

JUNE 10, 2018

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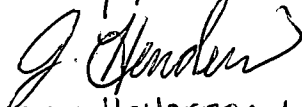
S.C. SUPREME COURT

RE: JUSTIN HENDERSON V. STATE
APPELLATE CASE NO. 2017-001822

DEAR MR. SHEAROUSE,

PLEASE FIND ENCLOSED THE PRO SE RESPONSE PER JOHNSON
V. STATE TO BE SUBMITTED TO THE UNITED STATES, SOUTH CAROLINA SUPREME COURT.

SINCERELY YOURS.



JUSTIN HENDERSON
PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO MARLBORO COUNTY
G. THOMAS COOPER, CIRCUIT COURT JUDGE

JUSTIN HENDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001822

PRO SE RESPONSE TO JOHNSON V. STATE, WRIT OF CERTIORARI

JUSTIN HENDERSON
PETITIONER

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LIEBER CORR INST / P.O. BOX 205
RIDGEVILLE, SC, 29472

PRO SE RESPONSE TO JOHNSON PETITION FOR WRIT OF CERTIORARI
APPELLATE CASE NO 2017-001822

THIS MATTER COMES BEFORE THE SUPREME COURT BY WAY OF PRO SE RESPONSE BY PETITIONER IN ACCORDANCE WITH JOHNSON PETITION FOR WRIT OF CERTIORARI SUBMITTED BY TAYLOR D. GILLIAM, ATTORNEY FOR PETITIONER, ON APRIL 30, 2018.

INEFFECTIVE ASSISTANCE OF COUNSEL

I. FAILURE TO CONDUCT INDEPENDANT INVESTIGATION

COUNSEL BRANDON STEEN BEGAN REPRESENTATION FOR PETITIONER ON 4-15-13, 8 MONTHS PRIOR TO PLEA ON DECEMBER 3, 2013. COUNSEL SAT DOWN WITH PETITIONER TO DISCUSE THE CASE IN CONFERENCE AT JAIL VISITS ONLY TWICE

APP. PG 116 CASE NOTES

1) JAIL VISIT 11-12-13 (APP 2 HRS)

2) JAIL VISIT 11-22-13 (APP 2 HRS)

COUNSEL B. STEEN CASE NOTES REFLECT THAT DEFENDANT IS PERSUING TRIAL. PETITIONER CONTENDS THAT HE REQUESTED WITNESSES TO BE INTERVIEWED, SUBPOENA SDC PROTOCOL, POLICY, AND PROCEDURE, AND POLYGRAPH.

APP. PG 117 EXHIBIT #2.

DURING TRIAL, THE INDEPENDANT INVESTIGATION INTO THE CASE WOULD HAVE BUILT DEFENSE AND STRATEGY BY DIRECT EXAM OF WITNESSES AND, THE QUESTIONING OF THEM. SDC PROTOCOL AND THE SUBPOENA SDC RECORDS WOULD HAVE BEEN USED TO QUESTION AND, DIRECT EXAM OFC. CHRISTOPHER MCBRIDE, THE OFC. ON CALL THE NIGHT OF THE 1-6-13 INCIDENT AND, CHALLENGE HIS STORY AND WRITTEN STATEMENTS PROVIDED TO SLED. MR. MCBRIDES AND PETITIONERS WRITTEN STATEMENTS WERE TO BE A PART OF THE POLYGRAPH AS REQUESTED BY PETITIONER AND, DISCUSSED WITH COUNSEL.

APP. PG 95 (14.15.16)

A. I DID NOT, LIKE I SAID, AT THE TIME I WAS TRYING TO SUBPOENA RECORDS SO I COULD START THE INVESTIGATION ON THE CASE PRIOR TO TRIAL.

APP. PG 96 (1, 2, 3)

A. IT WAS NOT. AGAIN, I WAS WAITING ON THE SDC RECORDS, ONCE THAT WAS THE MAIN CONCERN --- THE MAIN QUESTION FROM THE POLYGRAPH WOULD BE USED FROM THE SDC RECORDS.

