

The Supreme Court of South Carolina
Hon: Daniel E. Shearous/Clerk
P.O. Box 11330
Columbia, S.C. 29211

Mr. Rodney J. Ladson, #262438
MacDugall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

June 22, 2017

Dear Hon: Shearouse:

Enclosed for filing, please find one original Pro-se Petition for Writ of Certiorari, to be considered along with my Attorney's Johnson Petition. An attached affidavit of service to the Respondent's Attorney of record, Olivia A. Olive. Upon receipt, please return a clocked stamped copy of the cover sheet indicating your receipt of said petition for my records.

Thanking you in advance,

Sincerely,

S/ Rodney J. Ladson
Rodney J. Ladson/262438

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Perry H. Gravely, Circuit Court Judge

RODNEY LADSON

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002093

PRO-SE PETITION FOR WRIT OF CERTIORARI

Rodney J. Ladson, Sr. #262438
MasDoughall correctional Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(pro-Se)

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ISSUES PRESENTED

1. Whether the PCR court erred in ruling counsel not ineffective by his failure to provide and review the Berkeley County Agency's files with petitioner prior to the entry of the guilty plea, additionally, failure to investigate and inform petitioner and/or the court that testing had not been completed on evidentiary items sent to SLED ?

2. Whether the PCR court erred in ruling counsel not ineffective by his failure to conduct a reasonable investigation prior to the entry of petitioner plea of guilty, which was involuntarily entered ?

3. Whether the PCR court erred in ruling counsel not ineffective by his failure to address petitioner's mental health issues and prescription medications with petitioner and the court, additionally, counsel's failure to object to the court's failure to inform petitioner that "intent" is an element of murder prior to the entry of petitioner's guilty plea ?

4. Whether the PCR court erred in ruling counsel not ineffective by his failure to obtain and review over five (500) hundred documents, prior to advising petitioner to plead guilty, to include documents from the Berkeley County Solicitor's Office, the Berkeley County Coroner's Office, the Berkeley Sheriff's Department, and SLED files, which constituted newly discovered evidence ?

5. Whether the PCR court erred in ruling that petitioner received effective assistance of counsel where petitioner's counsel failed to subject the State's case to a meaningful adversarial testing ?

STATEMENT OF THE CASE

In May 1999, a Berkely County grand jury indicted petitioner for murder. App. 475. On November 15, 1999, petitioner pled guilty to murder before the Honorable R. Markley Dennis, Jr. App. 1. Sharon Capers represented the State. App. 1. Michael Brown represented petitioner. App. 1. Judge Dennis sentenced petitioner to thirty years imprisonment pursuant to a negotiated plea. App. 5,11. 18-24. App. 20,11. 305. Petitioner did not appeal. App. 23.

On February 29, 2012, petitioner filed a PCR application. App. 22. Preliminary hearings on motions to dismiss, for discovery, and for summary judgement were held on September 8, 2014, December 9, 2014, and July 22, 2015. App. 182. App. 215. App. 248. On January 21, 2016, the evidentiary hearing on the merits was held before the Honorable Perry H. Gravely. App. 288. Tricia A. Blanchette represented petitioner. App. 288. Rutledge Johnson represented the State. App. At the hearing, Judge Gravely granted the State's motion to ~~ix~~ dismiss and motion for directed verdict based on the statute of limitations. App. 424, 1. 23-429,1.5. On May 3, 2016, Judge Gravely entered a written Order of Dismissal. App. 447. On September 13, 2016, the court denied petitioner's Rule 59(e) motion. App. 465. Petitioner made a timely notice of Appeal which was perfected by the South Carolina Commission on Indigent Defense. David Alexander, Esquire/Appellant Defender filed a Johnson Petition on petitioner's behalf with the Supreme Court of South Carolina on May 30, 2017.

This petitioner follows:

ARGUMENT I.

The PCR court erred in ruling that counsel was not ineffective by his failure to provide and review the Berkeley County Agency's files with petitioner prior to the guilty plea, additionally, failure to inform petitioner and/or the court that testing result had been incomplected on evidentiary items to SLED.

See testimony of Robert Tressel (PCR hearing-January 21, 2016, on Direct Examination.

Q. Mr. Tressel, have you been qualified in the State of South Carolina before as an expert ?

A. I have. Yes, ma'am.

Q. And what was the expert qualifications?

A. Crime scene reconstruction and crime scene analysis, investigative analysis in Richland County. App. 298, lines 3-11.

Q. Now, Mr. Tressel, the Judge has already been given the documents that I referenced. But I'm going to ask you quickly, did you review the Berkeley County's Coronr's report in this case?

