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S.G. SUPREME COURT

To: The South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

From: Izell Hair, 311486
Izell Hair
Broadriver Corr. Inst.
4460 Broadriver Rd.
Columbia, S.C. 29210

Re: Izell D. Hair v. S.C. State

Appellate Case No. 2019-000039

(Pro se Response to The Petition Filed By
Counsel Mrs. Wanda N. Carter)

Dear Supreme court:

The court found that a plea cannot be considered knowing and voluntary if a defendant "lacks knowledge of material evidence Id., 334 S.C. at 523, 514 S.E.2d at 324. See also "SCR Criml Rule 5 and Brady violations" infra - "lacks knowledge of material evidence in the prosecution's possession." But be advised that my trial counsel failed to review state's evidence on videotapes to her client rather the Orangeburg County Detention Center Rules Prohibited ~~me~~ trial counsel for letting her client review state's evidence video tapes. Keep in mind the video tapes are material evidence in this case. If Orangeburg County Detention Center Prohibited trial counsel letting her client review state's evidence videotapes, then proof of written policy rules from Orangeburg Detention Center need to be subpoena. And if presented and it shows proof that it prohibited, then it still don't matter I'm ~~entitled~~ entitled to review state's evidence videotapes. Trial counsel could've set an appointment at Orangeburg County General Session Court to review the video tapes, but she never tried to let me review the videotapes nor find a way to let me review the videotapes, all she wanted me to do was take a plea.

Defendant testified at the PCR hearing that he was going to trial on August 23, 2016 but took a plea because she coerced me to take a plea under North Carolina v. Alford and told me "it's better if I took the plea because I'm not going to win at trial, they had so much against me." And there was a plea offer at 15-20 years on a flatiron from the solicitor Mrs. Cornwell in Black & white and that they was going to dismiss the indictment ex parte and trial counsel promise me 15 years.

LEGAL MAIL

The only states evidence the state had ~~was~~ what Trial Counsel testified to was victim testimony and videotapes, so I didn't ~~see~~ see the videotapes which is material evidence, so what you get left is a victim testimony with no Rape kit Hospital Report stating of evidence that victim been sexually Assaulted and on penetrated no DNA, no Hair Fibers, no cement that link the ~~the~~ Defendant to the Sexual Assault. You only have the victim stating I did this and did that in which she could be coached to say that.

So now Trial Counsel reviewed states evidence with defendant when he never saw the videotapes and I have rights to review any and all states' evidence against me and to challenge and prepare a defense at trial or plea but I never had the chance to do that and I didn't know what to do and Trial Counsel tricked me, failed to investigate, failed to spare, review, explain states evidence and she coerced me to plead guilty - that's why I plead guilty ~~because~~ and saying yes to everything the Judge asked me because I was lost and didn't know and what I could do, that's why ~~she~~ she was ~~going~~ getting paid for - that's why she wanted me to plea because she wasn't prepared and she knew if I took the plea it was going to be hard for me to get my sentence or conviction vacated or get some type of relief because the state going to look at it like you knowingly and ~~the~~ voluntarily plead guilty but I didn't. I testified at my pre hearing that I told Trial Counsel about my lack of communication and comprehension skills and she took advantage of that and I have evidence that I have learning disorder and comprehension disorder - Trial Counsel also stated in the plea ~~transcript~~ transcript Page 21 lines 2 - "there was other evidence against him and I didn't think that would be sufficient to sway the jury - so I'm glad he made the decision that ~~was~~ he did" she stated "there was other evidence against him", I'm trying to figure out what other evidence because the only evidence that the state have is videotapes of victim, psychologist, and victim mother something I never knew about and videotapes I never saw which is material evidence. Then Trial Counsel went on to say testified "and I didn't think that would be sufficient to sway the jury" that testifying there let you know she wasn't investigating and wasn't getting prepared for trial, because she wanted me to plead guilty and by ~~not~~ making a way for me to review the videotapes also lets you know she wanted me to just plea guilty, wasn't investigating, wasn't getting prepared for trial. Then she testified and say "so I'm glad he made the decision that he did" so what's that telling you (Counsel) she had no intentions on going to trial she wanted a plea. Being that it wasn't no evidence only

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Videotapes of victim, psychologist, and victim mother that I never get the chance to review - After my review and proper assessment of all the evidence in the case (material evidence) then I could find a more intelligent choice (trial or plea) among alternative actions available to me.

Be Advise The Only States Evidence letas Videotapes of Victim, Victim Mother and Psychologist, in which I never saw, in which is Material Evidence in this case, in which I am Entitled to Review to Challenge and Prepare for Defense. Trial Counsel can tell the Court anything that she Review, Show, and on Ex. Plain states Evidence against me but she testified at the PER Hearing that her client didn't see states evidence videotapes. I have a Constitutional Rights to Review any and all states evidence against me. The only thing Trial Counsel stated to me take the plea offer of 15-20 years and I promised I'll get you 15 years, you not going to win at Trial.

Trial Counsel testified at PER Hearing "Plea Counsel explained the date Range from the allegations against applicant shifted from a specific date to the entire year in advance of Applicants guilty plea." Now if you Review plea transcripts ~~some~~ pages 20 lines 19-23 Plea Counsel testified "But I want to share with you the fact that one of the dates, even though Ms. Ashley said the allegation was from A year, one of the dates in the paperwork that was presented to me by the solicitor was that the incident occurred in the last weekend in December ~~2014~~ 2014." That goes to show you that Ms. Beach-Davis Trial Counsel lied under oath because she never was aware of the year expired until the date of my ~~sentencing~~ sentencing August 11, 2016. And I testified that I never saw or had possession of the Indictment, I testified this at my PER Hearing. Trial Counsel stated testified "the paperwork ~~presented~~ that was presented to me by the solicitor was that the incident occurred in the last weekend of December 2014." so the shift range of dates to the year expired are documented on Indictment in which me and Trial Counsel never saw or had possession of the ~~the~~ Indictment. The Indictment was prepared by foreperson of Grand Jury August 17, 2016 and Grand Jury convened on August 22, 2016 - 6 days and 11 days after my sentencing so how you was aware of the shifting ~~to~~ to a year expired. I never signature my name in the Indictment The Court claim it was a Indictment at my Plea sentencing but that was a fully presented Indictment.

