STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Thomas A. Russo, Circuit Court Judge

JAMAAD DREQWAN THOMAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000196

PRO SE RESPONSE
To The Johnson Petition
FOR WRIT OF CERTIORARI

Mr. Jamaad Dreqwan Thomas

SCDC # 359532

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The PCR Judge erred in denying Petitioners Allegation that his guilty Plea was induced by ineffective Assistance of Counsel.

The PCR Judge erred in that the record reflects Petitioners Plea was entered freely, voluntary, Knowingly, And intelligently.

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ISSUES PRESENTED

The PCR Judge erred in denying Petitioner's Allegation that his guilty Plea was induced by ineffective Assistance of Counsel,

- Counsel was ineffective in investigation, Preparation
- Counsel failure to be competent, Prompt and diligent
- Counsel was not prepard within requiste range of competents
- Counsel Performance was deficient and prejudiced petioner
- Counsel Investigation was Inadequate and Incomplete

~~Presentence~~

The PCR Judge erred in that the record reflects Petitioners ~~Applicants~~ Plea was entered freely, voluntary, knowingly, and intelligently.

STATEMENT

Petitioner Jamaad Dreqwan Thomas pled guilty to voluntary manslaughter during the April 2014 term of the Florence County general Sessions Court before Judge D. Craig brown, and was sentenced to imprisonment for a period of twenty-eight years. App. 1-47. Joshua Bailey represented Petitioner at the plea proceeding and Assistant Solicitor Ed Clements appeared on behalf of the State. Petitioner did not appeal his conviction and sentence.

On march 9, 2015, petitioner filed a PCR Application with the Florence County office of the Clerk of Court. App. 49-55. The respondent filed a return dated January 19, 2017, requesting that a hearing be held in the case. Ap. 56-62.

A PCR hearing was convened on August 31, 2017, at the Florence County Courthouse before Judge Thomas A. Russo. App. 64-101. Petitioner was present at the hearing and represented by Jonnathan Waller and Assistant Attorney general Lindsey A. McCallister appeared on behalf of the State.

On January 22, 2017, Judge Russo issued an order of dismissal denying and dismissing Petitioner's allegations raised in the PCR action. App. 103-112. Petitioner appealed Judge Russo's order of dismissal

On November 19, 2018 Wanda H. Carter, Attorney for petitioner filed a Johnson Petition. This pro se response to the Jonson Petition follows.

ARGUMENT

The PCR Judge erred in denying petitioner Allegation that his guilty plea was induced by ineffective assistance of counsel.

During PCR Hearing Defense counsel testified that he didnt recall there ever being fifty five names In total in the entire case, and that he ~~thought~~ didn't know who the State was going to bring to trial (APP 82, L. 18-20). But remind you during guilty plea hearing the Solicitor stated he had supeneod fifty five wittness to come to court if defendant was going to trial. (APP 15, L. 13-18).

During PCR hearing Defense counsel testified that there were only fourthteen that he received. And this was all defense counsel had "before" petitioner entered the guilty plea (APP 83, L. 21-25, APP 84, 1-9). Therefore petitioner and defense counsel was "unaware" of the majority of wittnesses/statements the State was going to bring against Petitioner if he went to trial. In addition this was "After" Petitioner entered the guilty plea. Under newly discoverd evidence defense counsel erred in fileing a timely motion for a request for a continuance made pursant to Rule 7 of the South Carolina Rules of Criminal Procedure, the Sixth Amendmant of the United States Constituion, Article I, Section 14 of the South Carolina Constituion and Applicable case law. (for a complete and adequate investigation).

Counsel has a constitutional duty to make reasonable investigations or to make reasonable decesions that make particular investigations unnecessary. Strickland v. Washington, 466 U.S. 688, 691, 80 L.Ed 674, 104 S.Ct. 2052 (1984)

In Addition the 6th Amendment requires investigation And Preparation, not only to exonerate, but Also to sercure And Protect the rights of the Accused. Such Constitution rights are granted to the innocent And guilty Alike, And failure to investigate and file "Appropriate" motions is Inefrectivenes. Kimmelman V. morrison, 477 U.S. 365, 91 L.Ed.2d 305, 106 S.Ct. 2574 (1986).

