STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals Circuit Court judge

KEIRON K. COLEMAN

PETITIONER

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO 2018-000088

PETITION FOR WRIT OF CERTIORARI

ISSUE PRESENTED

Whether petitioner's conviction should be reversed because trial counsel failure to argue in his objection to play the audio on the video due to the agreement made by both counsel and instructed by the court. S.C. App 1998 Stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys and are binding upon those who make them - Griffith v Griffith 506 S.E. 2d 526, 332 SC 630 - stip -. This and the following are used for the purpose of comparison like in "White Horse cases" "Agreements are analyzed with greater scrutiny because agreements implicate fair and effective administration of justice the court must consider the essence of the particular agreement and the parties reasonable expectation of a fair trial.

Standard of Review

The standard of review in PCR cases depends on the specific issue before the court. A PCR courts findings of fact will be upheld if there is evidence in the record to support them. Sellner v State 416 S.C. 606, 610, 787 SE2d 525, 527 (2016) citing Jordan v State 406 S.C. 443 448, 752 SE2d 538, 540 (2013) Questions of law are reviewed de novo, with no deference to trial courts.

STATEMENT

On May 30 2013, an Horry County grand jury indicted Petitioner for first-degree burglary App 590 On March 12 2014 Petitioner was tried before the Honorable Larry B. Hyman jr and a jury. App 1 George DeBusk, jr and Nancy R. Livesay represented the state. App 2 J. M. Long III Represented petitioner App 2 The jury convicted petitioner App 437, l. 1 - 441, l. 18. Judge Hyman sentenced petitioner to twenty-five years imprisonment. App 448, l. 11 - 449, l. 5. The Court of Appeals affirmed petitioner's conviction. State v Coleman Op No 2015-UP-386 (S.C. Ct. App. July 29, 2015) On October 20, 2015, Petitioner filed a PCR application App 453 on September 18, 2017, the Honorable William H. Seals held a hearing. App 514 Daniel A. Selva II represented petitioner App 514 Johnny Ellis James jr represented the State App 514 On December 6, 2017, Judge Seals denied petitioners application App 568 This petition follows.

ARGUMENT 1

Petitioner's Conviction Should be reversed because trial Counsel's failure to request an objection based on the Agreement that was made between both Counsel prior to States exhibit number 15 being admitted into evidence. which Counsel Compromised the defense by allowing evidence that was affected by fruit-of-the-poisonous-tree prior to the agreement there's testimony by the state that show that me, mr Dudley, and ms cowan statements derived from the poisonous tree. App 10 "The statements that mr mureddu is worried about will not be coming in. "were not" going to bring in any of the statements made by the defendants to Law enforcement we may go into certain statements made in the presence of another witness, non-police witness, when the police were not present, but "were" not" bringing in any Custodial or even pre-Custodial statements to police officers. 16-24. "The court" All right sir. App 10-25. The prosecution was adament about his decision. "were not bringing any of those in. App 11-1. The court Alright. I would. App 11-2. "And we have so instructed our witnesses, your Honor. App. 11-3-4. Counsel was aware of the video and could have shown proper grounds to suppress the video but instead he once again gambled by making a deal with the adversary App 163-6-20. where an agreement was made with stipulations the first "The court" All right How long are we going to watch it. App 164-20-21. mr DeBusk "your Honor, going to be thirty minutes. App 164-22-23. Second" starting from where the officer turns onto McCormick Road until they get me Coleman out of the car. App 164-23-25. Third "were going to turn the speakers off on the video, continue to watch the video, but we will "not" have any possibility of interrogation or interview. App 164 16-19.

the miranda violation was the foundation of the agreement the terms of the agreement allowed no exceptions to be made unlike miranda and the exception for impeachment the stipulations of the agreement superseded miranda because the ruling and instruction by the court would be on the grounds of the "agreement" not miranda" the court "All right ladies and gentlemen of the jury, were about to watch part of a disk that was an audio disk and video disk "that was introduced earlier by agreement". "the parties have limited this". this was actually about five CDs long, a very extensive and long video. but by "agreement" the parties are going to introduce only about thirty minutes of it and part of that is going to be muted, and thats what you will consider. Okay? App166 - 17-25 this instruction says it all "the parties are going to introduce only about thirty minutes of it." which after the thirty minutes or when they show me being taken out of the car that evidence was no longer apart of the trial its limited admission was for officer Rick Abbott reiteration of the events that took place march 25, 2013 once the agreed part came to a end." " And who is this? App 170 13." that is mr Coleman. App 170 - 14. "getting out of the front passenger side? App 170 - 15. " Correct. App 170 - 16. By the stipulations of the agreement the video should have ended here. And counsel failed to object to it continuing on the video would continue to play breaching one agreement already the video concludes App 172-12-13

