

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Johnson Pro-se Response

Steve Leon Griffin, Petitioner

v.

State of South Carolina, Respondent

Appellant Case No. 2017-001565

STATEMENT OF ISSUES:

(1) Ineffective Assistance of Counsel:

(A) "Counsel advised petitioner to plead to an unindicted offense"

(B) "Counsel never allowed Petitioner to review states Motion of Discovery Packet."

(2) Violation of Due Process:

(A) The Court Lacked Subject Matter Jurisdiction to convict petitioner.

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S.C. SUPREME COURT

STATEMENT OF CASE:

The petitioner was indicted by the Greenville County Grand Jury at the September 2015 term of General Sessions Court for Armed Robbery and possession of a weapon during the commission of a Violent Crime [2014-65-23-7732]. He was represented at trial by Christopher D. Scalzo Esq; The State was represented by Elizabeth Major Esq; Petitioner went before the Honorable Judge Edward Miller and pled guilty to " Attempted Armed Robbery, and was sentenced to thirteen (13) years. The State dismissed the weapon charge against petitioner. No appeal was filed on petitioner's behalf.

On September 12, 2016 petitioner filed an application for Post-Conviction relief [PCR]. The State filed a return on January 12, 2017. On February 22, 2017 Petitioner appeared before the Honorable Judge Brooks Goldsmith for an evidentiary PCR hearing. Rodney W. Richey Esq. represented the petitioner. Jessica Kinard Esq. represented the State. In a written order signed June 17, 2017. Judge Goldsmith denied relief and dismissed the application. A timely notice of intent to appeal was served July 14, 2017. A Johnson Petition for Writ of Certiorari was filed by appellate Defender Kathrine Hudgins Esq. On the Fourth day of June 2018, Petitioner is now filing his Pro se response to this honorable court.

ARGUMENT:

Petitioner was denied the right to effective assistance of counsel when counsel advised him to plead guilty to an undictated "Attempted Armed Robbery" offense. In this case the petitioner was charged in a indictment with "Armed Robbery" which charged as follows.

That Steve Leon Griffin did in Greeneville County on or about the 27th day of June 2014, while armed with a deadly weapon or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person presents during the commission of the robbery would reasonable believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as U.S. Currency from the person of Ivey Curtis an employee of the Stop-n-Go gas station. This is a violation of 33.16-11-330(a) of S.C. Code of Law (1976) as amended.

while the petitioner's above indictment clearly charged him with "Armed Robbery" his trial counsel advised him to accept a guilty plea offer by the Assistant District Attorney to a lesser-included of "Attempted Armed Robbery."

The petitioner contends that "Asportation" \cong taking of Goods and or Money² is an essential and material element to the finding of guilt for Armed Robbery. Moreover, a lesser-included offense is one whose elements are wholly contained within the crime charged; stated differently if the offense contains any elements that are not part of the crime charged, then it is not "The lesser-included offense" See State v Dickenson 716 S.E. 2d 895 (2011)

Here, as tested by the holding in the Dickenson case, it cannot be seriously argued by the State that the "Attempted Armed Robbery" to which petitioner pled guilty to was the "less-included offense" of his indicted "Armed Robbery Charge"! In Martin v Ellison 223 S.E. 2d 415. Our Supreme Court held that only when the literal application of a statute produces an absurd result will it consider a different meaning.

Notwithstanding, as Attempted Armed Robbery does not include any element of "Asportation" it most certainly would lead to an absurd result to consider it the lesser included offense to Armed Robbery. Likewise, by a similar analogy, it would lead to an absurd result to consider "Attempted Murder" the lesser-included offense of murder absent the element of the death of the victim.

NOTE: It is a well settled, common law in South Carolina that "Strong Arm Robbery" is the lesser-included offense to Armed Robbery.

(B) Petitioner contends that counsel was ineffective for not providing him with a copy of the motion of Discovery Packet, that he had requested several times prior to entering a plea to the Non-indicted Attempted Armed Robbery charge. That if (he) petitioner had been able to review the motion of discovery, he would have demanded a trial by jur. The [Pur] Post conviction transcript upholds this fact, that petitioner was never provided with a copy until three (3) months after his plea.

upon which learning that the victim had gave a statement which is part of the Discovery Packet; that there was no robbery, that nothing was taken, no money, no property, nothing and that the alleged victim could not identify petitioner from a photo lineup, that description given of petitioner was wrong. Had petitioner been able to review this discovery, he'd never, ever had pled guilty, but demanded a trial. Finally, in reliance on the above argument, Petitioner submits that in as much as "Attempted Armed Robbery" is not the lesser-included offense of his "Indicted Armed Robbery" his counsels advice for him to plead guilty to the Attempted Armed Robbery offense was ineffective assistance of counsel, that was prejudicial. as it subjected petitioner to a conviction upon an unindicted offense and one that would have went to trial if counsel had shared the states discovery with petitioner. See transcript [Per] Post Conviction Hearing (APP. P. 36 lines 1-10) (APP. P. 35 line 18) (APP. P. 36 lines 1-3) (APP. P. 42 lines 5-10) (APP. P. 58) (APP. P. 40 lines 16-21. Petitioner is guaranteed the right to effective assistance of counsel under the sixth (6th) Amendment of the United States Constitution.

