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JUN 10 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

IVAN WILLIAMS,

PETITIONER

-vs-

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001644

PRO-SE PETITION FOR WRIT OF CERTIORARI

IVAN WILLIAMS, #357781

RCI / GA-52

P.O. BOX 2039

Ridgeland, S.C. 29936

PRO-SE

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WHEIHER THE FOR COURT COMMITTED REVERSIBLE ERROR (SIC) WHEN THE COURT ALLOWED THE PETITIONER TO BE CONVICTED OF CRIME UNSUPPORTED BY THE EVIDENCE; AND THAT FAILED TO MET THE REQUIRED ELEMENTS AS SET FORTH BY SCUIH CAROLINA CODE ANN. 16-11-311?

WHEIHER AN UNDULY SUGGESTIVE LINE-UP (photo) CONSTITUTES A DENIAL OF DUE PROCESS AS INVISIONED BY CONGRESS?

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ISSUE PRESENTED

WHETHER THE PCR COURT COMMITTED REVERSIBLE ERROR (SIC)
WHEN THE COURT ALLOWED THE PETITIONER TO BE CONVICTED OF CRIME
UNSUPPORTED BY THE EVIDENCE; AND THAT FAILED TO MET THE REQUIRED
ELEMENTS AS SET FORTH BY SOUTH CAROLINA CODE ANN. 16-11-311?

WHETHER AN UNDULY SUGGESTIVE LINE-UP (photo) CONSTITUTES
A DENIAL OF DUE PROCESS AS INVISIONED BY CONGRESS?

STATEMENT OF CASE

Petitioner Ivan Williams was convicted of first-degree burglary during a jury trial held at the November 2013 term of the Hampton County General Sessions Court before Judge Michael G. Nettles, who sentenced him to imprisonment for a period of fifteen years. Petitioner Appealed his conviction and sentence STATE v. WILLIAMS, Op. No. 2017-UP-027(Ct. App. 2017).

Incorporate the statement as identified from the JOHNSON PETITION.

ARGUMENT

WHETHER THE PCR COURT COMMITTED REVERSIBLE ERROR (SIC)
WHEN THE COURT ALLOWED THE PETITIONER TO BE CONVICTED OF CRIME
UNSUPPORTED BY THE EVIDENCE; AND THAT FAILED TO MET THE REQUIRED
ELEMENTS AS SET FORTH BY SOUTH CAROLINA CODE ANN. 16-11-311?

Petitioner contends that his conviction for burglary 1st degree violates the terms (elements) necessary to constitute the crime of 1st degree burglary. Accord: State v. Melton, 196 S.E. 181 (S.C. 1938).

Section 16-11-311 of the South Carolina Code specifically sets out the elements required to charge and/or convict a person so charged...

Elements of the offense to wit:

1. That the accused did break and enter a dwelling without consent and with the intent to commit any crime and: one or more of the following aggravating circumstances are present:
 - a. armed with a deadly weapon (either himself or codefendant).
 - b. causes physical injury to any person who is not a participant in the crime.
 - c. threatens use of a dangerous instrument.
 - d. displays what appears to be a knife or firearm.
 - e. has a prior record of two or more convictions for burglary or housebreaking or a combination of both.
 - f. enters, remains in, or exits during the nighttime.

Petitioner asserts that none of the aggravating circumstances mentioned in section 16-11-311 are readily apparent from the indictment, nor the evidence as presented at trial from the (record).

Indeed, the lack of such aggravating circumstance(s), leaves the prosecution without an adequate theory upon which to submit the case to the jury.

The prosecution theory of (MURDER) as the intended crime violates petitioner right to only be tried for the offense(s) for which he has been indicted.

Said theory as advanced during the State's Closing argument denied the petitioner of the right to be convicted of only those offense(s) for which there exist evidence in support thereof, and a valid lawful indictment for said charge must exist for the jury to be granted leverage to consider matters that are not in evidence.

As such petitioner avers that the jury was allowed to presume the aggravating circumstance as that of the unsupported murder theory as advanced during closing arguments.

