

State of South Carolina

County of Spartanburg

Tyrone Perry # 307793

Petitioner

v

State of South Carolina

Respondent

In the Supreme Court

2015-CP-42-4338

Appellate case No: 2017-001770

RECEIVED

OCT 03 2017

S.C. SUPREME COURT

Rule 243 (c) Explanation

The petitioner argues that his case should not be dismissed and heard due to the fact the previous issues are both new grounds in which relief can be sought. During the petitioner's first PCR hearing the petitioner raised that the guilty plea was involuntary due to counsel promised the petitioner he would receive 25 years when in fact the petitioner received a 50 year sentence. The petitioner had two witnesses present when original plea counsel relayed this plea. These two witnesses Brenda Miller and Sarah Dunn testified at the petitioners first PCR hearing that plea counsel promised the petitioner 25 years in exchange for his plea of guilty. In the petitioner's order of dismissal the PCR judge failed to rule on this issue violating 17-27-80. PCR attorney Kenneth P. Shabel violated Marlar-U-State and failed to file a Rule 59(e) motion to reserve the petitioner's rights to appellate review. On writ of certiorari to the Supreme Court the petitioner raise ProSe the PCR attorney was in violation for not filing a 59(e) motion violating Pruitt-U-State and Marlar-U-state at PCR court violated 17-27-80 for not ruling on all issues raised at PCR. The Supreme Court dismissed the petitioner's claims with no explanations or conclusions of law when the petitioner quoted valid South Carolina

precedent law. When the petitioner went to the federal courts he was procedurally barred due to the issues the petitioner raised at his original PCR were not ruled upon. No 59(e) motion were filed to reserve rights for appellate review. So the petitioner was unable to proceed in the federal courts due to the PCR's court inability to rule on all issues raised denying the petitioner his full bite of the apple. The petitioner raised in his first PCR trial counsel was ineffective for failing to investigate medical records. Currently the petitioner is raising that trial counsel was ineffective for failing to get a second opinion on the petitioner's mental health. The original plea counsel James E Hatcher had knowledge that the petitioner had mental health issues. The petitioner had written up plea counsel with the Disciplinary Counsel prior to the plea which led to an inadequate investigation and lack of diligence in the petitioner's case. The state ordered a mental evaluation. Trial counsel failed to get a second opinion when he knew the petitioner suffered from mental illness. Currently the petitioner is housed in the ICS program which is a mental health program. The petitioner has a diminished capacity and has responded to each tight court deadline with his own understanding with no help from a law clerk and limited access to a law library and legal material. The petitioner has been housed at Gilliam Psychiatric Hospital and the S.I.B Self Injurious Behavior program while incarcerated. He dealt with mental health on the street and still deals with it while incarcerated. The petitioner is on several psychotropic medications and continues to respond to each of the Honorable Court's deadlines. The record reflects during the plea the petitioner had NO understanding of the proceedings against him. At PCR Sarah Dum testified that the petitioner would look to plea counsel after the judge asked each question of the colloquy. The record reflects that the petitioner was incompetent and this violates

due process. All of these issues were not ruled upon in the petitioner's initial PCR. The conviction of an accused person while he is legally incompetent violates due process. *Pate-v-Robinson*. Currently the petitioner raises that trial counsel was ineffective for this failure to get that second opinion. It could not have been raised in my initial PCR due to the fact I had NO knowledge of it. I have diminished capacity with limited access to legal supplies and libraries. This is a new ground and not the same ground as alleged in the judge's order. The petitioner would have raised these issues earlier in his second PCR which was filed May 30, 2014. The petitioner raised Austin violation, unkept plea agreement, and Marlar violation in his second PCR. The petitioner received an conditional order of dismissal on April 16, 2015. The petitioner attempted to appeal this order, but received an order from the Honorable Courts stating *Lewis-v-State* the petitioner could not appeal an conditional order. With the petitioner's diminished capacity he thought he could not appeal not knowing you had to wait for the final order. So the final order came ten months later on February 1, 2016, but the petitioner had already filed his third and most recent PCR application already prior to this.

Both grounds that the petitioner is raising involuntary guilty plea, incompetent at the time of the guilty plea and ineffective assistance of counsel for counsel failure to get a second opinion are both new grounds NOT previously raised by the petitioner. They could not have been raised earlier in the petitioner's initial PCR because the petitioner had no knowledge of them. *Droppe-v-Mo* failure to make sufficient inquiry into defendant's competence and give adequate weight to irrational behavior violated due process. In the petitioner's initial PCR the PCR Court failed to rule on ALL issues raised at his PCR hearing.

It's evident in the order of dismissal each issue alleged in the application none were ruled on pursuant to 17-27-80. So the petitioner appealed all the way to the U.S. Supreme Court and got the same response. Procedurally barred due to the PCR Court not ruling on them and NO 59(c) motions filed to preserve rights. Then when I raised this issue to the South Carolina Supreme Court my case was dismissed without any explanations or conclusions of law. Trial Counsel did a bare minimum in my case. I never once talked with plea counsel James E Hatcher about my case. He never got my version of the facts. He violated my sixth amendment right by not conferring with me prior to court-ordered psychiatric exam. In the final order it states that plea counsel requested a mental health evaluation prior to the plea to determine competency to stand trial and criminal responsibility and that evaluation was made part of the record. This evaluation was in December 2005. I went to the plea in February 2006. And the evaluation was no longer than ten minutes. The petitioner was entitled under due process clause to appointment of Independent psychiatric expert to assist in his defense during the guilt and sentencing phases in capital murder prosecution. Powell-V-Collins. Scientific opinions on either side of any question where there is substantial contradiction in a given area of expertise it may be vital in affording effective representation to a defendant in a criminal case for counsel to elicit expert testimony rebutting the state's expert testimony. Counsel's failure to become versed in a technical subject matter in order to conduct effective cross examination or failure to properly seek and produce witnesses at trial may constitute a constitutional flaw in the representation of a defendant in a particular case Knott-V-Mabry. In the record trial counsel can't prove he had any meeting with the petitioner. He did not

investigate his case or mental health background which is a requirement by due process. He had knowledge of the petitioner mental health but chose to ignore it even though the petitioner had multiple suicide attempts and commitments to mental institutions. None of these psychiatrists were interviewed. The record reflects that the petitioner was incompetent at the time of the plea. Witness testimony can verify that was made part of the record. The petitioner never got a full bite of the apple and his case in general is a miscarriage of justice. I can't proceed in the federal courts due to im procedurally barred. I pray that this explanation fits the criteria and helps me obtain some relief. I throw myself at the mercy of the courts. I need relief from a matter in which I have been deprived at every step of my relief efforts. I pray that this is the stepping block I need. I have a low understanding and diminished capacity, but I hope it's understood what im trying to say

This 28th day of September 2017

s/ Tyrone Perry 307293
Tyrone Perry 307293
Kirkland Corr Institute
4344 BroadRiver Rd
Columbia S.C. 29210

State of South Carolina

County of Spartanburg

Tyrone Perry # 307793

Petitioner

v

State of South Carolina

Respondent

In the Supreme Court

2015-CP-42-4338

Appellate Case No: 2017-001770

Proof of Service

RECEIVED

OCT 03 2017

S.C. SUPREME COURT

I certify that I have served this Rule 243 (c) Explanation by depositing a copy of it in the U.S. mail postage prepaid on September 28, 2017 to the following

Supreme Court of South Carolina

Daniel E Shearouse Clerk

P.O. Box 11330

Columbia S.C. 29211

s/ Tyrone Perry