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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable R. Ferrell Cothran, Circuit Court Judge

ROBERT LEE JR
PETITIONER

V.

STATE OF SOUTH CAROLINA
RESPONDENT

APPELLATE CASE NO 2017-00187

(pro se response)
and
Petitioner's Written Memorandum
(Submitted for the Court's Consideration)

I Robert Lee (Petitioner) SCDC# 348833
am submitting a Memorandum
to go along with the Appendix
in my case and Filed Johnson
Petition for Writ of Certiorari
that was filed on my behalf by
Laura R. Baer (Appellate Defender)
This Memorandum is being
submitted for the Courts consideration
on behalf of case NO 2017-00187

Bobby Horton V. State (SC)
306 SC 252 (1991) 411 SE. 2d 223

Trial Counsel Brendan Delaney gave (petitioner Robert Lee Jr) erroneous advice not to testify. Mr. Delaney advised me that it was best not to testify seeing that the Solicitor would bring up abuse allagations and would eat petitioner alive on the stand due to petitioners (Robert Lee Jr) mental state which Mr. Delaney testified to at the January 11, 2016 PCR hearing for petitioner. Looks at page 726 Lines 1-11 and pages 728 Lines 1-3. Petitioner was not mentally stable to make decisions on his own. (#253) Petitioner maintains his decison not to testify was based on trial counsel's advice that was subject to cross examination and was not mecantally stable. #254 Because the petitioner's (Robert Lee Jr) meantal State was unstable and the fact that the petitioner had never been in trouble before, and the fact that the petitioner did not know the law as his experienced attorney did. The petitioner did not know the law and obviously went along with whatever advice counse gave. #255

The State Respondent v. Jamie Hartley Appellant
307 SC 239 (1992) 414 SE 2d 182

We hold the requested charge constitutes an impermissible charge on the facts See Const. art V 21 (Judges shall not charge juries in respect to matters of fact but shall declare the law State v. Bagwell (201 S.C 387, 23 S.E 2d 244 (1942) #241 Trial Counsel Failed to object to impermissable Comment.

A judge cannot express in his charge or intimate any opinion as to weight or the sufficiency of testimony without the probibition of the Constition as to charging upon the facts) 75 A Am Jur 2d Trial and 1203 at 693 (1991) The trial Court may not instruct the jury what weight should be given [to the evidence] or even to any particular evidence is or is not entitled to receive weight or motive consideration from them") Cf State v. Edwards 127 S.C 116, 120 S.E 490 (1923). Jury Charges: Read Trial Transcript - pg 568 Lines 4-8 pg 570 Lines 15-16, pg 571 Lines 24-25, pg 572 Lines 1-3 pg 574 Lines 4-9, 575 Lines 6-7, pg 576 Lines 1-3 pg 583 Lines 24-25, 584 Lines 1-10, 16-23, pg 586 Lines 23-25, pg 588 Lines 1-5, pg 589 Lines 1-20

(Read Trial Transcript)

pg 549 Lines 4-6 Arousing Passion and Prejudice, evidence outside the record - Solicitor testifying.

State v. Thurman Smith
(Read Trial Transcript) pg 574
Lines 4-9, 14, 22-25

Read Transcript Trial pg 137-140
↓
Read PCR Transcript has lawyer visit logs Counsel never came to talk to me as he was told by the judge

162.45 Reviewing Court Does Not Invent Strategies for Counsel.

Marcum v. Luebbers, 509 F.3d 489 (CA8 2007)

p502. [T]he burden of proof is on the petitioner to show that "his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman, 477 U.S. at 384, 106 S.Ct. 2574

The Supreme Court has held in several cases that habeas court's commission is not to invent strategic reasons or accept any strategy counsel could have followed, without regard to what actually happened; When a petitioner shows that counsel's actions actually resulted from inattention or neglect, rather than reasoned judgment, the petitioner has rebutted the presumption of strategy, even if the government offers a possible strategic reason that could have, but did not, prompt counsel's course of action. Rompilla v. Beard, 545 U.S. 374, 395, 162 L.Ed 2d 360 (2005) [omitted] [Grant of writ reversed] 15727

162.45 Decision Not to Investigate is Not A Strategy

Fisher vs Gibson, 282 F.3d (CA10 2002)

)1296.[...] Counsel has the (A) duty to investigate all reasonable lines of defense, or make reasonable determinations that such investigation is not necessary. Strickland [...] A decison not to investigate cannot be deemed reasonable if it is uninformed. Id. Mr. Porter's decision not to undertake substantial pretrial investigation and instead to "investigate" the case during the trial was not only uninformed it was patently unreasonable. [...] Here it is evident that counsel did not have a strategy of pointing to holes in the evidence or trying to create a reasonable doubt in jurors's mind. To the contrary, it is obvious that during his direct and cross examinations Mr. Porter had no idea he might elicit information that could be useful to such a strategy. Furthermore, he made no attempt whatsoever to draw the jury's attention to any gaps in the State's evidence, and never otherwise articulated a reasonable doubt theory to the jury. [...] Where an attorney accidentally brings out testimony that is damaging because he failed to prepare, his conduct cannot be called a strategic choice: an event produced by the happenstance of counsel's uninformed and reckless cross-examination cannot be called a "choice" [...] all See Strickland, 466 U.S at 691. [Writ granted]

I Robert Lee Jr Petitioner believe that if an proper and full investigation would have been done on people, letters, and abuse allegations that did not prove to be true in a court of law and should have never been brought up in a court of law, that my lawyer advising me not to testify and Mr. Brendan Delaney failure to object to things the Sollicitor and trail Judge said and did also my trail lawyers lack of experiance on murder cases in which he said he lacked at my PCR hearing effected the outcome of my trail and if all these things would have been done differently especially if I would have been able to testify and do to some of the things my trail lawyer said hurt me as well he was ask about this at my PCR hearing about words he used and why he didn't object to things that I believe hurt me with the jury. I believe if I would have not been mentally off and would have been able to testify on my behalf and all the other stuff I list that the outcome would have been different.

I, Nancy C Merchant, Notary for the state of South Carolina here by affirm by my signature and that I witnessed this letter being signed and mailed by the above Petitioner this 11th day of December, 2017

Nancy C Merchant (1-23-2023) 12-11-17
Signature of Notary Date

Robert Lee Jr.
Robert Lee Jr #348833
(Petitioner)

Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

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