In Addition the defendant was entitled to A Continuance to Investigate the factual Allegations Contained in the newly disclosed evidence including majoraty of wittnesses/ Statements Defense Counsel wasn't Aware of During guilty Plea hearing

A lawyers duty to investigate is Virtually Absolute Regardless of a Client expressed whishes. Silva v. Woodford, 279 F.3d 825 (9th Cir. 2002).

Futhermore, the failure of the defense Attorney to investigate Evidence the State planned to introduce At the penalty Phase trial Constituted Constitutionally deficient Performance. States V. tucker, 716 F.2d 576, 581 (9th cir. 1983).

Futhermore, In Assesing reasonableness of Attorneys investigation Court must Consider not only Quantum of evidence Already Known to Counsel, but Also whether Known evidence would lead reasonable Attorney to investigate futher. U.S.C.A Const. Amendment Sixth.

Defense Counsel States As follows;

A: I had prepared cross-examination of Questions that I trought the State was going to be bringing to trial.

Q: what went into the decesion to not go to trial? was it mr thomas decesion?

Q: was it his Idea?

A: my Advice to mr. thomas was based on the evidence I had observed, that I thought it was likely A Jury would find him guilty of murder.

During the guilty plea hearing the Court ASK petitioner did he wanted A trial in the case, petitioner Stated that he did. (App 17, L. 11-14).

During the guilty plea hearing It was A break in the proceeding from 12:19 pm until 2:09 p.m with petitioner And defense counsel After he told the Judge he wanted A trial. (App. 17, L 11-16).

During the PCR hearing petitioner testified during the break in the guilty plea proceeding Counsel Advised that it was best to take the plea. (App. 74, L. 19-24).
During the PCR hearing defense counsel during the break in the guilty plea proceeding that his Advice to petitioner was the evidence "he observed he thought" It was likely A Jury would find him guilty of murder. (App. 86, L. 4-6).

Standard 14-32 Responsibilites of defense counsel States: (b) To Aid the defendant, defense Counsel After "Appropriate" investigation Should Advice the defendant Of the Alternatives Available And Address Considerations deemed important by defense Counsel or the defendant in reaching A decesion. Defense Counsel Should not recommand to A defendant Acceptance Of A plea unless Appropriate investigation And Study of the case has been completed.

In Addition Standard 4-6.1 points out; Counsel is Admonished not to recommend Acceptance of A guilty Plea unless having engaged in Appropriate investigation, including Seeking Any And All exculpatory information.

Furthermore Defense counsel recommendant Advice to petitioner ~~that~~ during the break in the guilty Plea Proceeding After petitioner wanted A trial Acceptance of A Plea And that he thought A Jury would find Petitioner guilty of murder. In Addition this Advice was given without A complete And Adequate Investigation Or filing A timely motion for A Continuance to the newly discoverd evidence during the guilty plea hearing Pursant to Rule 7 of the South carolina Rules of Criminal Procedure. Furthermore Defense Counsel erred in Providing Petitioner Advice Suffiently in Advance of decesions to Allow petitioner to consider Available options to Avoid rushing ~~the~~ ~~Accus~~ Petitioner into decesions. This Shows that counsel had no reasonable basis for his Advice. In Addition the Advice wasn't within the range of Competence required by Attorneys in Criminal CAses. A Competent lawyer has A duty to complete Investigation.

Cross-examination By. ms. mcAllister;
Defense Counsel states As follows;

Q; OKAY And the Statements that you had transcripts for did you share those transcripts with mr. thomas

A; Absolutely, yeah Any documents that I had for

received a copy of.

Q: okay and the ones that you - but you don't think you had transcripts for all statements?

A: No No

Q: okay

A: Because once I had listen to them - I mean, once I had a grasp of what the facts of ~~those~~ this case are going to be, there was no need to have the statements transcribed because they didn't relate to any facts that I didnt think they could be called to trial.

Q: okay. but by the time we came to April 11th, I think you said you were first on the trial docket for next monday if he decided not to plea.

Q: were you prepared to go foward with trial at that time?

A: Absolutely, yeah

Defense counsel testifed in PCR hearing that he ~~had~~ didn't had the transcripts for all statements (App. 83, L. 14-18). Defense counsel testifed in PCR Hearing that he didn't had them transcribed because he didnt "think" the facts didnt relate to any facts the case he didn't think they could be called to trial. (App. 89, L. 4-8).

