STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JAN 25 2018

S.C. SUPREME COURT

Certiorari to Beaufort County

Michael G. Nettles, Presiding

MELVIN SAMUEL HOLMES.....Petitioner

"VS"

STATE OF SOUTH CAROLINA.....Respondent

APPELLATE CASE NO 2017-001052

PRO.SE. BRIEF OF PETITIONER

Mr.Melvin Samuel Holmes,#310276

Kershaw C.I.

4848 Gold MINE Hwy

Kershaw S.C. 29067

ISSUES PRESENTED

I. Did the Beaufort County Court of General Sessions have jurisdiction to entertain and and except petitioners guilty plea, when his indictments were forth with by a Grand Jury not authorized by law, and pleaded guilty in a proceeding contrary to statutory law ?

II. Whether counsel gave petitioner erroneous advice to plead guilty wheen counsel failed to investigate, research, and prepare a defense for the search warrant being Malum Prohibitum ?

III. Whether counsel gave petitioner erroneous advice to plead guilty, when counsel failed to investigate, research, and prepare a defense for petitioners brother confessing to the crime ?

IV. Whether it was a conflict of interest for attorney Ian Deysach to have a unauthorized visit with petitioner when he was married to the prosecutor ?

V. Whether petitioner's guilty plea was constitutionally sound when it was not a voluntary, and intelligent choice among the alternative courses of action open to petitioner ?

STATEMENT OF THE CASE

Petitioner resides at 232 Sea Side Rd., in St. Helena Island. Petitioner was on a leg monitor, and during this time he was involved in a hellacious argument with his father.

To insure that no incident would violate his liberty, Petitioner got the green light to visit his sister at 944 Club Bridge Rd. in Beaufort until this situation between the parties cooled off.

Petitioners brother was distributing cocaine and met with a C.I. on several occasions, and on January ~~5th~~ 11, 2013 a search warrant was executed on his sisters residence at 944 club Bridge Rd..

Cocaine was found in the bed room were petitioner was sleeping, and petitioner and his brother were arrested.

An arrest warrant was issued in this case, grounded with [m]isleading information that the cocaine was found in petitioners bed room.

Petitioner was purportedly indicted on April 18th, 2013 by the Beafort County Grand Jury. On December 15th, 2014, Petitioner appeared before the court. Petitioner thought he was coming to court for roll call, because he received no notice of a trial. Importantly, Petitioner did not want to plead guilty, but felt he was forced to do so. Petitioner pleaded guilty, but he did not appeal. A PCR application was filed on May 15th, 2015, and a hearing was held on October 17th, 2016. Petitioner was denied relief by written order dated December 20th 2016, and a timely appeal was filed.

Appellate DEFENDER Lanelle Cantey Durant submitted a Johnson's Brief to the court on behalf of the Petitioner and this brief follows.

ARGUMENTS

(I)

Because the Beaufort County Grand Jury convened and true billed petitioners indictments at an unauthorized time, the Circuit Court of Beaufort County lacked jurisdiction to entertain and adjudicate this case.

Ex Rigore Juris, the S.C. Code Ann. § 14-5-800 in relevant part states:

> The courts of general sessions for Beaufort County shall be held at Beaufort on the first Monday in March for one week, on the third Monday in June and continuing until the Saturday before the second Monday in July, and on the third Monday in Novemeber for one week.

Insomuch, the language on the charging instruments "at a court of general sessions, convened on [A]pril 18th, 2013, the Grand Jurors of Beaufort County present upon their oath" id dubbed by the affirmative statute stated.
The Grand Jury is a constituent part of the General Sessions Court, State "vs" Hann, 196 S.C. 211,12 S.E. 2d. 720 (S.C. 1940), and it only has power to act when the General Sessions Court is in session. Acknowledging this, the indictments in this case are preter legal, therefore the provisions of the S.C. Constitution Article I § 11 cannot be met for the circuit court to acquire jurisdiction in this case.
What is more, Petitioner pleaded guilty on December 15th, 2014. It is shocking to the universal sense of justice that Petitioner pleaded guilty in a court without statutory judicial power to even except the plea.
Reality is this, the petitioner's guilty plea is not authorized by the State Legislature, it is "Coram Non Judice" as a matter of statutory law.
To sum this up, Petitioner cannot plead guilty in a judicial proceeding not authorized by law. Petitioner's 14th Amendment rights to the federal constitution were violated in this case.

Because counsel did not investigate, research, and prepare a defense for the search warrant being Malum Prohibitum, counsel gave petitioner erroneous advice to plead guilty.

This much is certain, at the post conviction relief hearing, counsel was adamant when he stated "the search warrant was absolutely valid" (App.Pg.68 L.14-20). On that diction by counsel, it is accurate to say that counsel did not investigate, research, and prepare a defense for the search warrant being Malum Prohibitum.

Let me be pellucid, the State Legislature has made it clear that the "SWEARER OF A WARRANT IS PRECLUDED FROM SERVING IT", this is how the S.C. Code Ann. § 22-5-180 is styled.

In this case sub judice, the swearer of the search warrant is the same person who served the search warrant and executed it.

To be sure, here signature is edged in stone on the search warrant as the affiant and as the person who executed the warrant.

Given this reality, it is axiomatic that the search warrant is Malum Prohibitum, thus making the search incident unreasonable, and unreasonable searches and seizures are prohibited by the 4th Amendment jurisprudence, and the S.C. Constitution Article I § 10.

As I see it, Counsels advice did not fall within the range of competence demanded of attorneys in criminal cases, McMann "VS" Richardson, 397 U.S. 759.90 S.CT.1441 (1970). because his ineptitude to discover this defense was paramount.

