

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 09 2019

S.C. SUPREME COURT

HONORABLE R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

BILL BREELAND

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2018-001417

PRO SE FILING FOR JOHNSON PETITION

TO: ATTN: MR. DANTELE E. SHEAROUSE, CLERK
THE SUPREME COURT OF SOUTH CAROLINA
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

PRO SE FILING: ORIGINAL BRIEF OF PETITIONER
BILL BREELAND
WEBER CORRECTIONAL INSTITUTE
POST OFFICE BOX 205
RIDGEBURY, S.C. 29472
PRO SE.

TABLE OF CONTENTS

CASES

MILLER V. STATE, 388 S.C. 347, 697 S.E. 2d 527 (2010)

JONES V. STATE, 348 S.C. 13, 558 S.E. 2d 517 (2002)

STATE V. STUCKEY, 333 S.C. 56, 508 S.E. 2d 564 (1998)

FOSTER V. STATE, 298 S.C. 306, 379 S.E. 2d 907 (1989)

FRASIER V. STATE, 306 S.C. 158, 410 S.E. 2d 572 (1991)

STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984)

GALLMAN V. STATE, 307 S.C. 273, 414 S.E. 2d 780 (1992)

JOHNSON V. STATE, 325 S.C. 182, 480 S.E. 2d 733 (1997)

HELL V. LOCKHART, 474 U.S. 52, 106 S.Ct. 366 (1985)

McMANN V. RICHARDSON, 397 U.S. 759, 771 (1970)

ALEXANDER V. STATE, 303 S.C. 539, 402 S.E. 2d 484 (1991)

ROBINSON V. STATE, 422 S.C. 79, 810 S.E. 2d 32 (2018)

STATUTES

SOUTH CAROLINA CONSTITUTION ARTICLE 1. SECTION 14

UNITED STATES CONSTITUTIONS, AMENDMENTS SIX (6)

UNITED STATES CONSTITUTIONS, AMENDMENTS FOURTEEN (14)

ARGUMENT

THE P.C.R. COURT ERRED IN FAILING TO FIND PLEA COUNSEL INEFFECTIVE FOR NOT INSURING THAT PETITIONER BREELAND'S GUILTY PLEA WAS ENTERED VOLUNTARILY AND KNOWINGLY BECAUSE PETITIONER ONLY PLEAD GUILTY BECAUSE HIS TRIAL COUNSEL FAILED TO PREPARE HIS CASE FOR TRIAL.

STATEMENT (1)

PETITIONER BILL BREELAND AND KATRINA BREELAND WERE MARRIED AND HAD TWO (2) BOYS; HOWEVER, PROBLEMS DEVELOPED AS PETITIONER HAD MENTAL ISSUES WITH HIS HEALTH. HE WAS DIAGNOSED WITH PARANOID SCHIZOPHRENIA AND DEPRESSION. KATRINA LEFT HIM AND WAS LIVING WITH HER PARENTS.

ON JANUARY 5, 2014, KATRINA WAS LEAVING HER PARENTS' HOME TO GO TO SCHOOL AS SHE RODE THE LOCAL MOTION BUS. AS SHE WALKED OUTSIDE, PETITIONER CAME AROUND A BUSH WITH A KNIFE AND PROCEEDED TO STAB KATRINA. HE STABBED HER THREE (3) TIMES IN THE CHEST AND ONE (1) TIME IN ONE (1) EYE. KATRINA'S FATHER CAME OUT AND CHASED PETITIONER AWAY. KATRINA WAS IN CRITICAL CONDITION BUT DID SURVIVE; HOWEVER, SHE LOSE ONE (1) EYE. VIDEO FROM THE BUS SHOWED THE INCIDENT AS WELL AS SEVEN (7) EYE WITNESSES INCLUDING THE PEOPLE ON THE BUS. WHEN HE WAS ARRESTED, BREELAND GAVE STATEMENTS TO THE POLICE THAT HE HAD DONE THE CRIME.