During Jan 19, 2012 A notice of motion And motion for Production And Inspection of evidence or Information which lead to evidence was file under the Authority of Brady vs. maryland, 373 U.S. 83 (1963); napue vs. Illinois, 360 U.S. 364 (1959); Alcorta vs. Texas; 355 U.S. 28 (1957); mooney v.s. Illinois, 408 U.S. 786 (1972) And Kyles vs. whitley, 514 U.S. 419 (1995). In Addition in the motion it requested Access to: 1. All tape recordings made by witnesses or Any other person in connection with the case.

2.) "All" transcripts made of tape recored Statements made by Accused And by Potential wittnesses; As we'll As Any handwritten notes.

The motion was to enable petitioner herein to properly prepare a defense to the offense charge And to properly for the examination of Any witnesses who may testify in the case. petitioner would show that the failure to produce Any of the foregoing evidence or information by the law enforcement Agency involved would result in A violation of the 6th Amendment of the federal Constitution of the United States.

[petitioner] testified At PCR hearing that Defense counsel didn't dicuss Any possible defenses [App. 71, L. 4-11).

Standard 4-3.9 Duty to keep client informed ; Advised About the representation States;

(b) Defense counsel Should promptly comply with the Clients reasonable request for information about the matter and for copies of or Access to relevant documents, unless the Clients Acess to Such information is restricted by law or court order. Counsel Should Challenge Such restrictions on the Clients Acess to information unless, After Consulation With the client, there is good reason not to do so.

Standard 4-4.1 Duty to Investigate And engage Investigators.

Points out; (C) Defense counsel investigate efforts should commence promptly And Should explore Appropriate Avenues that reasonably might lead to information relevant to the merits of the matter. It Should Always be Shaped what is in the Clients best interest, After consultation with the Client. Defense counsel's investigation of the merits of the criminal charges include efforts to sercure relevant information in the Possession of the Prosecution, law enforcement Authorities, And others, As well As Incependant investigation.

Cross- examination By. ms. mcallister;

Defense counsel States As follows;

Q: OKAY. But the time we came to April 11th, I think you said you were first on the docket for next monday if he decided not to plea. Were you prepared to go foward with trial at that time?

A: Absolutely, yeah.

During PCR hearing defense counsel testified that he didn't recall there ever being fifty five names in total in the entire case, and that he didn't know who the State was going to bring to trial (App. 82, L. 18-20).

Therefore Defense counsel wasn't prepared to go to trial. In Addition there were fifty five wittnesses the State supeneod to court if Petitioner was going to trial. (App. 15, L. 13-18). Majority of the other wittnesses Defense counsel and [Petitioner] wasn't aware of when [Petitioner] entered the guilty plea. Therefore Defense counsel wasn't prepared for a defense to majority of the State wittnesses the State was going to bring to trial.

The [Petitioner], moreover has the following fundamental rights that would be violated if the State requires that he go to trial without adequate time to reveiw the materials in the possesion of the State and to prepare a defense. These rights include:

The defendant has the right for an Attorney to Investigate the case, to prepare a ~~defendant~~ defense, And to be effective In representation At trial under 5th, 6th, 14th Amendmend of the united States Constitution And Article one, Section three And fourteen of the South Carolina Constitution; And the defendant has A due process right to A fair trial under the 5th, 14th Amendments of the united States Constitution And Article one, Section three of the South Carolina Constitution.

The prosecution must prove every element of the offense Charged beyond A reasonable doubt. Jackson V. Virginia, 443 U.S 307 (1979). Here, Petitioner Could not make An informed decesion about whether he Should Choose A trial by Jury And require proof beyond A reasonable doubt or pled guilty because he was not Privy to All of the State evidence, Particularly with respect to All Audios And videos, "All transcripts made of tape recored Statements made by Potential Prosecution witnesses that existed in the Case to prepare A defense. Therefore, Petitioner Plea was not given Voluntarily in the Case. The test to determine the validity of A guilty plea is if it represents An intelligent Choice Among the Alternative Causes of Action open to the defendant.

Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011);
North Carolina v. Alford, 400 U.S. 25 (1970).

Here, Petitioner plea were submitted without a reveiw of All States evidence Against him to prepare a defense. Therefore petitioner deceslon to pled guilty was not an informed deceslon.

