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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BAMBERG COUNTY

HONORABLE J. MARK HAYES, CIRCUIT COURT JUDGE

LEWIS GARVIN,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002442

PRO SE RESPONSE OF JOHNSON PETITION

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SC Court of Appeals

ISSUE PRESENTED/ARGUMENT

WHETHER THE PCR COURT ERRED IN CONCLUDING DEFENSE COUNSEL WAS NOT INEFFECTIVE WHERE COUNSEL ERRONEOUSLY ADVISED PETITIONER, WHO RECEIVED A FORTY-YEAR PRISON SENTENCE FOR A BANK ROBBERY, THAT HE COULD RECEIVE A LIFE WITHOUT PAROLE SENTENCE IF COUNSEL FILED A MOTION TO RECONSIDER, WHERE COUNSEL ADMITTED HE WAS NOT AWARE OF ANY CASE WHERE A DEFENDANT RECEIVED "MORE TIME" AFTER FILING A MOTION TO RECONSIDER, AND THE STATE ALREADY HAD WAIVED ITS RIGHT TO SEEK AN LWOP SENTENCE?

STATEMENT OF FACTS

I.

I, THE PETITIONER, WAS CHARGED WITH OR INDICTED AT OCTOBER 20, 2014 OF THE BAMBERG COUNTY GRAND JURY FOR THE OFFENSES OF: ARMED ROBBERY, ENTERING A BANK WITH INTENT TO STEAL, CONSPIRACY AND THE POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

I, THE PETITIONER, APPEARED ON NOVEMBER 30, 2015 BEFORE HONORABLE R. YOUNG, AND PLED GUILTY TO ALL OF THE CHARGES WITH THE EXCEPTION OF THE POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WHICH WAS NOLLE PROSEQUI (DISMISSED), 544 DAYS TIME SERVED FOR CONSPIRACY AND ARMED ROBBERY WITH DEADLY WEAPON. JASON PRICE, ESQ REPRESENTED PETITIONER AND ASST. SOLICITORS DAVID MILLER AND JACK HAMMACK DEFENSIVELY REPRESENTED THE STATE OR PROSECUTION. ON DECEMBER 3, 2015, JUDGE YOUNG SENTENCED PETITIONER TO CREDIT TIME FOR CRIMINAL CONSPIRACY, THIRTY YEARS IMPRISONMENT FOR ARMED ROBBERY AND TEN YEARS IMPRISONMENT FOR ENTERING A BANK WITH INTENT TO STEAL, TO RUN CONSECUTIVELY/CONCURRENT WITH ARMED ROBBERY SENTENCE. I, THE PETITIONER, DID NOT HAVE A CHANCE TO APPEAL MY CONVICTION OR SENTENCE NOR HAVE A CHANCE TO PLACE A MOTION TO A RECONSIDER SENTENCE.

DEFENSE COUNSEL (JASON PRICE) REQUESTED THAT PETITIONER BE SENTENCED AFTER THE FIRST CO-DEPENDANT'S TRIAL; THE STATE (ASS. SOLICITORS D. MILLER/J. HAMMACK) AGREED WITH THAT PROCEDURE AND REPEATED THAT IF PETITIONER COOPERATED, THE SENTENCING RECOMMENDATION MAY BE DIFFERENT FOLLOWING CO-DEPENDANT'S TRIAL OR IF COOPERATE WITH STATE WITH TESTIMONY, THEN SENTENCE WAS GOING TO BE REDUCED.

THE PETITIONER'S GUILTY PLEA PROCEEDING RECONVENED ON DECEMBER 3, 2015 WHERE ASST. SOLICITOR D. MILLER ALLEGED I WAS NOT BEING TRUTHFUL AND KNEW EXACTLY MORE THAN I CLAIMED BEING FORCED INTO PARTICIPATING IN THIS CRIME... SO THE ASSISTANT SOLICITOR "STAND BY" HIS FORTY-YEAR RECOMMENDATION.

JUDGE YOUNG SENTENCED ME, THE PETITIONER, EVEN THOUGH BOTH CHARGES AROSE FROM THE SAME CONDUCT, SAME SET OF FACTS [ROBBERY AND BANK ROBBERY] 2ND OFFENSE REQUIRED PROOF THAT THE FIRST OFFENSE HAD BEEN COMMITTED OR WHY THE PETITIONER WAS CHARGED IN THE BANK ROBBERY IF THE FIRST OFFENSE OF ARMED ROBBERY DID NOT APPLY TO HIM, THE PETITIONER.