A. I did. Yes Ma'am.

Q. Did you review the Berkeley County Sheriff's Department's file including photographs?

A. Yes, Ma'am.

Q. Did you review the SLED file including photographs?

A. Yes, ma'am.

Q. Did you review the interrogatories that have been admitted from both SLED and the Berkeley County Sheriff's Department?

A. Yes.

Q. Now mr. Tressel, upon reviewing those documents did you render certain opinions in this case?

A. Yes, ma'am. I Did.

Q. Okay.

See page 302, lines 16-18., - App. 303, 13-19.

A. I was not able to make a trajectory analysis because I'M missing a vital measurement.

Q. If you had been retained by a defense attorney before this case went to trial, is that an issue you would have raised to him or her ?

A. Definetely. Because it's somthing we need to know in order to determine the exact trajectory of this bullet..

See App. 306,

Q. Now, regarding the firearms analysis and what you reviewed in this case, what were you able to determine regarding that ?

A. There was no firearms analysis.

Q. And could you please explain where you were able to ascertain from your review of the file ?

A. In looking at the file the recovered weapon, that occurred after the incident, was sent to SLED for firearms analysis sometime in March of '99.

The weapo~~n~~ was returned to Berkeley County. I believe it was in 2002,

December 2002, with a notation that it can be returned with no analysis performed. There is no firearms report in the SLED file.

Q. What were you able to ascertain regarding the ballistics evidence that was recovered from the scene or subsequent to the scene.?

A. They recovered a bullet from the wall, but there was no analysis of that bullet to tell me is it consistent with the .38 caliber that was recovered later. They did recover a .357 magnum shell casing out of the--I believe it was the defendant's vehicle.

The analysis I made of that is a .357 cannot be fired in a .38 caliber revolver. A .38 CAN BE FIRED in .357, but not in the other direction. So the .357 could not have been fired from the Charter Arms that was recovered.

Mr. Tressel further testified that had he been contacted by defense Attorney regarding this case, he would have advised that analysis be done of the projectile that could tell if the bullet match in size and weight and characteristic of being a .38, and also match it to the particular gun that was found.

Q. Okay. And from your review of the file, was this .38 weapon that was recovered, was that recovered from the defendant or from some other location ?

A. It was recovered by a recreational diver who was diving on one of the local rivers, somewhere not far from the area where the incident took place. He turned it over to the Berkeley County Sheriff's Department.

Q. And do you know who that gun was traced to or did you find information regarding that ?

A. Yeah. An ATF trace showed that the weapon was purchased by a South Carolina State Trooper.

Q. And the records in the file did not trace that weapon back to Mr. Ladson; is that correct ?

A. No. There's no information that they traced it back to Mr. Ladson. I did not even see an interview that was done with the ATF purchaser of the Charter Arms.

Further there was no forensic evidence linking Petitioner to the crime scene. See. App. 314, 7-15, 315.

Q. And finally turning just to the overall forensic evidence in the case, based upon your review of the complete file, were you able to link the forensic evidence to Rodney Ladson ?

A. I found no forensic evidence linking him. There's no finger prints, no hair and no DNA at the scene of the crime linking him to this incident,

There was a used condom also listed as evidence that was found accross ~~kh~~ the street from where the victim lived, that was collected and maintained as evidence but it was never sent for analysis. Further .38 caliber shell casing found in shed behind the residence was changed in report by Berkely County Sheriff's offife Memorandum to .357 spent shell casing. App. 315.

The .38 Caliber weapon was traced back to a state trooper by the name of Henry Sims from Hemingway, Lexington, Edgefield by ATF.

LAW-ANALYSIS

See Elmore v. Ozmint, United States Court of Appeals, 4th.Cir. (2011), held that failure of petitioner's trial lawyers to investigate the State's forensic evidence constituted ineffective assistance of counsel. Gross failure of defendant's trial lawyers to investigate forensic evidence, including the medical examiner's time of death opinion, pubic hairs, allegedly recovered

from the murder victim's bed, nature of Caucasian hairs removed from victim's bloody abdomen during her autopsy, including one hair that DNA testing confirmed was not hers, and finger prints lifted from the blood-smearred toilet in victim's en suite bathroom, constituted ineffective assistance of counsel; the forensic evidence was vital to the State's case, and lacked investigation had a probably adverse effect on the defense such that there was a reasonable probability that, but for his attorney's failure to investigate the State's forensic evidence, the defendant would have been acquitted. U.S.C.A. Amend 6. Elmore v. Ozmint, 661 F.3d 783, 2011 WL 5843684.

ARGUMENT II.

The PCR court erred in ruling that counsel was not ineffective by failing to conduct a reasonable investigation prior to Applicant's plea of guilty, in which was involuntary.

See Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986), the Supreme Court deemed trial counsel's lack of investigation to be deficient under Strickland v. Washington, 466 U.S. at 690, 104 S.Ct. 2052. The Kimmelman Court was convinced of deficient performance in that Morrison's lawyer neither investigated, nor made a reasonable decision not to investigate the State's case through discovery. Accordingly to the Court, "[s]uch a complete lack of pretrial preparation puts at risk both the defendant's right to an ample opportunity to meet the case of the prosecution and the reliability of the adversarial testing process. Therefore, not even "defense counsel vigorous cross examination attempts to discredit witnesses, and effort to

establish a different version of the facts" during trial could lift counsel's performance back into the realms of professional responsibility. Id. at 386,88 106 S.Ct. 2574.

ARGUMENT III.

The court erred in ruling that counsel was not ineffective due to his failure to address petitioner's mental health and prescription medication with petitioner and the court prior to entry of petitioner's guilty plea, and counsel's failure to object and inform court that "intent" is an element of murder.

See App. 17, 6-71.

THE COURT: Mr. Ladson, is there anything you wish to tell me ?

MR. LADSON: Yes, sir. I owe my family, Patricia's family an apology. I'm very sorry that this did happen. If I could change the situation a thousand times I would change it. That's it, Your Honor.

There was never any admission of guilt by petitioner. The court never explain to petitioner that "intent" is an element of murder, nor did counsel advise the court of petitioner's mental health and prescription medications that petitioner was taking at the time his plea was entered, which constituted ineffective assistance of counsel.

See Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2252, 49 L.Ed.2d 106. the Court held: State prisoner incarcerated after pleading guilty to second degree murder filed petition for habeas corpus. The District Court granted -----

relief and the U.S. Court of Appeals for the 2nd circuit, F.2d 897 affirmed.

On Certiorari, the United States Supreme Court, Mr. Justice Stevens, held that where neither defense counsel nor trial court explained to the petitioner that an intent to cause death of his victim was an element of the offense of second degree murder and the petitioner made no factual statement or admission necessarily implying that he had such "intent," the petitioner's plea of guilty to a charge of second degree murder was involuntary; and in view of the petitioner's unusually low mental capacity, raising the possibility that the homicide was manslaughter rather than murder, the error was not harmless. Affirmed.

The Court further held that:

Plea of guilty may be involuntary either because accused does not understand nature of constitutional protections that he is waiving or because he has such an incomplete understanding of charge that his plea cannot stand as intelligent admission of guilt and, without adequate notice of nature of charge against him, or proof that he had such facts understood of charge, plea cannot be voluntary in the latter sense.

Where the record discloses that defense counsel did not purport to stipulate that respondent had the requisite intent or explained to him that his plea would be admission of the fact, and made no factual statement or admission necessarily implying that he had such intent, it is impossible to include that his plea to the unexplained charge of second degree murder was voluntary.

Henderson at 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 106.

There are essentially two ways under our system of criminal justice in which the factual guilt of a defendant may be established such that he may be deprived of his liberty consistent with Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. The first is by a verdict of a jury which, or a decision by a judge who, concludes after trial that the elements of the crime have been proved beyond a reasonable doubt. The second is by the defendant's own solemn admission "in open court that he is in fact guilty of the offense with which he is charged." Tollet v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973)(emphasis added), Id. by a plea of guilty.

The Court has repeatedly emphasized that "a guilty plea for purposes of a federal conviction, is a judicial Admission of guilt conclusively establishing a defendant's factual guilt." Lefkowitz v. Newsome, 420 U.S. 283, 299, 95 S.Ct. 1463, 1465, 25 L.Ed.2d 747 (1970).

ARGUMENT IV.

The PCR court erred in ruling that the responses to interrogatories from the Berkeley County Solicitor's Office, Berkeley County Coronor's Office, the Berkeley County Sheriff's Department and SLED, along with files, failed to amount to newly discovered evidence.

Prior to entering guilty plea, petitioner's counsel, despite numerous request by petitioner, failed to obtain and furnish petitioner with, and go over evidence with petitioner prior to plea of guilty. Documents were

Essential and played a vital role in petitioner's decision to plead guilty. Documents included Interrogatories from the Berkeley County Sheriff's Department and SLED, along with the files received from Berkeley County Solicitor's Office, Berkeley County Coroner's Office, Berkeley County Sheriff's Office and SLED.

These documents amounted to newly discovered evidence that was not provided to petitioner in response to repeated request to counsel for copy of his file and has only been discovered within the last year (as a result of the discovery orders issued on the PCR action) that would have caused him not to proceed with a guilty plea and proceeded to trial.

See App. 295, 5-19, Ms. Blanchette Addressing the court.