A defendant who enters a plea on the Advice of Counsel may Attack the Voluntary and intelligent character of a plea by showing that counsel representation fell below an objective standard of reasonableness And that there was a reasonable probability that but for counsels errors, the defendant would not have pled guilty and would have insisted on a trial. Holden v. State, supra, citing to Rolen v. State, 384 S.C. 409, 683 S.E. 2d 47 (2009).

Counsel omission In giving erroneous Advice to Accept A plea without Allowing Petitioner An opportunity to review All States evidence Agaisnt him to create A defense, And failure to make a reasonable investigation And preparation And file A Appropriate motion in this regard constituted ineffective Assistance of Counsel in Violation of the Sixth Amendment to

United States Constitution (see Strickland v. Washington, 466 U.S. 688, 691, 80 L.Ed 674, 104 S.Ct. 2052 (1984); Kimmelman v. Morrison, 477 U.S 365, 91 L.Ed 305, 106 S.Ct. 2574 (1986); Hill v. Lockhart, 484 U.S. 52 (1985), such that "but for counsels unprofessional errors, the result of the proceeding would have been differnt cause petitioner woulbve proceeded with the trial If petitioner could have created a defense for potential prosecution wittnesses that existed in the case." Cherry, 300 S.C. at 117-18, 386 S.E. 2d at 625.

In addition petitioner testified he made the decesion to pled guilty because he didn't want to go to trial in the blind not knowing who said what (App. 73, L. 16-17). Petitioner testified in PCR hearing that he changed his mind with going to trial, cause he relied on counsels advice (App. 74, L. 19-25, App. 75, L. 1). Furthermore defense counsel never stated that he went over any possible defense after consultation with petitioner.

This also shows there's a possiblity that petitioner decesion was a decesion under duress.

Petitioner Stated As follows:

Q: did you And mr. Bailey ever talk About Any possible defense you might have?

A: not that I remember

Q: Defenses like what?

A: Anyway you Could beat the case or get A lesser Charge Or Something like that, Something that would help you out And not be Charge with murder?

A: No Sir

Q: OKAY did you think you had Any defense?

A: I mean, I Ain't Seen my Statements So, I dont Know

Q: OKAY well, let me ASK you this, mr. thomas Ultimately you made the decesion to plead; is that right

A: yes, yes sir

Q: why did you make that decesion?

A: Because It was these Statements that I never Seen, So I didn't want to go to trial in the blind not Knowing who Said what And, you Know what Im Saying

- In the PCR Hearing Petitioner was ASK what did him And defense Counsel dicuss during the break in guilty plea Proceeding After Petitioner told Judge he wanted A trial

Petitioner Stated as follows:

Q: OKAY what did you and mr Bailey talk About first Of All?

A: I mean, he Said It was best to take the plea. If I go to trial I get life. They Could give me life

Q: when you go talk to mr. Bailey And you Come back And All Sudden youre ready to plea, what Changed your mind?

A: Because he Said it was best for me to plea.

Q: OKAY. So you relied on your Attorney Advice?

A: yes

Q: OKAY If you'd seen some of those Statements really, would have

A: I Could have made A better decesion of whether to plead guilty or not (App. 74, App. 75, App. 73, App. 71).

Furthermore the deficient performance prejudiced the defense cause counsel errors were so serious as to deprive Petitioner of A fair trial. In Addition [Petitioner] Wouldve went into trial without preparation for A defense to unknown Potential Prosecution witnesses State had to testify in the Case.

This indicates that Counsel's Conduct so undermined the Proper functioning of the Adversarial process that the trial Cannot be relied upon as having produced A Just result. Id. At 443, 334 S.E.2d At 814.

ARGUMENT

The PCR Judge erred in that the record reflects Petitioners Plea was entered freely, voluntary, knowingly, and intelligently.

During the plea proceeding the Solicitor Apprised the Plea Judge of the facts of the case. Apparently, wittnesses were set to testify that Petitioner rode up on a bicycle to the house of the deceased and shot the deceased In the head. And Solicitor testified that the case was gang related. To be Advise [Petitioner] was Pleaing to a charge of manslaughter pursuant to a plea under Alford. The facts the Solicitor gave to the Court was not the element of "manslaughter" but was still the elements of murder. The Solicitor stated that he was going to explain to the Court why they were offering a plea to voluntary manslaughter. The Solicitor gave no facts to real notice of true nature of the manslaughter charge agaisnt [Petitioner]. (App. 13, L. 7 - App. 15, L. 25). Here the guilty plea was "Invalid" because [Petitioner] was never told that to be guilty of manslaughter a defendant must have acted with act of "heat of passion" upon sufficient legal provocation. In addition the facts that were given to the Court was still feloniously, willfully, and of malice aforethought, kill and murder the deceased. When plea Judge ask [Petitioner] If the case were to go to trial and those facts [Elements] were presented was there a reasonable probability