II.

PETITIONER FILED P.C.R. APPLICATION AND MAKING IT RETURNED ON AUGUST 29, 2016 ALLEGING TO BEING HELD IN CUSTODY UNLAWFULLY FOR THE FOLLOWING REASONS:

1. INEFFECTIVE ASSISTANCE OF COUNSEL, IN THAT:

- i. COUNSEL FAILED TO INVESTIGATE AND PREPARE FOR TRIAL AND/OR HEARING INCLUDING MIRANDA HEARING, AND JACKSON V DENO HEARING.
- ii. APPLICANT WAS DENIED THE RIGHT TO SEEK APPELLATE REVIEW OF THE DENIAL OF HIS P.C.R. APPLICATION AND DENIAL OF MOTION OF RECONSIDERATION BY HIS LAWYER

2. DENIAL OF DUE PROCESS

ON AUGUST 29, 2017, PETITIONER FILED AN AMENDMENT TO HIS APPLICATION ADDED - INEFFECTIVE ASSISTANCE OF COUNSEL, IN THAT:

- i. FAILURE TO FILE A MOTION TO RECONSIDER HIS SENTENCE.

III.

I, THE PETITIONER, PLEAD GUILTY ON THE ADVICE OF DEFENSE COUNSEL MAY COLLATERALLY ATTACK THE PLEA BELIEVING THERE IS REASONABLE PROBABILITY OF INCRIMINATING SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE DURING THE CUSTODIAL INTERROGATION BY SLED AGENTS DAVID WILLIAMS AND ~~LT.~~ SHAWN HARLEY. BOTH STATED THAT I WAS AN PARTICIPATE, D.N.A, HAD EVIDENCE BECAUSE OF THE JEAN POCKETS DESIGN AND THE SAID TWO REJECTED MY MEMORANDUM OF INTERVIEW STATEMENT OF WHY I WAS IN DENMARK/OLAR AREA PLUS THE INTERROGATION WAS OVER FIVE AND ONE HALF HOURS WITH DEROGATORY REMARKS TOWARDS ME. UPON ADVICE DURING THE JACKSON V. DENO HEARING FROM DEFENSE COUNSEL, I WITHDREW MY INITIAL STATEMENT ABOUT MOI, DEROGATORY REMARKS AND WHEREABOUTS ON SAID DAY/NIGHT OF INCIDENT, JUNE 5TH-7TH, 2014. PETITIONER WOULD NOT HAVE PLED GUILTY AND WOULD HAVE INSTED ON GOING TO TRIAL; PEOPLE V. BOYER (1989) 48 CAL. 3d 247, 274-175; MIRANDA V. ARIZONA 384 US 436, 444, 478, 479, 86 S. CT 1602, 1630

I, THE PETITIONER, WOULD HAVE GONE TO TRIAL BASED ON THE ACCUSATION OF PARTICIPATION IN THE BANK ROBBERY BUT NOT THE ARMED ROBBERY BECAUSE ① I WAS FORCED BY DURESS ② I DID NOT HAVE A GUN ACCORDING TO WHAT THE VICTIM STATED THAT I DID HAVE ONE ③ AND INEFFECTIVENESS OF LAWYER TO SUPPORT MY DEFENSE; I WOULD HAVE BEEN ENTITLED TO A DIRECTED VERDICT OF NOT GUILTY INSTEAD OF A LEGALLY INCONSISTENT VERDICT AND A FORTY-YEAR HABITUAL OFFENDER STATUS RECOMMENDATION. FURTHERMORE, EVEN IF THE MATTER HAD BEEN SUBMITTED TO A JURY AND A CONVICTION OBTAINED BASED UPON THESE ABOVE-CALLED ACCUSATION, I WOULD HAVE SOME GROUNDS OF CLAIM ON APPEALS/P.C.R. AND IT WOULD HAVE SUSTAINED. I TOOK CRIMINAL RESPONSIBILITY ~~FOR~~ FOR MY PART IN THE BANK ROBBERY NOT THE ARMED ROBBERY, EVEN THOUGH BOTH CHARGES AROSE FROM THE SAME CONDUCT, SAME ELEMENT AND THE ELEMENT OF THE SECOND OFFENSE REQUIRES PROOF THAT THE FIRST OFFENSE HAD BEEN COMMITTED (LEGAL INCONSISTENCY)

"Petitioner Appendix pg 2nd line"

before mentioned

THE STATE PROSECUTORS DISMISSED THE POSSESSION OF WEAPONS CHARGE BUT NOT THE ARMED ROBBERY WITH A DEADLY WEAPON TO GET AN CONVICTION, NOT TO HONOR THE "PLEA DEAL OR BARGAINING A PLEA" WHEN THE BANK SURVEILLANCE TAPE SHOWS THE ALLEGED JUMPING ACROSS/OVER THE COUNTER DID NOT HAVE WHAT VICTIM REBECCA E. TEMPLETON SAID SHE SAW IN HIS HAND OR OTHER VICTIMS AT ENTERPRISE BANK OR NO ONE WAS HURT OR KILLED.