THE BARNWELL COUNTY GRAND JURY INDICTED PETITIONER BREELAND ON MAY 26, 2014 ON THE CHARGE OF ATTEMPTED MURDER BEFORE HONORABLE EDGAR W. DICKSON AND ENTERED A GUILTY PLEA TO ATTEMPTED MURDER AS INDICTED. BREELAND WAS REPRESENTED BY LAURA A. MCCANN AND THE STATE WAS REPRESENTED BY SUSANNA M. RINGLER.

DURING GUILTY PLEA, BREELAND TOLD THE JUDGE THAT HE HAD MENTAL HEALTH ISSUES AND TOOK MEDICATION FOR PARANOID SCHIZOPHRENIA AND DEPRESSION. WHEN ASKED BY THE JUDGE IF THE MEDICATION AFFECTED HIS ABILITY TO UNDERSTAND, BREELAND INITIALLY SAID "YES!!" THEN AFTER CONFERRING WITH HIS ATTORNEY, BREELAND CHANGED THAT

STATEMENT (2)

TO SAY "NO", THAT THE MEDICATION DID NOT AFFECT HIS UNDERSTANDING.

DURING MITIGATION, PLEA COUNSEL TOLD THE COURT BREEZLAND FOUND OUT THAT HIS WIFE WAS HAVING AN AFFAIR WHICH "INFURIATED" HIM AND WHEN HE CONFRONTED HER ABOUT IT, HIS WIFE MADE "TAUNTING" REMARKS TO HIM SUCH AS "WHAT DOES IT MATTER, YOU ARE GOING TO PRISON ANYWAY" THESE TAUNTING COMMENTS MADE HIM EXTREMELY ANGRY. BREEZLAND TOLD THE COURT THAT HIS WIFE "TALKED TO HIM LIKE HE DID NOT EVEN EXIST AND TREATED HIM LIKE A NOBODY". HE SAID: "SHE BROKE ME DOWN TO MY HEART, SHE BROKE ME IN MY HEART". THE JUDGE SENTENCED BREEZLAND TO TWENTY (20) YEARS INCARCERATION. WHILE INCARCERATED, HE WAS TO OBTAIN HIS G.E.D. AND COMPLY WITH MENTAL HEALTH TREATMENT.

BREEZLAND'S PLEA COUNSEL FILED A NOTICE TO APPEAL. THE DIVISION OF APPELLATE DEFENSE PERFECTED THE APPEAL WITH FILING OF A BRIEF PURSUANT TO ANDERS V. CALIFORNIA, 386 U.S. 738 (1967). THE COURT DISMISSED PETITIONER'S APPEAL ON AUGUST 12, 2015. STATE vs BREEZLAND, Op. No. 2015-UP-419 (Ct. App. filed August 12, 2015)

PETITIONER BREEZLAND FILED AN APPLICATION FOR POST CONVICTION RELIEF (P.C.R.) ON JULY 22, 2016 WHICH THE STATE FILED A RETURN ON JANUARY 24, 2017. AN EVIDENTIARY HEARING WAS HELD ON MAY 7, 2018 BEFORE HONORABLE R. SCOTT SPROUSE, IN WHICH PETITIONER TESTIFIED THAT HIS PLEA COUNSEL WAS INEFFECTIVE BECAUSE SHE DID NOT EXPLAIN TO HIM ANY DEFENSE NOR ANY TRIAL STRATEGY - SHE HAD MADE NO TRIAL PREPARATIONS. IT TOOK BREEZLAND A LONG TIME TO TRUST HIS PLEA COUNSEL; SHE TOLD HIM AT THE LAST MINUTE THEY WERE GOING TO TRIAL AND BREEZLAND KNEW THAT THEY WERE NOT PREPARED... THAT THE REASON HE DECIDED TO PLEAD GUILTY.

STATEMENT (3)

IF HE HAD MORE TIME, HE WOULD HAVE TAKEN THE JURY TRIAL - SAID "HE WANTED A NEW TRIAL!"

