduct Rule 3.1 et seq. The trial court did not abuse its discretion in denying defendant's request to represent himself in trial for murder. Although trial court noted that defendant was bright, educated, and did not have drug, alcohol, or mental health problems; defendant's testimony that attorney contacted by his mother had recommended a criminal law book, coached him on rules of evidence and was going to continue to coach him was in conflict. A defendant's right to self representation is not absolute even at trial level, the government's interest in ensuring the integrity and efficiency of trial at all times outweighs the defendant's interest in acting as his own lawyer. A defendant's assertion of his right to self representation must be clear and unequivocal, knowing and intelligent and voluntary, timely. Citations 414 S.C. 206, 777 S.E. 2d 398. See the Amended per application titled "Judicial Notice of Adjudicated Facts".

Discussion

The PCR court did not error in finding that respondent satisfied his burden of proving that he did not properly waive his rights to counsel when counsel was relieved and he went pro se.

In the pretrial transcripts it is held on April, 15 and 16 2010 in relations to the waiver. The Judge made it clear that Mr. Williams would not and could not get another attorney appointed and only if a paid/hired attorney would take the case in a two day time frame and be ~~was~~ ready for trial could I get an attorney. This is prejudice in its self giving no adequate time for an professional attorney to investigate the case etc and it denies my right to counsel. Also the trial indictment was invalid presented at day of trial and it was double Jeopardy involving the initial indictment changing the elements and Accusations of the Allegations and the criminal statute charge. I was entitled to the lesser included offense and the plea offered in this case was the lesser included offense of time serve to Ab hand. I was not indicted at time of counsel waiver as the records will demonstrate which would prevent an valid waiver from happening. The record is void in any heavy investigation into Mr. Williams understanding, Background, competency and issue with standby counsel. Habeas corpus key states determinations in federal court where fundamental liberties of person are claimed to have been infringed, federal courts carefully scrutinize state court record and duty of federal district court on habeas corpus is no less exacting. 28 U.S.C. A. 2243 Federal Review of State or territorial cases. There are procedural errors so grave as to require appropriate Federal Court order directing habeas corpus Applications please unless state grants new trial forthwith. 28 U.S.C. A. § 2243.

Habeas Corpus Adequacy of effectiveness of state proceeding full and fair litigation: If for any reason not attributable to inexcusable neglect of habeas corpus petitioner, evidence crucial to adequate consideration of constitutional claim was not developed at state hearing, Federal hearing is compelled 28, U.S.C.A. § 2243.

Habeas Corpus reception of evidence, Affidavits, matters in every case on Appeal Habeas Corpus, Federal district court has power constrained only by Judges sound discretion to receive evidence bearing on Applicants constitutional claim. *Glebe v. Frost* - Supreme Court of the U.S. 11-17-2014 (135 S. Ct. 429) most constitutional mistakes calls for a reversal of a conviction only if government cannot demonstrate harmlessness, and only the rare type of error, in general, one that infects the entire process and necessarily renders it fundamentally unfair, requires automatic reversal. *Pethel v. Ballard* - United States Court of Appeals, 4th Cir. 8-18-14 (617 F.3d 299) Habeas Review is available to check violations of Federal Laws when the error qualifies as a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure. 28 U.S.C.A. § 2254. The S.C. Supreme Court has the authority and discretion to Review this case to prevent the buck being passed to the higher court and this case will qualify for such prior mentioned Federal Review based on mentioned litigation. The Hand written judicial notice is what was meant/ suppose to be filed and it where the typed pocket # judicial notice was drafted

from and it needs to be reviewed. Ineffective Assistance of PCR counsel and the inadequate PCR transcripts of record which Mr. Williams complained about it missing issues raised, testimony etc is the need for the full records of my due diligence in this case should be under review. The S.C. Supreme Court and Clerk Shearouse is well aware of my due diligence.