APP. PG 96 (16, 17, 18, 19, 20, 21, 22)

A. YES SIR, DEPENDING ON THE SDC RECORDS

Q. ALL RIGHT. ARE THOSE ALL THE THINGS THAT MR. HENDERSON ALSO WANTED YOU TO DO?

A. YES SIR.

THE SUBPOENA SDC RECORDS, POLICY, AND PROCEDURE WHICH WERE NEVER REVIEWED BY COUNSEL NOR DEFENDANT, COULD VERY WELL BEEN BENEFICIAL TO TRIAL AND, ALSO VERIFY PETITIONERS STATEMENTS, TESTIMONY, AND CLAIMS. THESE RECORDS COULD VERY WELL HAVE PRESERVED PETITIONERS SELF DEFENSE CLAIMS.

TO FULLY DEVELOPE THE CASE AND INVESTIGATION, IN ORDER TO ALLOW TO MAKE AN INFORMED DECISION ABOUT WHETHER TO PLEA OR, GO TO TRIAL, IT WOULD HAVE BEEN PRUDENT TO FIRST GOTTEN ALL OF THE INFORMATION AND CONDUCTED THE INVESTIGATION BEFORE ADVISING PETITIONER TO PLEA WHEN COUNSEL WAS WELL AWARE OF PETITIONERS WISHES FOR A TRIAL. COUNSELS CASE FILE AND NOTES REFLECT THAT COUNSEL NEVER CONDUCTED ANY TYPE OF INDEPENDENT INTERVIEWS OR INVESTIGATION REQUESTED BY PETITIONER. COUNSEL CLAIMS HE WAS WAITING ON SUBPOENA RECORDS TO START THE INVESTIGATION. COUNSEL NEVER RECEIVED THE SUBPOENA RECORDS. THEREFORE, NO INVESTIGATION WAS CONDUCTED TO GIVE PETITIONER A JUST, FAIR CHANCE AT TRIAL BY A JURY.

2. FAILURE TO INFORM PETITIONER OF RIGHT TO APPEAL.

PETITIONER CONTENDS AND TESTIFIED THAT HE WAS NEVER ADVISED OF HIS RIGHT TO AN APPEAL. PETITIONER FURTHER TESTIFIED THAT HE SENT COUNSEL A LETTER FOLLOWING THE PLEA REQUESTING THAT HE FILE AN APPEAL, HOWEVER, IT WAS TOO LATE. COUNSEL ACKNOWLEDGED HE DID NOT DISCUSS WITH PETITIONER HIS RIGHT TO AN APPEAL. PETITIONER CONTENDS THAT HE WAS NEVER AWARE OF THIS RIGHT AND, THEREFORE, DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE OR FORFEIT THIS RIGHT. RESPECTIVELY, PETITIONER REQUESTS A BELATED REVIEW OF HIS CONVICTION AND A WHITE V. STATE REVIEW.

3. COUNSEL NOR PLEA JUDGE NEVER EXPLAINED THE APPLICABLE MAXIMUM OR MINIMUM SENTENCES AND, PAROLE ELIGIBILITY.

PETITIONER WAS UNDER THE IMPRESSION THAT THE LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER FOR 20 YEARS WOULD BE RAN CONCURRENT TO HIS ORIGINAL SENTENCE AND, THAT A CONSECUTIVE 5 YEAR NON-VIOLENT SENTENCE WOULD FOLLOW. HOWEVER, PETITIONER ENDED UP WITH A VIOLENT 25 YEAR SENTENCE WITH NO PAROLE. PETITIONER CONTENDS THAT, HAD HE BEEN AWARE OF THE FACT THAT HE WOULD BE SERVING THE ENTIRETY OF THIS SENTENCE, HE WOULD HAVE REJECTED THE PLEA.

PETITIONER CONTENDS THAT HE WAS UNDER THE IMPRESSION THAT NON-VIOLENT SENTENCES WERE AND ARE, PAROLE ELIGIBLE. SENTENCING SHEETS FOLLOWING THE PLEA ALSO LABELED THE 5 YEAR POSS. OF WEAPON AS "NON-VIOLENT".