There is a reasonable probability that if counsel would have prepared a defense in this matter, the evidence could have been suppressed, and a reasonable probability is a probability sufficient to undermine the proceeding.

Petitioner would not have pleaded guilty and insisted on going to trial if counsel would have disclosed this defense, Hill "vs" Lockhart, 474 U.S. 52,106 S.CT. 366 (1985).

Because Counsel did not investigate, research, and prepare a defense for petitioner's brother confessing to the crime, counsel gave petitioner erroneous advice to plead guilty.

This much is certain, counsel was provided with a letter from petitioner's brother confessing to the crimes in this case, (App.pg.59 L.10-25). Acknowledging this, in my opinion it was Constitutionally incumbent upon counsel to investigate, research, and prepare a defense which is the basic duty of effective advocacy.
I must emphasize the point that when counsel received the letters, and had them in his custody and control, he did absolutely nothing to develope a defense for petitioner (App.pg.69 L.9-23).

Inasmuch, in my opinion, there is simply no legal justification for counsel not to investigate, research, and prepare a defense.
The states evidence in this case was petitioners purported DNA evidence found on the baggies, to wit, petitioners finger prints. As I see it, counsel could have gotten the DNA evidence and the drugs suppressed in this case do to a break in the chain of custody in this case. There is no initial or subsequent chain of custody documentation in this case. We know as a fact that the drugs were field tested, but by who ? what is more, how did the drugs get to the police station ? and who receive them at the police department ? Given this reality, it is safe to say that that is was a complete breakdown in the chain of custody in this case.
I must point out, that petitioner was a guest at at his sisters home, the documentation in this case stating that petitioner lived at the address were the drugs were seized is simply a factoid and a factual inaccuracy, there for the defense of dominion and control was applicable in this case Goldsmith "vs" Witkowski,981 F.2d. 697 (4th Cir.1992) regardless of the alleged possession in this case.
Counsel advice did not fall within the range of competence demanded of attorneys in criminal cases, McMann Supra, because he failed to excercise his basic duties as a advocate.
There is a reasonable probability that if counsel would have developed a defense in this matter, petitioner would not have pleaded guilty and insisted on going to trial, Hill "vs" Lockhart, supra.
For any lawyer not to investigate a person who confesses to a crime, is simply unjustifiable as a matter of Constitutional law.

Because attorney Ian Deysach was married to the prosecutor and he had a unauthorized visit with petitioner, a conflict of interest was present in this case.

A person who does not deny admits,(Qui Non Negat Fatetur), being so, the record in this case sub judice facilliates an understanding that attorney Ian Deysach did not deny the fact that he visited petitioner at the Beaufort County jail (App.pg.44 L.19-25 through 45 L. 1-11), critically serious, it must be amplified that this attorney had no legal justification for even being at the jail speaking to petitioner about his case when he was represented by counsel.

Importantly, regardless of these two attorneys offices being in the same business building, the record is devoid of any authorization for Ian to justify this attorney visit.

Acknowledging this, there can be no blinking the fact that attorney Ian was married to the prosecutor in this case.

There for, factually what we have is a unauthorized attorney visit by a lawyer who is married by the prosecutor.

This case is similar to the precedent Abney "vs" State, 523 S.E. 2d. 362 (G.A. ct. 1999), nevertheless, because the attorney visit was unjustifiable, prejudice should be presumed.

To sum this matter up, Counsel should not be involved in a criminal case when his or her partner is the prosecutor, (DEFENSE FUNCTION STANDARDS 4-3.5(F)

Because petitioner's plea was not a voluntary and intelligent choice among the alternative courses of action open to petitioner, Petitioner's plea of guilty was not constitutionally sound.

In North Carolina "vs" Alford, 400 U.S. 25 (1970) the U.S. Supreme Court held that "a guilty plea must be a voluntary and intelligent choice among the alternative courses of action open to the defendant".

In this case at bar, reality is this, petitioner didn't want to plead guilty, (App.pg.8 L.6-8).

What is more, Petitioner informed the court that counsel was not acting in his best interest, accompanied with the judge threatning petitioner with revoking his bond, and making him represent himself, petitioner felt like his back was against the wall, (App.pg.51 L.25 through 53 L.1-5).

It is obvious and unarguable that under these circumstances that petitioners plea was not a voluntary and intelligent choice among the alternative courses of action open to petitioner.

Consequently, counsel did not interview any witnesses for petitioner, was unaware that petitioner did not live at the residence, did not use code 22-5-180 to suppress the search warrant, and the drugs, did not use dominion and control as a defense, did not use the break in the chain of custody for a defense, and allowed the petitioner to plead guilty in a court who had no judicial power from the State Legislature to have a judicial proceeding.

The point here is simplistic, petitioners guilty plea cannot be Constitutionally valid when petitioner receives ineffective assistance of counsel, Pennsylvania ex rel. Herman "vs" Claudy,350 US 116,76 S.Ct. 223 (1956), Von Moltke "vs" Gillies332 US 708,68 S.CT. 316 (1948)

I must emphasize, that "THE CHIEFEST PART OF EVERYTHING IS THE BEGINNING"(Cujusque Rei Potissima Pars Est Principium) and petitioner pellucid in the beginning of this case telling the court that he did not want to plead guilty.

The petitioners guilty plea is unConstitutional on its facial validity.

Because Counsel did not investigate, research, and prepare a defense for petitioner's brother confessing to the crime, counsel gave petitioner erroneous advice to plead guilty.

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CONCLUSION

For the reasons stated, the judicial pronouncement of the PCR Court should be reversed, and Petitioner given another chance to proceed to trial.

Respectfully submitted

JAN. 19, 2018
date

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