Then the video is played again without objection by Counsel App 181 "Mr DeBusk" Thank you, just a few. Could I have the screen again? App 181 - 14-15. The following portion played is concerning a time stamp that was not agreed on it does not exist between McCormick rd or where they get me out the car it takes place before they get to ms Ross house this portion breaches the agreement also and Counsel dose not object. After Officer Rick Gibbott is accused is when the video stopped. By this time the video has gone past thirty minutes showed scenes that should have breaching the agreement. Stolt-Nielson S.A. V U.S. 442f3d 177, 183 (3rd Cir) The government must adhere strictly to terms of all agreements with defendants to extent Agreements require defendants to sacrifice Constitutional rights. Whitehorse Case." During Cross-examination the State would ask the Court to play the audio from the agreed portion that there would be no possibility of hearing the interrogation or interview per the Agreement "There were an argument over what I said or my Codefendant and Mr DeBusk said "Your Honor He is. App 378.4. The Court" Well, if its in the evidence, the jury will remember it." App 378-5-6 IS this not a ruling as to say no. "Mr DeBusk Your Honor we would ask to publish it at this time. App 378-7-8. The Court" The part weve already seen? App 378-9. Mr DeBusk your Honor, The part we saw without sound. I would like to publish the sound portion. App 378-10-11. The Court" All right App 378-12. Counsel asked to approach, the bench where a conference was held. App 378-20-24 which the Court allowed it. App 378-25

And the audio was played without the Court stating why until after the audio was played Counsel requested to be heard outside the presence of the jury. App 381 - 12-13 where before the prosecution could say why they wanted to introduce the audio the Court playing Judge ans prosecutin said " that the statement still may be used for impeachment purposes. App 382. -13-14. Counsel continued to argue miranda when the choice to play the audio stood on the agreement in which the video was allowed in on. To revisit the video after the stipulations it was allowed in under violates my right to fair trial. for the same reason the Court said in its instruction " but by agreement the parties are going to introduce "only" about thirty minutes of it and of that is going to be muted. And thats what you will consider.. Okay not only was it improper for the jury to hear something they were told would be muted without a curative explaning why or no reinstruction is a abuse of power's by the court to over rule his own ruling a second time " well, if its in the evidence, the jury will remember it. App 378 - 5-6. The PCR Court erred in finding ne ither deficient performan nor prejudice in Counsel's failure to argue the stipulations of the agreement which he helped explain is deficient performance by allowing the audio in violates my 4th Amendment right to fair trial by the terms and conditions of the agreement Counsel's failure to enforce the agreement is unreasonable the testimony from the impeachment was fatal to the defense which the state was able to paint me as liar which the defense was unable to remove the taint.

Thank you from the Coleman family
respect to the victims family

STATE OF SOUTH CAROLINA

In the Supreme Court

Certiorari to Horry County

Honorable William H. Seals, Circuit Court judge

Keiron K. Coleman

Petitioner

V.

State of South Carolina

Respondent

APPELLATE CASE NO 2018-000088

Petition for Writ of Certiorari

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S.C. SUPREME COURT

STANDARD OF REVIEW

The Standard of review in pcr cases depends on the specific issue before the court. A PCR courts findings of fact will be upheld if there is evidence in the record to support them. Sellner v State 416 SC 606, 610, 787 SE2d 525, 527 (2016) (citing Jordan v State 406 S.C. 443, 448, 752 SE2d 538, 540 (2013) questions of law are reviewed de novo, with no deference to trial courts.

ARGUMENT

First in Allegation #5 - Praise of law enforcement, Prosecution in Closing. App 578 The PCR decided on a claim i did not not make Concerning Law Enforcement there is no where in my argument at the PCR hearing where i mention any treatment of Law enforcement. App 554 - "Okay Mr Coleman also alleges and complains that you were unduly complimentary of the state. App 578 - 12-13 The above was the state, and on direct by mr Selwa "you took issue with him stating that he respected and admired both prosecution prosecutors, correct? App 545 - 20-21 And through my reply 22-25 App 545 - 546 - 1-6. There is no where in that argument anything about law enforcement my claim was only directed at the bolstering and vouching of the adversary counsel "White horse case SC App 2003 it is improper for the solicitor to express before the jury his or her personal judgement about opposing counsel State v Rudd 586 SE2d 153, 355 SC 543 "The State is permitted to make the last argument and I respect and admire both [redacted] of these prosecutors. ① They do a good job. ② They are effective in the courtroom. ③ They know how to handle cases. ④ They know how to try cases. ⑤ They know how to make closing arguments. ⑥ Six statements either bolstering the adversary or vouching for their performance white horse case CA4 (S.C.) 1973 it is improper for united states Attorney to express opinion in argument.