APP. PG 10 (14,15,16,17,18,19)

THE COURT: ARMED ROBBERY. DID YOU ENTER A PLEA OR WAS THERE A TRIAL?

DEFENDANT: A PLEA.

THE COURT: SIR?

DEFENDANT: IT WAS A PLEA

THE COURT: I SUSPECT YOU HAVE BEEN AROUND OUR SYSTEM FOR SOME TIME.

PETITIONERS ORIGINAL SENTENCE, PETITIONER PLEAD GUILTY AND RECEIVED CONCURRENT SENTENCES INWHICH, HE WAS NOT REQUIRED TO SERVE THOSE SENTENCES IN THEIR ENTIRETY AS OPPOSED TO THE CURRENT SENTENCE FOR 25 YEARS. FURTHERMORE, THE CONSECUTIVE 5 YR SENTENCE IN PETITIONERS ORIGINAL SENTENCE WAS CLASSIFIED AS NON-VIOLENT AND, PETITIONER RECEIVED PAROLE DATES IN THAT SENTENCE, UNLIKE, THE CURRENT SENTENCE.

PETITIONER CONTENDS THAT HE WAS UNDER THE IMPRESSION THAT THIS PLEA OF THE CONCURRENT, CONSECUTIVE, AND NON-VIOLENT PLEA WOULD BE THE SAME TERMS AS HIS ORIGINAL SENTENCE IN WHICH A PLEA WAS ENTERED.

DURING THE DECEMBER 3, 2013 PLEA, HAD COUNSEL AND TRIAL JUDGE ADVISED PETITIONER OF THE CONSEQUENCES OF HIS PLEA, MANDATORY MINIMUM AND MAXIMUM SENTENCES, PAROLE ELIGIBILITY, PETITIONER WOULD HAVE WITHDRAWN THE PLEA. PETITIONER CONTENDS THAT BOTH COUNSEL AND TRIAL JUDGE FAILED TO EXPLAIN THIS AND, WAS DEFICIENT IN HANDLING THIS MATTER CORRECTLY. APP 1 REFLECTS PLEA TRANSCRIPT.

INVOLUNTARY PLEA

PETITIONER ALLEGED AND TESTIFIED HIS GUILTY PLEA WAS ENTERED INVOLUNTARY. SPECIFICALLY, PETITIONER TESTIFIED THAT HE ONLY PLED GUILTY BECAUSE HE FEARED FOR HIS SAFETY WHILE BEING HOUSED AT EVANS CORRECTIONAL. PETITIONER TESTIFIED THAT IN EXCHANGE FOR HIS GUILTY PLEA, IT WAS HIS UNDERSTANDING THAT HE WOULD

BE TRANSFERRED FROM EVANS CORRECTIONAL TO LEE CORRECTIONAL .

FOLLOWING THE JANUARY 6, 2013 INCIDENT IN WHICH PETITIONER WAS INDICTED FOR MURDER, HE IMMEDIATELY STARTED RECEIVING THREATS FROM RIVAL GANGS IN RETALIATION TO THE DEATH OF THE VICTIM, JAMIE DEAN WHITE . PETITIONER THEN WENT THROUGH THE INSTITUTIONAL GRIEVANCE PROCESS WITH HIS CONCERNS AND, FEAR FOR HIS SAFETY. PETITIONER WAS TRANSFERRED TO LEE CORRECTIONAL FOLLOWING THE GRIEVANCE PROCESS .

HOWEVER, PETITIONER WAS BROUGHT BACK TO EVANS ON DECEMBER 1, 2013 AND, WAS ADVISED BY INVESTIGATOR RUBY BROCKENBERRY THAT HE WOULD REMAIN AT EVANS UNTIL HIS LEGAL PROCESS WAS EXHAUSTED . TRIAL WAS SET FOR 6 WEEKS LATER, JANUARY 29, 2014. PETITIONER IMMEDIATELY STARTED RECEIVING THREATS, ON DECEMBER 3, 2013, TWO DAYS LATER, PETITIONER PLEAD GUILTY IN EXCHANGE TO BE TRANSFERRED .

