

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas
Post Conviction Relief

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DEC 08 2017

S.C. SUPREME COURT

Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No.: 2016-001914

CONNIE MURRAY DUMAS,..... Petitioner,

vs.

State of South Carolina,Respondent.

REPLY TO RETURN FOR PETITION FOR WRIT OF CERTIORARI

Tommy A. Thomas
SC Bar: 5536
Attorney for Petitioner
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PCR Division
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Respondent's Return to Petition for Writ of Certiorari

That the Respondent in their Return to Petition for Writ of Certiorari allege:

1. That the Petitioner's assertion that Counsel was ineffective for failure to suppress video evidence at trial is not preserved for Appellate review.
2. That the Petitioner's assertion that Counsel was ineffective for failure to adequately advise Petitioner regarding the potential risk of taking the case to trial and that Counsel was ineffective for failure to object to the Solicitor's failure to honor an agreement regarding sentencing are not preserved for Appellate review.

The Respondent goes further and alleges that even if these issues were preserved, that Counsel was not ineffective.

The Petitioner in her argument alleges the following:

- a. That the authorities lost a video recording of Petitioner at the location. That this video clearly showed that Petitioner was at the location of the crime, but that she did not have any type of weapon and showed that Petitioner was not involved in the alleged Robbery (App. p. 673, lines 18-21) Counsel failed to move to suppress all video evidence.
- b. That the Petitioner was offered a plea of ten (10) and six (6) years. Defense Counsel persuaded her not to accept the plea and failed to adequately advise her of the exposure of trial verses acceptance of the plea. Counsel was ineffective for failure to object to the Solicitor's failure to honor an agreement regarding sentencing.

ARGUMENT #1

The Petitioner testified that she had an opportunity to view the discovery in her case. This included a video from the convenience store (App. p. 672, lines 14-15) She also stated that she saw this video at the first trial. The video evidently showed her walking to the counter. She and the cashier were talking and she handed the cashier something and then the cashier hands her something back. She then walked out. (App. p. 673, lines 2-25) This is consistent with her defense. That she had taken from her home a hundred dollar bill. That she desired to have the hundred dollar bill exchanged for smaller bills and that she asked the clerk at the One Stop to change this bill for her. She was advised that the clerk could not open the register without a purchase. She proceeded to make a small purchase. Petitioner laid the hundred dollar bill on the counter. Then the hundred dollar bill was missing and she believed that the cashier had taken this money. Eventually, after some discussion, the cashier gave her the hundred dollars back. (App. p. 709, lines 17-25, p. 710, lines 1-24)

This matter is important because at her second trial, she was told by counsel that the video that showed her handing the hundred dollar bill to the cashier had been lost. (App. p. 672, lines 19-25, App. p. 673, line 1)

The Petitioner would allege that the PCR Court did in fact hear testimony on this issue and made a ruling. The PCR Court found that Counsel testified that a surveillance video from the Convenience Store was lost after the first trial. The Court, however, found that none of Counsel's actions concerning the video evidence rose to the level of deficient performance and that the Petitioner had failed to prove that he was ineffective in this regard.

The Petitioner would allege that the Court did make a ruling find counsel was not ineffective and that the Court was in error in making such a decision.

ARGUMENT #2

The Petitioner received two plea offers. A plea of ten (10) and then six (6) years. Defense Counsel persuaded her not to accept the plea and failed to adequately advise her of the exposure of trial verse acceptance of the plea. In addition, Petitioner would allege that Counsel was ineffective in his failure to enforce the agreement that he had with the Solicitor. The Solicitor indicated he would make a recommendation at the end of trial that the Petitioner receive six (6) years. (App. p. 728, lines 1-6)

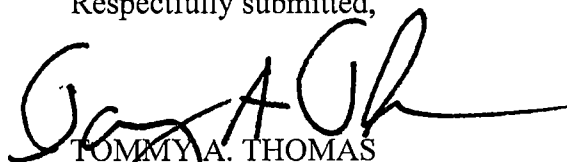
The Court addresses the issue regarding Counsel's alleged ineffectiveness regarding the plea negotiations. The Court specifically finds that Counsel's testimony was creditable and that Applicant rejected all plea offers because she asserted her innocence. That she failed to show any prejudice in any way by Counsel's action regarding plea negotiations. (App. p. 754)

The Applicant would assert that these issues were preserved for review by the Court and that Counsel was ineffective regarding his failure to give proper advice regarding acceptance of the plea offers as well as failure to object to the Solicitor's non enforcement of plea offer made in trial.

CONCLUSION

That the relief request in the Petition for Writ of Certiorari be granted.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT

December 5, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

The Honorable J. Derham Cole, Circuit Court Judge

APPELLATE CASE NO. 2016-001914

CONNIE DUMAS,

PETITIONER,

V.

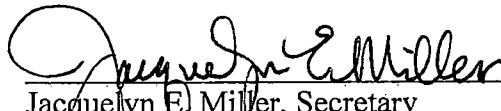
THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of a Reply to Return for Petition for Writ of Certiorari, with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General
Attention: Justin Hunter, Esq.
P.O. Box 11549
Columbia, SC 29211-1549



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December 5, 2017

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December 5, 2017

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

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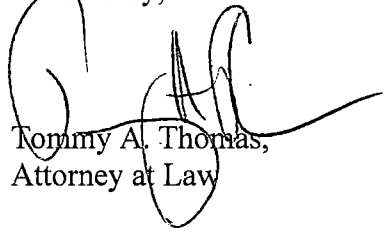
RE: Connie Murray Dumas #346178 v. State of South Carolina
Appellate Case No.: 2016-001914

Dear Mr. Shearouse:

Enclosed please find for filing an original and 6 copies of the Reply to Return to Petition for Writ of Certiorari as well as an original and a copy of the Certificate of Service.

Kindly return a clocked copy of the Petition to me in the enclosed envelope.
Thank you.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Justin Hunter, Esq.
Connie Murray Dumas #346178