Essentially, this case boils down to allegations that counsel failed to obtain the five hundred-plus pages that have been provided to Your Honor as part of the record in this case today. He failed to obtain and review those with Mr. Ladson before advising him to enter a guilty plea. As a result, we're alleging ineffective assistance, involuntary guilty plea.

Then we also have a claim of newly-discovered evidence that we would like to submit based upon the fact that he has just recently received a number of these documents. I plan to go into that in more detail with him.

LAW ANALYSIS

Pursuant to petitioner's claim of newly discovered evidence, see S.C. code § 17-27-45(c), which states; " If the Applicant contends that there is evidence of material facts not previously presented and heard that requires

vacating of the conviction and sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence." (emphasis added). Further, when an Applicant presents or seeks relief on basis of newly discovered evidence following a guilty plea, relief is appropriate only when Applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, that the "interest of justice" requires the Applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 470, 876 S.E.2d 123, 130 (2014).

Petitioner was presented by testimony and documents to the court, that plea counsel had an obligation to petitioner. That counsel failed in that obligation and violated petitioner's Sixth Amendment right to the U.S. Constitution to effective assistance of counsel. U.S.C.A. Amend 6. Petitioner was not representing himself, but depending the guiding hand of counsel and relying on counsel's professional judgement. S.C. Courts do not recognize hybrid representation, therefore, it was counsel's duty to exercise due diligence in obtaining these documents and making sure to discuss them with the petitioner as well as providing petitioner with a true copy. We are talking about over five (500) hundred documents that counsel failed to obtain and review prior to advising Petitioner to enter plea of guilty, clearly amounting to ineffective assistance of counsel.

ARGUMENT V.

The PCR court erred in ruling counsel provided effective assistance of counsel where counsel failed to subject the State's Case to a meaningful adversarial testing, which violated Applicant's Sixth Amendment right to the U.S. Constitution, Amend. 6.

Counsel's performance was riddled with deficiencies. Not only that counsel failed to obtain critical and vital documents from various different Agencies that were crucial to petitioner's defense, but also failed to request that certain tests be conducted and performed on certain evidence prior to advising petitioner to enter a plea of guilty, even without ever reviewing these crucial documents. See app. 423,-423, 15-25,-1-9.

What we have presented today is a complete breakdown in the adversarial process. There was potentially exculpatory evidence, evidence that could have linked someone else to the crime. And those reports came back prior to the entry of the guilty plea. Now, if the State wants to go on and on about my client's law enforcement experience, if he had known that, you do not think he would have cried foul. If he was in his right mind, do you think he would have cried foul and said I want this tested. There DNA under her fingerbails. They'er saying there was an altercation. I want this tested. It didn't happen.

There was never any test done for DNA that was found under the victim's fingernail. And I would submit to you the entry of the guilty plea before a case is properly investigated is a breakdown in our adversarial process. And that's why we've made the Cronic and Nance Claims.

The Court held: that most obvious of course, is the complete denial of counsel. The presumption that counsel's assistance is essential requires us to include that the trial is unfair if the accused is denied counsel at a critical stage of his trial. Summarily, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that make the adversary process itself presumptively unreliable. No specific showing of prejudice is required in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 1347 (1974), because petitioner has been "denied the right of effective cross-examination" which" would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." Id., at 318, 94 S.Ct., at 1111 (citing Smith v. Illinois, 399 U.S. 129, 131 88 S.Ct. 748, 749, 19 L.Ed.2d 956 (1968); and Brookhart v. Jains, 384 U.S. 1, 3, 86 S.Ct. 1245, 1246, 16 L.ED.2d 314 (1966)).

CONCLUSION

Based on the following, petitioner respectfully request that this Court reverse the ruling of the PCR court and grant petitioner a new trial.

Respectfully submitted,

Rodney Ladson
s/ *R. A. Ladson*

**Rodney Ladson/262438
MacDougall Corr. Inst
1516 Old Gilliard Rd.
Ridgeville, S.C.29472
(Pro-se)**

AFFIDAVIT OF SERVICE

I, Rodney Ladson, #262438, being duly sworn, disposes and swears under the penalty of perjury, that on this 29 dat of June, 2017, did forarded for filing, one original Pro-se Petition For Writ of Certiorari to the Hon: Daniel E. Shearous/Clerk for the Supreme Court of South Carolina and a true copy to the Respondent at the below listed address, via, U.S. mail postage prepaid 1st class.

Respectfully submitted,

S/Rodney Ladson
Rodney Ladson, #262438
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
(Pro-se)

Olivia A. Olive, Esquire
Office of the Attorney General, S.C.
P.O. Box 11549
Columbia, S.C. 29211

RECEIVED

JUN 29 2017

S.C. SUPREME COURT

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 29th DAY OF June
20 17
Nicole R. Chapman
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 12-26-2026