IV

AN EVIDENTIARY HEARING CONVENED ON SEPTEMBER 19, 2017, BEFORE HONORABLE J. MARK HAYES. LANCE BOOZER REPRESENTED PETITIONER. THE ASSISTANT ATTORNEY GENERAL WAS JULIE A. COLEMAN. P.C.R. COUNSEL LANCE BOOZER TOLD P.C.R. JUDGE THAT PETITIONER DID WANT HIS GUILTY PLEA VACATED BUT RATHER HE WANTED THE P.C.R. COURT TO RULE THAT A MOTION TO RECONSIDER SHOULD HAVE BEEN FILED SO THAT A LESSER SENTENCE COULD BE IMPOSED AND RESENTENCING SHOULD BE HIS (PETITIONER) RELIEF BY A PROPOSED ORDER OF STRONG ARM ROBBERY/BANK ROBBERY INSTEAD OF ARMED ROBBERY/BANK ROBBERY; TWELVE OR FIFTEEN STRONG ARM ROBBERY OFFENSE INSTEAD OF THIRTY ARMED ROBBERY OFFENSE. SHOULD SUFFICE OR BE SUFFICIENT FROM HONORABLE J. MARK HAYES.

PETITIONER TESTIFIED AT THE P.C.R. HEARING THAT HE WANTED COUNSEL TO FILE A MOTION TO RECONSIDER HIS SENTENCE, BELIEVED HE COULD RECEIVE A SENTENCE LESS THAN FORTY YEARS IF COUNSEL FILED MOTION AND HOPED THAT ONE OF THE CHARGES COULD BE "DROPPED". (THE ARMED ROBBERY WITH A DEADLY WEAPON) I DID NOT KNOW AT TIME OF TRIAL; INTELLECTUALLY!

P.C.R. COUNSEL BOOZER CROSS-EXAM. DEFENSE COUNSEL PRICE TO CONFIRM THAT HE HAD A CONVERSATION WITH PETITIONER ABOUT "THE RISK OF FILING A MOTION TO RECONSIDER AND POTENTIALLY GETTING LWOP BASE ON THAT MOTION AND THAT CONVERSATION HAD A GREAT DEAL OF INFLUENCE OVER PETITIONER NOT WANTING TO PURSUE THE MOTION TO RECONSIDER". COUNSEL SAID HE DID ADVISE PETITIONER HE COULD RECEIVE A LIFE WITHOUT PAROLE SENTENCE IF HE MADE A MOTION TO RECONSIDER AND COUNSEL ADDED THIS WOULD MEAN "EVERYTHING OPENING BACK UP" FOR HIS CASE. THAT ERRONEOUS SENTENCING ADVICE SHOULD BE ENTITLED TO THE PETITIONER TO RESENTENCING HIS P.C.R. REMEDY AS A PROPOSED ORDER, OR ACCORDINGLY:

V. CONCLUSION

HAD I BEEN PROPERLY INFORMED OF THESE FACTS PRIOR TO MY DECISION OF GUILTY PLEA, THE PETITIONER WOULD NOT HAVE PLEADED UNDER THE CURRENT CIRCUMSTANCE WOULD HAVE WENT TO TRIAL UNDER DEFENSE COUNSEL'S SUFFICIENT PERFORMANCE AND NOT THE ERRONEOUS SENTENCING ADVICE BASE ON THE LEGAL AUTHORITY OF STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052, 80 L ED 674 (1984) HILL V. LOCKHART 474 US. 52, 106 S. CT. 366, 88 L. ED. 2D 203 (1985) STATE V. GREENE. Op. No. 27802, Shearouse's Adv. Sh. #21 at 18-47 (FILED MAY 23, 2018) ROBINSON V. STATE. 422 S.C. 79, 810 S.E. 2d 32 (2018) Alexander v. STATE 303 S.C. 539, 402 S.E. 2d. 484 (1991)

o LEGAL INCONSISTENT VERDICT @ BLACK'S LAW DICT [CRIMINAL LAW 878(4) FED. CIVIL PRO. 22.37 TRIAL-358]