Von Moltke v. Gillies, 332 U.S. 708, 724 (1948) stated the fact that an accused may tell (Judges) that he is informed of his right to counsel and desires to waive this right does not automatically end the judges responsibility. To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments there under, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused professed waiver of counsel is understandingly and wisely made only from penetrating and comprehensive examination of all the circumstances under which such plea is rendered. id 724. The ~~waiver~~ waiver did not even require the level of understanding that the S.C. Supreme Court required for me to go pro se in this appeal.

II. The post-conviction Relief Judge did not error in Finding Respondent satisfied his burden of proving that Appellate counsel was ineffective for failing to raise the issue that his waiver of counsel was invalid.

see PCR Application, ~~Amended~~ Amended PCR Application titled Judicial notice of Adjudicated facts, see PCR Judge final order and see letters from direct appeal attorney confirming on various occasions that she received and obtained a copy of my issues, letters, ^{brief} addressing the things that I want raised in brief and that she will certainly consider them. Also see Appellate counsel write me after brief was filed and I complained of its incompleteness that she said she asked me to send her my own brief but she never received it. You will also see my letters to her with due diligence in asking to correct my initial brief, you will also see that she told me to file that she was ineffective in this case and that I was denied new Appellate counsel. You will also see that Appellate counsel was asked to obtain mental health records, that Appellate counsel was aware of how to do an proper waiver with eyes wide open of the dangers and disadvantages of appearing pro se based off a letter she sent me inquiring about my desire to relieve counsel on direct appeal which shows she was ineffective in not recognizing such invalid waiver of counsel, jury trial, presentment of indictment etc that she was asked to raise including actual innocence, miscarriage of justice etc. Appellate counsel clearly lied, unprofessional and criminal in this matter. The nine letters from her is supporting evidence?

III. The states Appeal is Frivolous.
CRIMINAL LAW - Frivolous or Futile Appeals: good faith
See entire case files of lower court records.

PCR counsel was ineffective in entire PCR preventing Mr. Williams to have a fair bite at the Appellate. See Judicial notice of Adjudicated facts and letters from PCR counsel, records at S.C. Supreme Court of Mr. Williams Due Diligence, PCR counsel filed in Application that he would be ineffective if he did not have witnesses, mental health records, expert witnesses, defense mechanisms, exhibits, properly raised various specific issues etc. while in letters from PCR counsel it states that none of these things can even be done at the PCR level and that only one issue could be raised at PCR which was ineffective assistance of counsel. PCR counsel prevented 59(c) from being filed and other things.

conclusion

For the foregoing reasons, ~~Respondent~~ ^{Respondent} respectfully requests
this court to deny and dismiss with prejudice the certiorari
to Review the Post-conviction Relief Judges proper, (lawful,
Adequate Justifiable granting of post conviction Relief.

Respectfully submitted,

Trey Alexander Williams

SCCL # 341036

BY: Trey Williams

Pro se Respondent

Trey A. Williams #341036

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(Power of Attorney)

NIKKIA BETTS

601-983-8993

April, 2017

State of South Carolina
IN THE SUPREME COURT

Certiorari to York County
The Honorable Alison R. Lee, Circuit Court Judge

Trey A. Williams, # 341036,

Respondent,

State of South Carolina,

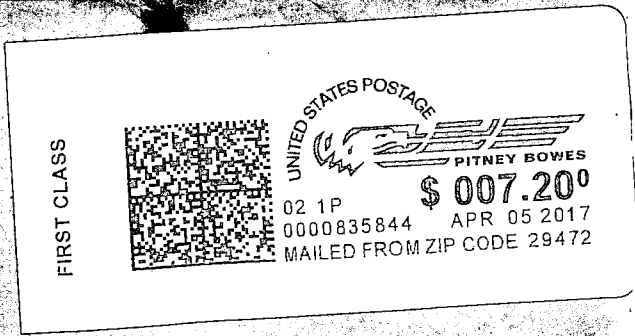
v.

petitioner,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of
the petition for writ of certiorari and appendix has
been served upon opposing counsel by office of Appellate
Defense.

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