

The State Of South Carolina

Dorchester County Courthouse

Court Of Common Pleas

First Judicial Circuit

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MAR 31 2017

S.C. SUPREME COURT

Hon. Maite Murphy, Presiding

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MAR 31 2017

SC Court of Appeals

Ronald Lance,

Appellant,

vs.

The State Of South Carolina,

Respondent,

2016-DD1418

Appellants Pro Se Brief

Ronald Lance # 310167
Lize Correction Institution
990 Wisacky H. Highway/F4B
Bishopville, S.C. 29010

Questions Presented

Question One:

Whether Counsel Was Ineffective For Advising Applicant That Armed Robbery Was A Non-Pardonable Offense?

Question Two:

Whether Guilty Plea Was Knowingly, Voluntarily and Intelligently Given Based On Applicant Diminished Mental Capacity?

Question Three:

Whether Counsel Was Ineffective For Not Challenging Statement Obtained While Under Influence Of Medication?

Question One:

The advice rendered by counsel to accept Guilty Plea for Armed Robbery, which was a non-Paroleable offense (APP. PG 76 lines 11-16). Such advice by counsel was erroneous. Hill v. Lockhart, 474 U.S. 52 (1985)

According to the language in South Carolina Code Ann. Sec. 16-11-330 (a) (cum. supp. 16) in relevant Part reads that:

A Person convicted under this section is not eligible for Parole until the Person has served at least seven Years of the sentence

Sec. 16-11-330 (a)

Thus, counsel conclusion this was non-Paroleable was done based on an inadequate legal investigation. The language of statute, reveals that legislature has not abolished Parole for sec. 16-11-330, and those convicted under this Provision after service of seven Years will be eligible.

Conversely, Penal statutes are construed against state and in favor of defendant. Sec. [The relevant section is Penal in nature, and thus must be construed against state. Counsel advice that misled me into Pleading Guilty renders advice and Plea involuntary. Furthermore, after seven the sentence is no longer mandatory and entitles me to earned work credits and Good-time credits. Whereas, the first seven of my Thirty Year sentence is mandatory and ineligible for work credits and Good-time.

Similarly, counsel own admission that this was his first case (APP. PG 73 lines 1-13) and his lack of experience is evident from his lack of knowledge concerning armed robbery Parole Provision after seven Years

Wherefore, it is Prayed court Grant writ

Question Two:

During Pre-hearing, counsel was questioned extensively concerning my ability to stand trial (App. PG 84; lines 17-25; PG 85; lines 1-5) What counsel failed to do was as counsel testified that:

Q: It was Your intent to use the mental health evaluation and the issues with Mr. Lances intellectual functioning as mitigation in a Guilty Plea?

A: Correct

App. PG 81; lines 13-17

Accordingly, the diminished mental capacity is reflected by record colloquy by me and court.

Q: Did You Go in with intent to steal?

A: How do You mean? like to Go --

Q: What were You going into bank with a Gun?

A: ... I was really under the influence and like I went under. I went in there

App. PG 19; lines 1-5; App. PG 18; lines 22-25

By entering Guilty Plea, defendant effectively waives several constitutional rights. For that waiver to be valid, due Process requires that the Plea amount to a voluntary and "Intentional relinquishment or abandonment of a known right or Privilege" (*McCarthy v. United States*, 394 U.S. 759 (1969), *Boykin v. Alabama*, 395 U.S. 238 (1969)) The Boykin rule was intended to ensure that a defendant who Pleads Guilty does so with an "understanding of the nature of the charge and the consequences of his Plea" (*Boykin, id.*)

The Boykin rule distinguishes between "technical and rules core concerns" and hold a violation that implicates one of the rules core concerns mandates that the Plea be set aside. See, *Rosece v. State*, 345 S.C. 116 (2001) The Boykin rules are as follows:

(1) Absence of Coercion; (2) Understanding of The Charges; (3) knowledge of The consequences of the Plea

Boykin, id.; *United States v. Allard*, 926 F.2d 1237 (1st Cir. 1991)

In determining whether there has been technical or core violations, the court is asked to review totality of the circumstances surrounding Boykin. What is critical is the substance of what was communicated by the trial court, and what should have been

rather than the form of the communication.

Before continuing, it must be asserted that trial counsel failed to consider a hearing to stand trial, but whether his conduct based on his mental records could be excused under (G.B.M.I. Guilty But Mentally Insane).

Moreover, his low intelligence severely hinders whether I could reasonably understand the charges against me or consequences of Plea. Counsel testified at hearing that:

Q: ... At the Plea colloquy that you had him repeat everything back to you. Did you take special care to make sure he understood exactly what was going on

A: Absolutely. If he had any questions or I felt he didn't understand I'd ask him. But I felt like he understood it. We had been over some of these things before...

App. Pg 88: lines 19-21

Q: Did you understand the Plea offer to be twenty years recommended by the solicitor, or did you understand it to be a negotiated sentence?

A: I understand it was a promise from the state, that was my understanding I got

App. Pg 70: lines 9-13

Since trial court and counsel failed to address one of Boykin core concerns, the question now becomes whether these irregularities in the Plea Proceedings affected my substantial rights. Clearly from collateral hearing, the testimony reveals the nature of offer was not clear, inter alia, counsel had no idea whether what he said was understood or misunderstood and even during Plea. The record indicates, a level of understanding which does not conform to Boykin Standards.

Wherefore, it is Prayed court Grant Writ

Question Three

The admissibility of my statement turns on whether the statement was voluntary under 7th amendment which guarantees that

"No Person... shall be compelled in any criminal case to be a witness against himself... without due Process of law"

Molloy v. Hoban, 378 U.S. 1 (1964)

A statement is involuntary under the 7th amendment only if it is "involuntary" within the meaning of the Due Process Clause. See *Oregon v. Elstad*, 470 U.S. 298 (1985)

The test for determining whether a statement is involuntary under the Due Process Clause "is whether the confession was extracted by any sort of threats or violence or obtained by any direct or implied promises, however slight, or by the exertion of any improper influence"

Hutto v. Ross, 429 U.S. 28 (1976)

Counsel was aware of the statement being obtained after surgery, and instead still advised me to Plead Guilty after rejecting 20 Year Plea deal (APP. PG 78; lines 15-23) Therefore, if counsel was aware that statement was given after wreck and surgery or as testimony at hearing revealed that:

"I remember having some pretty extensive conversations about Particular his statement to law enforcement as he was in the hospital when that happened and he was under influence of medication and just come out from surgery and things of that nature."

APP. PG 94; lines 24-25; PG 95; lines 1-4

To make this determination, whether my will was overborne or my capacity for self-determination critically impaired, the court is asked to look at this setting inside hospital after surgery. The medication administered coupled with a border-line mentally retarded capacity, is nothing more than throwing gas on a fire and expecting nothing will happen.

The officer was fully aware that surgery had just been completed and medication (morphine) was being administered for pain. Thus, the officer was aware of my mental state and knew that under these circumstances an incrim-

minating response was given under influence. Counsel lack of experience, made him forego investigating further about statement and what if any effect a diminished capacity would coupled with medication by hospital make statement easier to obtain.

Wherefore, it is Proved court Grant writ

Conclusion

The court should reverse lower court ruling denying Post conviction relief. Because counsel failed to conduct a legal investigation into whether persons convicted of armed robbery are entitled to Parole after seven years.

Or whether counsel failure to explore diminished capacity as a defense in mitigation of charges, and his failure to properly advise that a trial would render statement inadmissible.

Date: _____ day of _____, 20____.

Respectfully Submitted

s/

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SC Court of Appeals

Honorable Chief Clerk Of Court
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