PETITIONER FURTHER TESTIFIED THAT HE ONLY ACCEPTED THE PLEA TO GET TRANSFERRED FROM EVANS CORRECTIONAL AND HE WOULD HAVE PROCEEDED TO TRIAL HAD HE NOT CONTINUED TO RECEIVE THREATS AND FEAR FOR HIS SAFETY AT EVANS CORRECTIONAL . PETITIONER TESTIFIED THAT HE WOULD HAVE ADMITTED TO ANY CRIME THAT DAY JUST TO EFFECTUATE THE TRANSFER . COUNSEL TESTIFIED APPLICANT DID NOT WANT TO REMAIN AT EVANS CORRECTIONAL DUE TO SAFETY CONCERNS . COUNSEL FURTHER TESTIFIED AND ACKNOWLEDGED THAT PETITIONER INDICATED HE WOULD PLEAD GUILTY IF HE WERE TRANSFERRED TO A DIFFERENT FACILITY .

APP. PG 7 (5,6,7,8,9,10,11,12)

THE COURT: TELL ME ABOUT THE SHANKS THAT WERE FOUND .

MR. ANDERSON: IN COMPLETING THE INVESTIGATION, WE RECEIVED INFORMATION THAT INMATES WERE MAKING SHANKS THERE IN THE INSTITUTION AT EVANS .

THE COURT: ALL RIGHT, AND WAS IT YOUR INTENTION TO TAKE HIM BACK TO EVANS? IS THERE A PROBLEM TAKING HIM TO EVANS?

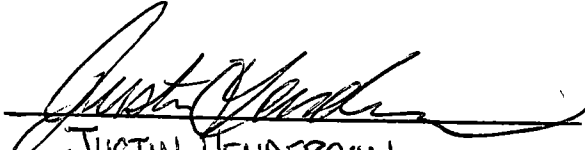
MR. ANDERSON: YES YOUR HONOR . I WAS INFORMED BY THE C. O. OR INSTRUCTED TO TAKE HIM BACK TO LEE TODAY .

PETITIONER CONTENDS THAT COUNSEL SHOULD HAVE ADVISED THE PLEA COURT THAT PETITIONER HAD INDICATED TO HIM THAT HIS INSTITUTIONAL TRANSFER HAD AN EFFECT ON HIM ENTERING THE PLEA . AT THAT POINT, THE PLEA COURT COULD HAVE INQUIRED WHETHER THIS WAS THE REASON AND BASIS FOR THE PETITIONER'S PLEA . PRESUMABLY, APPLICANT WOULD HAVE TESTIFIED AS HE DID AT THE PER HEARING THAT HE WAS CONCERNED FOR HIS SAFETY AT EVANS CORRECTIONAL AFTER RECEIVING THREATS AND THAT HE WAS PLEADING GUILTY BECAUSE HE WANTED TO BE TRANSFERRED . THE COURT WOULD LIKELY NOT HAVE ACCEPTED THE PLEA IF THAT WERE THE SOLE REASON FOR THE PLEA . PETITIONER CONTENDS THAT COUNSEL WAS DEFECTIVE IN THIS REGARD AND PETITIONER'S PLEA

WAS NOT KNOWINGLY AND FREELY ENTERED.

CONCLUSION

BASED ON ALL THE FOREGOING, PETITIONER BELIEVES THAT HE HAS MET HIS BURDEN OF PROOF IN SHOWING HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AND COUNSEL'S PERFORMANCE PREJUDICED HIM. PETITIONER REQUESTS THAT THE COURT GRANT A BELATED REVIEW OF HIS CONVICTION TO WHITE V. STATE AND, GRANT THE PETITION FOR WRIT OF CERTIORARI TO ALLOW FULL BRIEFING, REVERSE THE CHARGES AGAINST HIM AND, GRANT PETITIONER A NEW TRIAL.


JUSTIN HENDERSON
PETITIONER

THIS 10TH DAY OF JUNE, 2018

JUSTIN HENDERSON # 296885
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RIDGEVILLE, SC, 29472

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THE SUPREME COURT OF SOUTH CAROLINA
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