The plea was rendered involuntary based on Trial Counsel failure to disclose exculpatory evidence based on Brady v. Maryland, 373 U.S. 83, 82 S.Ct. 1194, 16 L.E.d. 2d 215 (1963).

LEGAL MAIL

If you review SCRIMP Rule 5 and Brady violations - In evaluating Post-Trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, but you got (Client) Trial Counsel suppressing evidence from her own client; (2) the evidence would have been favorable to the accused ~~and~~ but the videotapes are favorable to the accused material evidence and the only evidence they have against defendant and he never got the chance to review the videotapes through and by his ~~attorney~~ Trial Counsel for Defendant to challenge and Persevere A Defense at (Trial or Plea) by Trial Counsel not properly assessing his case as a whole and ~~was~~ defendant making his own intelligent choice (Trial or Plea) among alternative actions available to him and (3) the suppressed evidence is material but the suppressed evidence is material evidence in this case (videotapes).

~~United States v. White, 839 F.2d 1387 (10th Cir. 1988).~~ The Brady disclosure Rule Requires the Prosecution or rather to provide to the defendant any evidence in the Prosecution's possession or (rather to provide to the defendant any evidence in the Prosecution's possession on Trial Counsel's possession) in this case Trial Counsel was the (Prosecution) that may be favorable to the accused and material to guilt or Punishment - State v. Kennedy, 331 S.L. 442, 452, 503, S.E. 2d 214, 220 (Ct. App. ~~1998~~ 1998) (Citing Brady v. Maryland, 373 U.S. 83, 87, 83 Ct. 1194, 10 L.E. 2d 215 (1963). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.L. 3375, 87 L.E. 2d 481, (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." If Trial Counsel would've made a way for her client to review the videotapes, the result of the proceedings would have been different (by Trial or guilty Plea). Clark v. State, 315 S.L. 385, 434 S.E. 2d 266 (1993).

A Trial Counsel can tell her client anything when the client never reviewed material evidence in which the only material evidence which is the video tapes in my case - but Trial Counsel only told me I'm not going to win at Trial, so much evidence against me, they was going to put the victim on stand.

Argument: Trial Counsel erred in failing to disclose the state's evidence in its entirety to Petitioner prior to the Plea Proceeding because this deprive Petitioner of the option of properly assessing his case as a whole and making an intelligent choice (trial or Plea) among alternative actions available to him - The Solicitor, apprised the trial Judge of false accusations apparently alleging that defendant performed anal sex on victim but you have no info, no Case Kit or Hospital Report indicating she was penetrated or any sexual Assault occurred. Trial Counsel testified that the videotapes were shown to Petitioner's Brother, but she couldn't find a way to let me review my own material evidence. The Judge Ruled that Trial Counsel reviewed with the petitioner the state's evidence him, but Trial Counsel testified that Petitioner didn't see the state's evidence (videotapes) against him. Now I'm a ~~man~~ Trial Counsel lie under oath and tell her side of the story and then the Petitioner tell his side of the story and they still believe Trial Counsel when she

Turn On Back

testified that the petitioner never saw the videotapes in which is state's evidence material evidence for my Review.

a guilty plea must represent a voluntary and intelligent choice among alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25 (1970). Petitioner's plea was not giving knowingly and voluntarily because he could not make an intelligent choice but pleading guilty on exercising his right to a trial by jury because he did not receive and review the state's evidence in its entirety the videotapes (are entirely because there wasn't any other evidence but the videotapes) - i.e. - the videotapes in question, prior to the plea proceeding. I was scheduled to go to trial on August 23, 2016 but noticed she wasn't investigating my case, I didn't see no evidence, I didn't even know nothing about a videotapes, so I was coerced to take a North

Carolina v. Alford plea I was lost and didn't know what to do at that time and my level of communication and comprehension skills was addressed to Ms. Branch-Davis. so as you may see I was prepared for trial my Alibi witnesses wasn't inform about we going to trial on August 23, 2016. My witnesses wasn't inform to come to my PCR hearing either, why you think they didn't show up. Counsel's failure to supply all of the state's evidence to Petitioner in the case prior to the plea proceeding constituted deficient representation in violation of the 6th Amendment to the United States Constitution - see Hill v. Lockhart 484 U.S. 52 (1985). Petitioner was prejudiced because but for the omission, he might have proceeded on taking a ~~trial~~ trial.

Appellate Defense Mrs. Wanda N. Carters opinion for the Appeal is without legal merit sufficient to warrant a new trial or resentencing. Defendant never get to review state's evidence on videotapes because this deprive Petitioner ~~of the option of properly assessing his case as a whole and making an intelligent choice (Trial or Plea) among alternative actions available to him.~~ I was lost I didn't know the options I had, I thought my Trial Counsel was ~~to~~ supposed to object to, inform the Court ~~reject~~ withdraw from plea for an continuance of ~~trial~~ since I didn't never get a chance to review none of the states ~~entire~~ evidence and to challenge and prepare an defense.

Petitioner comes forth addressing if the Appeal is without legal merit sufficient to warrant a New Trial it's enough evidence to warrant a New Trial Resentencing.

Petitioner Prays that this Court grant the Petition deems just some type of Relief.

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