PLEA COUNSEL TESTIFIED SHE DID NOT DISCUSS ANY POSSIBLE DEFENSES WITH PETITIONER BECAUSE HE NEVER WANTED A TRIAL, HE WAS GUILTY FROM THE VERY BEGINNING, AND THE EVIDENCE WAS OVERWHELMING. COUNSEL SAID THAT SHE AGREED WITH BREZLAND'S DECISION TO PLEAD GUILTY. ON CROSS EXAMINATION, COUNSEL ADMITTED THAT THEY NEVER MADE ANY TRIAL PREPARATIONS BECAUSE BREZLAND WAS "VERY, VERY CLEAR HE DID NOT WANT A TRIAL."

ON JUNE 14, 2018, P.C.R. JUDGE ISSUE AN ORDER DENYING BREZLAND'S P.C.R. APPLICATION AND DISMISSING IT WITH PREJUDICE.

THE JUDGE FOUND BREZLAND TESTIMONY THAT HE WAS COERCED INTO PLEADING GUILTY BECAUSE HIS PLEA COUNSEL FAILED TO PREPARE HIS CASE FOR TRIAL TO NOT BE CREDIBLE, GUILTY PLEA ENTERED FREELY AND VOLUNTARILY AND BREZLAND FAILED TO PROVE PLEA COUNSEL WAS DEFICIENT.

ARGUMENT (1)

THE PCR COURT ERRED IN FAILING TO FIND PLEA COUNSEL INEFFECTIVE FOR NOT INSURING THAT PETITIONER BREZLAND'S GUILTY PLEA WAS ENTERED VOLUNTARILY AND KNOWINGLY BECAUSE PETITIONER ONLY PLEADED GUILTY BECAUSE HIS TRIAL COUNSEL FAILED TO PREPARE HIS CASE FOR TRIAL.

A DEFENDANT HAS THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH (6TH) AMENDMENT TO THE UNITED STATES CONSTITUTION. STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) "THERE IS A STRONG PRESUMPTION THAT COUNSEL RENDERED ADEQUATE ASSISTANCE AND EXERCISED REASONABLE PROFESSIONAL JUDGEMENT IN MAKING ALL SIGNIFICANT DECISIONS IN THE CASE" ARD V. CATOE, 372 S.C. 316, 331, 642 S.E.2d 590, 596 (2007) cert. denied, 128 S.Ct 370 (2009)

STATEMENT OF ARGUMENT ②

IN A PCR PROCEEDING, THE APPLICANT BEARS THE BURDEN OF ESTABLISHING THAT HE IS ENTITLED TO RELIEF. CAPROD V. STATE, 388 S.C. 103, 109, 525 S.E.2d 514, 517 (2000) ^{Id.} quoting MILLER V. STATE, 388 S.C. 347, 697 S.E.2d 527 (2010) IN ORDER TO PROVE THAT COUNSEL WAS INEFFECTIVE, THE PCR APPLICANT MUST SHOW THAT: (1) COUNSEL'S PERFORMANCE WAS DEFICIENT; AND (2) THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE RESULT OF THE TRIAL WOULD HAVE BEEN DIFFERENT Id. (CITING STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)); (GALLMAN V. STATE, 307 S.C. 273, 414 S.E.2d 760 (1992)).

A CRIMINAL DEFENDANT IS ENTITLED TO EFFECTIVE REPRESENTATION AT TRIAL AND ON DIRECT APPEAL. FRASER V. STATE, 306 S.C. 158, 410 S.E.2d 572 (1991); STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984) so "A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE TRIAL." JOHNSON V. STATE, 325 S.C. 182, 460 S.E.2d 733 (1997) "FURTHERMORE, WHEN A DEFENDANT'S CONVICTION IS CHALLENGED, 'THE QUESTION IS WHETHER THERE IS A REASONABLE PROBABILITY THAT, ABSENT THE ERRORS, THE FACT FINDER WOULD HAVE HAD A REASONABLE DOUBT RESPECTING GUILT'" Id. (quoting STRICKLAND V. WASHINGTON, 466 US 668, 685 (1984)).

SOUTH CAROLINA CONSTITUTION ARTICLE I, SECTION 14 PROVIDES AND STATES:
"THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED INVIOLE. ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT... TO BE FULLY INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR AND TO BE FULLY HEARD IN HIS DEFENSE BY HIMSELF OR BY HIS COUNSEL OR BY BOTH."
Id. (CITING FRASER V. STATE, 298 S.C. 306, 397 S.E.2d 907 (1989)).