* STATE V. JONES 536 S.E. 2d 396 (SC. APP. 2000) SUBJ. MATTER JURISDICTION/ELEMENTS

SHEPPARD V. STATE 594 S.E. 2d 462, 466 (S.C. 2004)

SALUTATIONS
VI. FINDING OF FACT AND CONCLUSION OF LAW

P.C.R. COUNSELOR BOOZER TOLD P.C.R. JUDGE THAT PETITIONER DID NOT WANT HIS GUILTY PLEA VACATED. RATHER, HE WANTED THE P.C.R. COURT TO RULE THAT A MOTION TO RECONSIDER SHOULD HAVE BEEN FILED SO THAT A LESSER SENTENCE (STRONG ARM ROBBERY) COULD BE IMPOSED, AND RESENTENCING SHOULD BE HIS RELIEF. APPENDIX (T/R) 43, 1.19-46, 1.4 SENTENCE REDUCTION TO STRONG ARM NOT ARMED. EVEN THOUGH, THE TRANSCRIPT OF THE PLEA HEARING SHOW PETITIONER WAS ADVISED OF RIGHTS HE WAS WAIVING BY PLEADING GUILTY AND PROVES THE INTELLIGENT AND VOLUNTARY NATURE OF THE PLEA; HE DID NOT KNOWINGLY EXPECT STATE/PROSECUTOR TO PRESUME PETITIONER TESTIMONY WAS NOT SUFFICIENT OR INADEQUATE... JUST TO BE REASONABLY JUSTIFIED TO THE STATES PLEA DEAL WHICH WAS NOT HONORED.

THE DEFENSE COUNSEL SHOULD HAVE CHALLENGE THE WHOLE MATTER OF STATES PLEA DEAL: THE DISMISSAL OF ① POSSESSION OF WEAPON DURING COMMISSION OF A CRIME ② TIME CREDIT SERVED OF 544 DAYS OF CONSPIRACY CHARGE AND ③ ARMED ROBBERY WITH DEADLY WEAPON. ACCORDINGLY, THESE ALLEGED CHARGES SHOULD AND MUST BE DISMISSED.

COUNSEL PRICE CONFIRMED THAT HE HAD CONVERSATION WITH PETITIONER ABOUT THE RISK OF FILING A MOTION TO RECONSIDER AND POTENTIALLY GETTING LWOP BASED ON THAT MOTION AND THAT CONVERSATION HAD A GREAT DEAL OF INFLUENCE OVER PETITIONER NOT WANTING TO PURSUE THE MOTION TO RECONSIDER. APPENDIX 70, 1.19-71, 1.20. ALSO COUNSEL PRICE ADMITTED HE WAS NOT AWARE OF A JUDGE EVER GIVING A DEFENDANT A GREATER SENTENCE AFTER A MOTION TO RECONSIDER. APPENDIX 69, 11.14-25

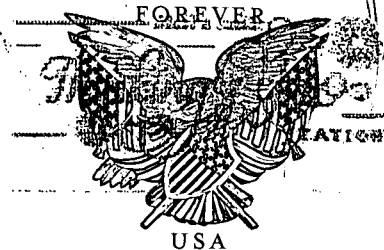
* DEFENSE COUNSEL MISSPOKE ABOUT UNDER STATEMENT OF APPEAL VERSUS THE RECONSIDERATION. APPENDIX 70, 1.19-71, 1.20.

THE EVIDENCE THAT WAS PRESENTED DOES NOT PUT ME ON NOTICE OF WHAT I WAS CONVICTED OF: ARMED ROBBERY AND BANK ROBBERY. THIS IS NOT TWO (2) DISTINCTIVE CRIMES BUT AN GOING CONTINUAL OFFENSE THAT HAPPEN FROM A SINGLE INCIDENT, SAME CONDUCT, SAME ELEMENT (ROBBERY) SAME FACTS WHICH IS LEGALLY INCONSISTED TO SUBJECT MATTER JURISDICTION. I AM SEEKING PROPER PROCEDURAL JUDICIAL REVIEW TO REDUCE SENTENCE, HONOR PLEA DEAL FROM ARMED ROBBERY TO STRONG ARM ROBBERY OFFENSE, AS THERE WAS NO INDICTMENT CHARGING ME WITH ARMED ROBBERY OFFENSE OR DID NOT APPLY AFTER PLEA DEAL.

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