ISSUE Presented

Whether petitioners conviction should be reversed because trial Counsel failed to function as the government's adversary during his summation to the jury pursuant to US v Swanson 943 F2d 1070 (9th Cir 1991) Constitutes ineffective assistance of Counsel under the Sixth Amendment

STATEMENT

On May 30, 2013 an Horry county grand jury indicted petitioner for first-degree burglary. App 590 on march 12 2014 Petitioner was tried before the Honorable Larry B. Hyman jr and a jury App 1 George DeBusk jr and Nancy R. Livesay represented the state. App 2 J. M. Long III represented Petitioner. App 2 the jury convicted petitioner. App 431, l. 1-441, l. 18. Judge Hyman sentenced petitioner to twenty-five years imprisonment App 448, l. 11 - 449 l. 5 The court of appeals affirmed petitioners conviction State v Coleman Op No. 2015-up-386 (S.C. Ct. App July 29 2016) On October 20, 2015 petitioner filed a pcr application App 453 On September 18, 2017, the Honorable William H Seals held a hearing. App 514. Daniel A. Selwa, II represented petitioner App 514. Johnny Ellis James jr represented the state App 514 on December 6, 2017, Judge Seals denied petitioners application. App 568. This petition follows.

[redacted]

The court addressed in it's dismissal that counsel further testified that his instances of self-deprecation "belittling hm self" and due regard to the state were intended to empower the jury which also can be considered as incompetency by the jury as well. "And for me to stand here and make an argument, which the law calls it about what you should consider, what you should think, how you should view, what you should decide, Okay is unproductive. App 396-10-14. "You are at least fourteen times more capable than i am of recalling what came from the witness stand, I'm doing other things in the courtroom. I'm thinking about the next question to be asked, et cetera." I'm not taking notes while some witnesses are testifying or while im asking those witnesses questions. So the pages of notes i have "Incomplete." I could spend all last night if i wanted to, going through and trying to recount every witness and every statement and every contradiction and things of that nature. Thats for you to do, not me. App 396-15-25." Counsel's lack of familiarity with the case, combined with his failure to investigate, provided petitioner with a trial significantly different than the trial he might have received if represented by a competent attorney. there exist, in short a reasonable probability that the outcome would have been different counsel's various failures have called the fairness of petitioners proceeding into question. "Counsel: I rely on my notes sometimes to much, but unless im making notes to my self, Sometimes i wont remember things. App 405-19-21 Both cant be true he said he dosent take notes thats not for him to do thats the jury job. App 396-19-25. Then this statement in closing is my last to make "Concerning Counsel." I asked him a question that i probably asked him close to a year ago. you know that looks bad, dont it. I mean, you've got jewelry in your pocket, they got you dead to rights." And his response then was the same response it is now. I know it looks bad, but I App 402-21-25." didnt commit a burglary i didnt do it, im not taking a plea, I want a trial. And thats what he's said for a year. And thats what he's receiving today, what he's asked for. App 403-1-4. US v Swanson, 943 F2d 1070 (9th Cir 1991) Mr Ochoa's closing argument was not merely a negligent missteo in an attempt to champion his clients cause. The concession that there was no reasonable doubt that his client robbed the bank was an abandonment of his client at a critical stage of the proceeding mr Ochoa's statements conveyed to the jury his belief that his client was guilty mr ochoa's failed to function as the government adversary during his summation to the jury.

The PCR court erred in addressing an issue not in the argument or record concerning this Allegation as presented or in finding deficient performance nor prejudice. If self deprecation belittling one self in front of the jury to make the state look more efficient is valid trial strategy then why would deficient performance be an issue in ineffective assistance counsel. I believe the entire trial speaks for it self to say it was a kangaroo court best fits the fifteenth circuit methods of trial and to what means it will go to get a conviction. The PCR court finding of facts and conclusion of law in my appeal violates it's own standard of review when ruling my case should not be in front of the south Carolina Supreme Court my charge should have been vacated based on the evidence the state did not have or the fact they never proved entry by evidence or by witness testimony especially by the means the house was entered and left there were no foot prints or tracks leading from the back of the house to show it was entered that way only the side window in view of the street in front of the marotte house which the state said the person left through the front door of the house app415 -7-8. There was so much stuff to argue i missed alot counsel failed to do some important things the last is that he said something to the trial judge that the trial judge considered in his sentencing " As a result of investigators or common theme or modus operandi of burglaries he was charged march 28 2013. And theres also discovery materials and maybe even warrants on a march 11th 2013. App14-20-24. I understand he has several burglary first. App14-25 App15-1. NO. these are pending, your Honor. App15 p2. That are pending. App15-3. " yes sir App15-4 " In sentencing " you have three more Mr Dudley. App448-19-20. " yes, your Honor. App448-21. " the court " three more pending burglaries that you could be tried for in this county. I dont know whether the solicitor is going to try you for them now or not, But mr Coleman you do not App448-22-25 deserve, nor shall you receive, the minimum sentence. The sentence of this court is that you be confined in the state department of corrections for a period of [redacted] twenty-five years thank you sir. App449-1-5. US v Ellison 789 F2d 1102 (7th cir 1986) A Criminal defendant is entitled to counsel whose undivided loyalties lie with his client. US v Jeffers 520 F2d 1256, 1263 (7th Cir 1975)

[redacted]

Counsel i believe should have never said anything about my pending charges it only gave the court more reason to be stiffer on his sentence.

Thank you from the Coleman family
and my respects to the victoms family.

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