

State Of South Carolina
In The Supreme Court

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S.C. SUPREME COURT

Certiorari to Richland County
Honorable Kristi F. Curtis, Circuit Court Judge

James Lamar Trapp,

Petitioner

v.

State Of South Carolina,

Respondent

Appellate Case No 2019-000848

Pro Se Petition For Writ of Certiorari

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Petitioner argues plea counsel gave erroneous advice to plea guilty and plea counsel failed to do any pre-trial investigation

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Issues Presented

Plea counsel gave petitioner erroneous advice to plea guilty, and

Plea counsel failed to do pre-trial investigation on petitioner

Argument

Petitioner argues trial counsel gave erroneous advice to plea guilty. Petitioner was coerced to plea guilty. At petitioner PCR hearing trial counsel testified that the State wanted to take petitioner to trial for the charge he wanted to plea guilty to coercing petitioner to plea to other charges. The Supreme Court held "Incompetent advice distorts the defendant's decisionmaking process and seems to call the fairness and integrity of the criminal proceeding itself into question. When a defendant opts to plead guilty without definitive information concerning the likely effects of the plea, the defendant can fairly be said to assume the risk that the conviction may carry indirect consequences of which he or she is not aware" (*Padilla v. Kentucky* 130 S. Ct. 1473).

Petitioner argues that trial counsel told him to plea guilty to 4 counts of Arm Robbery, 1 count of Attempted Arm Robbery and 4 counts of Kidnapping without doing any Pretrial Investigation. The Supreme Court held "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable, and strategic choices made after less

than complete investigations are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." (Wiggins v. Smith 123 S.Ct 2527)

Petitioner argues he wouldn't have pleaded guilty had he known that the evidence on video shows that the subject who committed these crimes was wearing a full face mask and the victims could not identify subject who committed these crimes. The supreme court held "Holding limited to affirmative misadvice would invite two absurd results. First, it would give counsel an incentive to remain silent on matters of great importance, even when answers are readily available. Silence under these circumstances would be fundamentally at odds with critical obligation of counsel to advise the client of the advantages and disadvantages of a plea agreement." (Padilla v. Kentucky Supra)

Argument

Petitioner argues trial counsel failed to do any pre-trial investigation. Trial counsel was ineffective for failing to investigate and failure to investigate DNA. If she would have investigated there was no chain custody pursuant to S.C. Criminal Rules of Procedures Rule 6. Had counsel rendered to effective assistant of counsel petitioner argues he would of never pled guilty. The supreme court held "Strickland, petitioner claims stems from counsel's decision to limit the scope of their investigation in potential mitigating evidence, *Id.*, at 673, 104 S.Ct. 2052. Here, as in Strickland, counsel attempt to justify their limited investigation as reflecting a tactical judgement not to present mitigating evidence at sentencing and to pursue an alternative strategy instead. In rejecting the respondent's claim, we defined the deference owed such strategic judgements in terms of the adequacy of the investigations supporting those judgements. (*Wiggins v. Smith* 123 S.Ct 2527); the courts also ruled "Our opinion in *Williams v. Taylor* is illustrative of the proper application of these standards.

In finding Williams ineffectiveness claim meritorious, applied Strickland and concluded that counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision to focus on petitioner's voluntary confessions, because counsel had not fulfilled their obligation to conduct a thorough investigation of the defendant's background." 529 U.S., at 396, 120 S.Ct 1495 (1 ABA Standards for Criminal Justice 4-4.1, commentary, P.4-55 (2ded, 1980)

Petitioner argues trial counsel failed to file Motion to suppress photo-identification under Neil v. Biggers. These factors to be considered in evaluating the likelihood of misidentification include the (1) opportunity of the witness to view the criminal at the time of the crime, (2) the witness degree of attention, (3) the accuracy of witness prior descriptions of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) length of time between the time of the crime and the confrontation.

In petitioner's witnesses did have the opportunity to view suspect. The witnesses degree attention was heightened and described things about the suspect which proves it wasn't petitioner. (3) The accuracy in petitioner's victims said suspect had a mask on. (4) Prior description

was of assailant who wasn't petitioner. (5) The length of the crime scene and confrontation showed negative results of the petitioner. Had counsel rendered to effective assistant of counsel petitioner would of never plea guilty.

Petitioner argues that he was guilty of charges of attempted arm robbery and want to pled guilty only to that charge. petitioner was told by counsel if he didn't plea guilty to the rest of charges that the state would of taken him to trial on the charge petitioner wanted plea guilty to. Had counsel did a pre-trial investigation instead of giving erroneous advice to petitioner to pled guilty of all charges, petitioner argues he would of pled guilty to attempted arm robbery and went to trial on the rest of the charges. The supreme court held "while the phrase was coined as a standard for determining whether an in-court identification would be admissible in the wake of suggestive out-of-court identification with the deletion of irreparable it serves equally well a standard for the admissibility of testimony concerning the out-of-court identification itself. It is **382 the likelihood of

of misidentification which violates a defendant's right to due process and it is this which was the basis of the exclusion of evidence in *Trapp*. Suggestive confrontations are disapproved because they increased the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that increased chance of misidentification is gratuitous." (*Neil v. Biggers* 93 S.Ct 375)

Conclusion

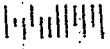
Based on the foregoing arguments, Petitioner respectfully requests this court grant the petition for writ of certiorari order further briefing on the issues presented. Wherefore petitioner convictions and sentences should be vacated.

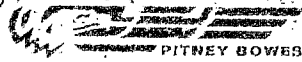
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Date

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