State of South Carolina
In the Supreme Court

Certiorari to Lexington County
Honorable J. Derham Cole, Circuit Judge

Richard Lee Boatwright,
Petitioner

v.

State of South Carolina,
Respondent

Appellate Case No. 2018-001818

PRO SE RESPONSE TO THE PETITION FILED PETITIONER'S COUNSEL

Richard Lee Boatwright
Petitioner Proceeding PRO SE

McCormick Correctional Institution
386 Redemption Way
McCormick, S.C. 29899-9000

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ISSUES PRESENTED

1. Do to erroneous of the P.C.R. judge order of dismissal. On ineffective assistance of counsel. Counsel failed to investigate to subpoen the D.O.T. logbook records from the correct trucking company.

2. Counsel testified that Counsel hired a private investigator to locate records from Petitioner's previous states of residency that would assist in a defense trial.

Statment of Case

During the May 2014 term, the Lexington County Grand Jury indicted Petitioner for criminal sexual conduct with a minor, 3rd degree; criminal sexual conduct with a minor, 2nd degree; and two counts of sexual exploitation of a minor, 3rd degree. App. 270-277.

On April 25, 2016, Petitioner's trial began before the Honorable R. Knox McMahon with several pretrial motions. App. 1; App. 46, l. 22. Elizabeth C. Fullwood and Sarah H. Mauldin represented Petitioner. App. 1. Suzanne Mayes and Rhonda Patterson represented the state. Id.

After all of Petitioner's pretrial motions were denied and plea counsel failed to subpoena the proper trucking company to corroborate Petitioner's alibi, Petitioner pled guilty. App. 150, ll. 5-6. Petitioner pled guilty as indicted without, "any plea negotiations in this case." App. 150, ll. 9-20; App. 160, ll. 8-11.

Judge McMahon accepted Petitioners guilty plea as freely, voluntarily, knowingly, and intelligently made. App. 172, ll. 8-13. Petitioner was sentenced to twenty years' imprisonment for criminal sexual conduct with a minor in the second degree; fifteen years' imprisonment for criminal sexual conduct with a minor in the third degree; ten years' imprisonment each for both counts of sexual exploitation of a minor in the third degree. App. 181, l. 9 - 182, l. 1. All sentences ran consecutive. App. 182, ll. 2-4.

On March 4, 2017, Petitioner filed a PCR application that alleged plea counsel was ineffective for failing to investigate potentially exculpatory evidence. App. 184 - 190. The state filed its Return on June 12, 2017. App. 191 - 216.

Petitioner's evidentiary hearing was held on February 21, 2018, before the Honorable J. Derham Cole. App. 217. Aimee J. Zmroczek represented Petitioner. Id. Caroline Scrantom represented the state. Id.

In an order filed on September 6, 2018, Judge Cole dismissed Petitioner's PCR allegations. App. 256 - 269. Judge Cole found that because no additional exculpatory evidence was presented at the PCR hearing and, "{plea counsel} testified that she subpoenaed {Petitioner's} former trucking employer for logbooks {that would have corroborated Petitioner's alibi}." Id.

ISSUE I

Was Counsel ineffective for failure to obtain impeachment information that was concerning Mary F. Perkins that would have helped in Petitioner defense at trial.

Counsel testified that Counsel hired a privated investigator to locate records from Petitioner's previous states of residency that may assist in a defense. Counsel was ineffective in retrieving records in Petitioner previous states of residency.
Petitioner had already given Counsel all the important information on a investigation on the Petitioner from 2012. By Michael Montgomery who was the head of Kentucky's Department of Social Service in Adair County. That is located in Columbia, Kentucky. Petitioner had brought it to Counsel attention on the fact that Petitioner had already been investigated. By Michael Montgomery personally in 2012 on sexual abuse of a child allegation. Which at the end of Michael Montgomery's investigation. It was found conclusive that allegation of sexual abuse of a child was not true.

There is a reasonable probability that if trial Counsel would had obtain the above information for impeachment

purposes as to the Petitioner defense at trial. The Petitioner would not had plead guilty to, one count of criminal sexual conduct with a minor third degree, One count of criminal sexual conduct with a minor, second degree. And two counts of sexual exploitation of a minor, third degree. And would have continued demanding Petitioner's 6th Amendment to trial.

The two-part standard adopted in Strickland v. Washington for evaluating claims of ineffective assistance of counsel there citing McMann, we reiterated that [W]hen a convicted defendant complains of the ineffective of counsel's assistance, the defendant must show that counsel's representation fell below a objective standard of reasonableness." 466 U.S. at 687-688, 104 S.Ct. at 2065. We also held, however, that "[T] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the processing would have been different. "Id., at 694, 104 S.Ct. at 2068

We hold, therefore that the two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas.