Strickland v Washington 466 U.S. 668 S. Ct. 2052, 80 L. Ed. 2d. 674 (1984)

Hill v Lockhart 474 U.S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)

Cherry v State 300 S.C. 115, 117, 386, S.E. 2d 624, 625, (1989)

Boykin v Alabama 395 U.S. 238, 89 S. Ct. 1709 23 L. Ed 2d. 274 (1969)

Roddy v State 339 S.C. 29, 33, 528 S.E. 2d 418, 421 (2000)

II The trial court lacked subject-matter Jurisdiction to accept the petitioners guilty plea to an unindicted "Attempted Armed Robbery" offense. For consideration of the petitioners claim in this instance, he submits that his "Sentencing sheet / Committed Order" does not indicate that he did in fact execute a signed waiver for the presentation of the "Attempted Armed Robbery" offense to which he pled guilty to without signing a valid waiver for the presentation of this offense.

Accordingly, it is well settled common and statutory law in South Carolina that the trial court lacks Subject-Matter Jurisdiction to hear a guilty plea unless: (1) there has been an indictment which sufficiently states the offense. (2) there has been a waiver of indictment. (3) And the offense waived is the/a lesser-included charge of the one charged in the indictment.

Campbell v. State, 535 S.E. 2d 928 (S.C. 2000). Moreover, South Carolina statutory law requires a signed-waiver of presentment before acceptance of a guilty plea to an unindicted offense. See S.C. Code of Law §§ 17-23-130 thru 17-23-140 (Waiver of presentment by grand jury and plea of Guilty). Thus, a defendant who fails to sign a waiver of presentment as required by law, the above statutes, is entitled to have his guilty plea vacated. see e.g., Summerall v. State, 294 S.E. 2d 344 (S.C. 1982).

Notwithstanding, here while the petitioner's "commitment order/sentencing sheet" does indicate that he along with his Attorney and Solicitor did sign his "sentencing sheet/commitment order," it does not indicate that (he) petitioner actually waived presentment of his "Attempted Armed Robbery" offense by "checking the waiver box and initialing his execution of such a waiver on his 'sentencing sheet/commitment order'" to indicate a valid waiver as required by statutory laws.

The petitioner finally contends that in reliance on the waiver requirement, under §§ 17-23-130 thru 17-23-140 the court lacked Subject-Matter Jurisdiction to accept (his) petitioner's guilty plea without a valid waiver of his "Attempted Armed Robbery" offense.

CONCLUSION

Based on Arguments, Facts and [PCR] Transcript testimony by Attorney Christopher Scalzo, Petitioner would have if had opportunity to review Discovers Packet elected for a trial, and was under the impression that he was pleading to the lesser-included offense of the unindicted

Attempted Armed Robbery Charge.

WHEREFORE, for the foregoing reasons, this Honorable Court should Reverse and vacate the petitioners conviction for a new trial.

Respectfully Submitted
S/ Steve Leon Griffin
Steve Leon Griffin #121940
Tyger River C.I. 410-205
260 Prison Rd
Eureka, S.C. 29335

Date June 4, 2018

cc: Deshaun Mitchell Esq. (State Attorney General's office)

Daniel E. Shearouse, Clerk of Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Pro se Response to:

Johnson Petition for Writ
of Certiorari

STEVE LEON GRIFFIN

PETITIONER

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STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this pro se response to the Johnson Writ of Certiorari in the above referenced case has been served upon Daniel E. Shearouse Clerk of Court P.O. Box 11330 Columbia S.C. 29210 and Deshaun H. Mitchell Esq, at the Rembert Dennis Building 1000 Assembly St. Room 519 Columbia S.C. 29201 on this 4th day of June 2018.

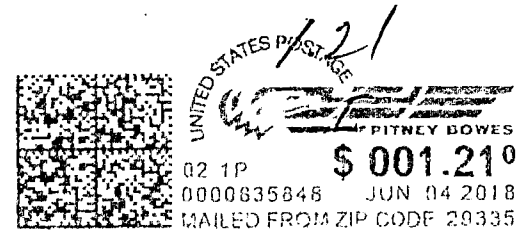
Steve Leon Griffin
Steve Leon Griffin 121940
Pro se petitioner

SUBSCRIBED AND SWORN TO before me
this 4th day of JUNE 2018

Paul Peter
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: DEC 10, 2024

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The Supreme Court of South Carolina
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