Probability that [Petitioner] would be convicted of the offense? (which was manslaughter), [Petitioner] responded And Stated "I dont think So your honor". Court ASK do you want a trial in this case? [Petitioner] responded yes, sir. (App. 17, L. 3 - 14). Plea of guilty Could "not be voluntary" In Sense that it Constituted Intelligent Admission that Accused Committed Offense Unless Accused received real notice of true nature of Charge Against him.

In Rule 11 Requirements (3) Determinging the factual basis for a plea.

Before entering Judgement on a guilty Plea, the Court must determine that there is a factual basis for the plea. Here Although [Petitioner] was Pleading guilty to Alford v. north Carolina, 400 U.S 25 (1970), to the lesser included Offense of Voluntary manslaughter, the [Petitioner] must first be Apprised of the element of the crime which he was pleaing under.

Heat of Passion is a Critical element of the Crime of manslaughter that the [Petitioner] must have been made Aware of this element for his guilty Plea to meet Constitutional requirements. (Henderson v. morgan (S. Ct. 1976).

The 6th Amendment to the United States Constitution requires that in All Criminal Prosecution the Accused Shall enjoy the rights to be informed of the nature And Cause of the Accusation. Furthermore, the court failure to inform [Petitioner] that the manslaughter Charge Carried a mandatory minimum Sentence of two years and maxium of thirty renders the guilty Plea "Involuntary". (App. 7, L. 13-15, App. 19, L. 23-24, App. 20, L. 8-11). In Addition Plea Judge never Advise [Petitioner] Of crucial elements of the Charge Offense he was Pleaing to. Furthermore the Attorney never Stated neither In Plea transcript or PCR transcript he explained the elements of the "manslaughter Charge he was Pleaing to. (See 22 C.J.S. Criminal law § 404 (1989) Prior to Accepting a Plea of guilty... The Court is required to Advise accused of the "range of Punishment"), See. Pittman v. State (S.Ct 1999). State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) where they fount a defendants plea Involuntary Since She was never informed of the mandatory minimum Sentence require by her guilty Plea. In Addition Plea Judge inform [Petitioner] Of maxium Sentence which could be Impose and never mentioned the mandatory minimum. (App. 7, L. 13-15, App. 19, L. 23-24, App. 20, L. 8-11).

Before A Court CAn Accept A guilty plea A defendant entering A guilty plea must be Aware of the nature And crucial elements of the offense, the maximum And mandatory minimum penalty.
Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709 (1969); 304 S.C 433, 405 S.E.2d 391 (1991). To find A guilty plea is voluntary And knowingly entered into, the record must establish the Applicant had A full understanding of the consequences of his plea And the charges Against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969). Although the trial court is not required to direct defendants Attention to each right And obtain A separate waiver, the record should indicate the defendant was fully Aware of consequences of his guilty plea.
The transcript of the guilty plea in this case speaks for Itself, [Petitioner] did not had A full understanding of the consequences of his plea And did not fully understand the nature of the constitutional rights being waived. (It was never established the [Petitioner] understood the severity of the crime of "manslaughter" or sentences It carried.

In Addition, the trial Court lack of Questions to ensure [Petitioner] Understanding of the Consequences of his plea, Coupled With the trial Court and Attorney failure to explain the elements of manslaughter, further indicates [Petitioner plea was not given Voluntary, intelligent, And Knowing.

CONCLUSION

Based on the foregoing Argument, Pro se, Petitioner would request that this court grant the pro se response to the Johnson petition And Allow briefing on the Above-raised issue.

Jamaad D. Thomas
Jamaad D. Thomas

Pro se, Petitioner.

This 18th Day of march, 2019.

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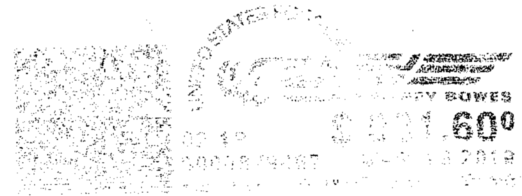

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