STATEMENT OF ARGUMENT (3)

THE APPLICANT MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERRORS, HE WOULD NOT HAVE PLED GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL.

HILL V. LOCKHART, 474 U.S. 52, 106 S.Ct. 366 (1985)

IN ROBINSON V. STATE, 422 S.C. 79, 810 S.E.2d 32 (2018), COURT FOUND THAT TRIAL COUNSEL PROVIDED DEFICIENT SENTENCING ADVICE WHERE HE ADVISED ROBINSON TO PLEAD GUILTY TO AVOID A SENTENCE OF 25 YEARS TO LIFE IMPRISONMENT. THAT ERRONEOUS SENTENCING ADVICE WAS BASED ON A NEW LAW THAT DID NOT APPLY TO HIS SENTENCING EXPOSURE AT THE TIME HE COMMITTED HIS CRIME. THIS COURT FOUND THAT ROBINSON WAS PREJUDICED BY THE TRIAL COUNSEL'S ERRONEOUS SENTENCING ADVICE AND THE GUILTY PLEA COLLOQUY DID NOT CURE THE DEFICIENT ADVICE OR REMOVE ANY PREJUDICE. THIS COURT NOTED THAT WHEN A DEFENDANT ENTERS A GUILTY PLEA UPON ADVICE OF HIS COUNSEL, THE VOLUNTARINESS OF THE GUILTY PLEA DEPENDS UPON WHETHER COUNSEL'S ADVICE WAS "WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES."

HILL V. LOCKHART, 474 U.S. 52, 56 (1985) quoting McMANN V. RICHARDSON, 399 U.S. 759, 771 (1972). SIMILARLY, IN ALEXANDER V. STATE, 303 S.C. 539, 402 S.E.2d 484 (1991), COURT FOUND PLEA COUNSEL PROVIDED INEFFECTIVE COUNSEL OF ASSISTANCE WHERE PETITIONER PLED GUILTY BASED ON THE ERRONEOUS ADVICE THAT HE COULD BE SENTENCED TO LIFE IMPRISONMENT IF HE PROCEEDED TO TRIAL. SINCE PETITIONER WAS GIVEN ERRONEOUS ADVICE AND NO TRIAL PREPARATION OR DEFENSE, HE SHOULD BE ENTITLED TO RESENTENCING AS HIS PCR REMEDY.

ARGUMENT & CONCLUSION

PLEA COUNSEL WAS INEFFECTIVE FOR NOT PREPARING FOR TRIAL BY DISCUSSING POSSIBLE DEFENSE OR ACQUIRING A MENTAL EVALUATION FOR/WITH PETITIONER BILL BREELAND. IF SHE HAD, BREELAND LIKELY WOULD NOT HAVE PLED GUILTY AND REASONABLY THE OUTCOME WOULD HAVE BEEN DIFFERENT; HE HAD A HISTORY OF MENTAL HEALTH ISSUES AND OTHER COMPLICATION WHICH ARE SYMPATHETIC.

THE P.C.R. COURT ERRED BY NOT FINDING PLEA COUNSEL INEFFECTIVE FOR HER EFFORTS OF NOT AT LEAST DISCUSSING OR ARGUING A TRIAL PREPARATION, POSSIBILITY OF RECONSIDERATION, A PLEA BARGAIN DEAL WITH BREELAND. POSSIBLY, THE PETITIONER WOULD HAVE NOT GOTTEN THE AMOUNT OF TIME HE WAS CONVICTED OF BASED ON THE GUILTY PLEA.

BILL BREELAND # 315919

L.C.I.

P.O. Box 205

EDGEVILLE, S.C. 29472

TIME
SENSITIVE
MATERIAL



ATTN: DANIEL E. SHEAROUSE, CLERK

THE SUPREME COURT of SOUTH CAROLINA
Post Office Box 11330

COLUMBIA, SOUTH CAROLINA 29211

RECEIVED

MAIL ROOM
JAN 11 1988