First half of the Strickland v. Washington test is nothing more than a restetement of the standard of attorney competence already set Forth in Tollett v. Henderson supra, and McMann v. Richardson, supra.

The second or prejudice, requirement, on the other hand. Focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985)

In the present case, clearly attorney/counsel, Ms. Elizabeth C. Fullwood representation of applicant fell below an objective standard of reasonableness, for failing to obtain impeachment information that was concerning Mary F. Perkins that would have helped in Petitioner defense at trial.

The Petitioner further meets the second prejudice requirement, had Ms. Elizabeth C. Fullwood acquired impeachment information concerning Mary F. Perkins,

this would have substantilly assisted the defense in there is a reasonable probability that, but for counsel's errors, Petitioner in the present case would have not plead guilty and would have insisted for a trial Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985)

Furthermore, the attorney's conduct in Hill fell below an objective standard of competence and as such amounted to a denial of effective assistance of cousel. The attorney failed to do minimal research which raises a question of fact regarding the level of competence exhibited by the attorney and the prejudicial effects these actions had on the proceeding.

ISSUE II

Was Counsel ineffective for failure to obtain exculpatory information concerning Petitioner's logbooks from the correct trucking company. That would have helped in Petitioner's defense at trial.

Counsel testified that Counsel did serve a subpoena on Petitioner's employer a company called TLC about work records or logbooks. In response to the subpoena, Counsel got this letter from the company saying that it did not have logbooks, eletronic logbooks, time cards, or any other documents that would have established Petitioners working hours; that Petitioner was an over the road trucker, paid a flat fee for the work the Petitioner did and that this company submitted payroll on a spreadsheet that lists the flat amount rather than the actual hours when their employees work. The letter went on to say it's not a motor carrier and is not required to keep logbooks or eletronic logbooks.

If Counsel would have done a thorough investigation in obtain copies of Petitionen's logbooks. When Counsel received the letter from TLC. It was Counsel's duty to bring this very important problem to Petitioner attention immediately.

But Counsel at no time even mentioning the problem to Petitioner. Which Petitioner had already stated multiple times verbally to defense Counsel in person. And also Petitioner had mentioned numerous times the trucking company by name in letters to defense Counsels office.
If Counsel would have brought this very important problem to Petitioners attention. Petitioner would have corrected the Counsel's error in obtaining the logbooks from the correct trucking company. Which is DTL Transportantion that did employ the Petitioner in 2012 and 2013 as a company driver.

The Petitioner's logbooks are a very strong and vital key piece of evidence in Petitioner defense. Petitioners locations, times, and dates are all logged in the logbooks. Which would have corroborated Petitioner's alibis and that would have helped in Petitioner's defense at trial.

There is a reasonable probability that if trial Counsel would had obtain the above information for impeachment purposes as to the Petitioner defense at trial.

The Petitioner would not had pleacl guilty to, one count of criminal sexual conduct with a minor third degree. One count of criminal sexual conduct with a minor second degree. And two counts of sexual exploitation of a minor, third degree. Petitioner would have continued demanding Petitioner's 6th Amendment to trial.

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We hold, therefore that the two-part Strickland v. Washington test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas.

The first half of the Strickland v. Washington test is nothing more than a restatement of the standard of attorney competence already set forth in Tollett v. Henderson supra, and McMann v. Richardson, supra.

The second or prejudice, requirement, on the otherhand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985)

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Furthermore, the attorney's conduct in Hill fell below an objective standard of competence and as such amounted to denial of effective assistance of counsel. The attorney failed to do minimal research which raises a question of fact regarding the level of competence exhibited by the attorney and the prejudicial effects these actions had on the proceeding.

ISSUE III

Was Counsel ineffective for failure to obtain impeachment information on Mary F. Perkins concerning Kentucky's Department of Social Service records and D.O.T. logs from DTL Transportation that would have helped Petitioner defense at trial.

Petitioner crave reference to and incorporator the facts in Issue I and II in this section for relief.

There is a reasonable probability that if trial Counsel would had obtain the above information for impeachment purposes as to the Petitioner defense at trial. The Petitioner would not had plead guilty to, one count of criminal sexual conduct with a minor second degree. One count of criminal sexual conduct with a minor third degree. And two counts of sexual exploitation of a minor, third degree. And would have continued demanding Petitioner's 6th Amendment to trial.

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Conclusion

Again, the petitioner prays that this Court Grant this pro se and such other and further relief this Court seen just and proper.

Date: September 6, 2019

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