This constitutes a denial of equal protection of the law and denies petitioner of his constitutionally protected right to due process of law.

As petitioner at NO-TIME was charged with the offense of murder or even attempted murder; Neither where there any evidence presented that could be presumed to have amounted to a theory upon which the prosecution could advance his case, as such petitioner avers that he was convicted of Burglary 1st Degree in-light of facts and evidence that are unsupported by the record.

Petitioner's burglary conviction fails to comply with the elements requirement of section 16-11-311 to wit:
Accord: State v. Clamp, 80 S.E.2d 918, 225 S.C. 89.

Due Process Clause forbids a State from convicting a person of a crime without proving the elements of that crime beyond a reasonable doubt, U.S. Const. Amend. 5, Bunkley v. Fla., 123 S. Ct. 2020, 155 L.Ed.2d 1046 (U.S.2003).

WHETHER AN UNDULY SUGGESTIVE LINE-UP (photo) CONSTITUTES
A DENIAL OF DUE PROCESS AS INVISIONED BY CONGRESS?

Petitioner avers that on the night of the alledged burglary; He was subjected to a suggestive police line-up, in that law officers only showed (his) photo to the alledged victim.

Petitioner asserts that he was denied of due process of law due to identification procedure which was unnecessarily suggestive and conducive to irreparable mistaken identification. Accord: U.S.C.A. Const. Amend. 14, State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (Dec. 11, 2000).

A criminal defendant is deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable identification. Stovall v. Denno, 388 U.S. 293, 87 S. Ct. 1967, 18 L.Ed.2d 1199 (1967).

An IN-COURT identification of an accused is inadmissible if a suggestive OUT-OF-COURT identification procedure created a very substantial likelihood of irreparable mis-identification, Manson v. Brathwaite, 432 U.S. 98, 97 S. Ct. 2243, 53 L.Ed.2d 140 (1977)(citing Simmons v. United States, 390 U.S. 377, 88 S. Ct. 967, 19 L.Ed.2d 1247 (1968); State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980).

'ONE-ON-ONE SHOW-UPS' have been sharply criticized, and are inherently suggestive, Accord: Manson v. Brathwaite, Supra. Here, the court ruled the show-up procedure was not unduly suggestive. This is error, as single person show-ups are particularly disfavored in the law. Stovall, 388 U.S. at 302, 87 S. Ct. 1967 (practice of showing suspects singly to person(s) for the purpose of identification, and not as part of a line-up, has been widely condemned); see also State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct. App. 1993)(Single person show-ups are particularly disfavored in the law). Accord: IN THE INTEREST OF JAMAL RASHEE A., 308 S.C. 392, 418 S.E.2d 326 (Ct. App. 1992).

C O N C L U S I O N

WHEREFORE, petitioner having made this pro-se response and/or brief respectfully moves this Honorable Court for the grant of Appeal in this matter as the facts presented in support of his issues are before the court. Petitioner avers that this court contextly apply his pro-se petition (brief).

Respectfully Presented,

Date: 6 05-19

By: Ivan Williams

Ivan Williams, #357781
RCI / GB-52
P.O. BOX 2039
Ridgeland, S.C. 29936

pro-se

PROOF OF SERVICE BY MAIL

I, Ivan Williams, a man incarcerated at Ridgeland Corr. Inst., in Ridgeland, South Carolina 29936; do herein affirm that the ORIGINAL PRO-SE BRIEF, was placed into the hands of prison mailroom officials, for deposit into the United States Mail, first class postage duly affixed and a return address clearly indicated on the upper left corner of the envelope for service upon the following person(s):

1. _____

Date: 6.05.19

Respectfully Presented,

By: Ivan Williams
Ivan Williams, #357781
RCI / GB-52
P.O. BOX 2039
Ridgeland, S.C. 29936
Pro-se

SWORN TO AND SUBSCRIBED BEFORE ME

ON THIS 5 DAY OF June, 2019.

Deverly Ferguson SEAL
NOTARY OF PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 10-1-25

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S.C. SUPREME COURT

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Ridgeland Correctional Insts
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