

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Spartanburg County
Honorable Larry B. Hyman Circuit Court judge

CHRISTOPHER HAMPTON,

APPELLANT **RECEIVED**

v.

MAR 04 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO, 2017-002374

PRO SE BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

CHRISTOPHER L. HAMPTON 314697
APPELLANT PRO SE

SOUTH CAROLINA DEPARTMENT OF CORR.
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

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TABLE OF AUTHORITIES

CASES

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STATEMENT OF ISSUE ON APPEAL

Trial Counsel was Constitutionally ineffective for failing to object to the waiver of rights form and Statement from being placed into evidence during the guilty plea proceeding when the Solicitor and the Court had explicitly given him the opportunity to object, and because the waiver of rights form was clearly successive and should have been suppressed, along with the Statement, because I had informed trial counsel that the police ignored my repeated requests for Counsel's assistance prior to that signed waiver and Statement.

STATEMENT OF THE CASE

Appellant Pled guilty to murder on April 03, 2006 at the Spartanburg County General Sessions Court before Judge John C. Few and was sentenced to life imprisonment. Appx. 1-44.

Inasmuch as trial counsel passed away two days after the guilty Plea Proceeding, the filing of a notice of appeal out of time was submitted, but the South Carolina Court of Appeals denied and dismissed it on May 17, 2006.

On September 15, 2006, appellant filed a PCR application with the Spartanburg County office of the Clerk of Court. In response to the PCR action, a PCR hearing was convened on September 17, 2007 at the Spartanburg County Courthouse before Judge Roger L. Couch. On November 02, 2007, Judge Couch signed an Order of dismissal, which was filed on November 05, 2007, denying appellant's allegations of ineffective assistance of counsel in the case, but granted a belated direct appeal under White v. State, 263 S.C. 110, 208 S.E.2d (1974). Appx. 46-59. However, because PCR counsel failed to appeal Judge Couch's order

of dismissal per the first PCR action, appellant did not enjoy the benefit of an appeal of the first PCR action or the belated direct appeal that was granted by the first PCR judge.

On April 15, 2014, appellant filed a PCR application, requesting a belated appeal of the first PCR action. Appx. 60-79. A Return was filed by the Respondent on May 08, 2015. Appx. 80-85. A second PCR hearing was held on November 09, 2015 before Judge Larry B. Hyman, Junior. App 87-89. At the second PCR hearing, appellant was present and represented by J. Brandt Rucker, and Assistant Attorney General Alicia A. Olive appeared on behalf of the State. On October 04, 2017, Judge Hyman granted appellant's Order for a belated appeal of the first PCR action per Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991) Appx. 91-99.

Thereafter, appellant's first PCR hearing was reconstructed via a hearing held on November 26, 2018, at the York County Courthouse before Judge Couch. Appx. 101-170. The undersigned appellant was present and represented by Wanda H. Carter Esquire at the reconstruction hearing and Assistant Attorney General Jordan Cox appeared on behalf of the State.

Appellant appealed. An Anders brief was filed by appellate Counsel, this pro se brief follows.

STANDARD OF REVIEW

Ineffective assistance claims are generally not cognizable on direct appeal, unless it conclusively appears from the record that defense counsel did not provide effective representation. United States v. Benton, 523 F.3d 424 (4th Cir) 2008

ARGUMENT

Trial Counsel was Constitutionally ineffective for failing to
Object to the waiver of rights form and statement from being
Placed into evidence during the guilty plea proceeding when
the solicitor and the Court had explicitly given him the opp-
ortunity to object, and because the waiver of rights form
was clearly successive and should have been suppressed,
along with the statement, because I had informed trial
Counsel that the police ignored my repeated requests for
Counsel's assistance prior to that signed waiver and
statement.

I pled guilty to murder. During the plea proceeding, the
Solicitor gave the recitation of the facts, and afterwards,
the following was said:

SOLICITOR: It's a waiver of rights form and his
statement on August 12th to serve as a factual basis,
if the defense has no objection, if madam Court reporter

Would mark it and submit it to the Court.

THE COURT: Does it? Appx. 15, lines 21-25

MR. BARTOSH: NO Objection.

(Whereupon, state's exhibit number 1 was marked for identification and admitted into evidence without objection.) Appx. 16, lines 1-3

I was appointed Mr. Michael Bartosh, esq. from the Spartanburg County Public defender's office; during his first ever visit to me at the county jail, he asked me why in the world did I confess. I explained to him that the investigators in the case, Lieutenant Steve Lamb and Investigator Jay Steadman "gave me no choice." I explained the circumstances of my confession to Mr. Bartosh in full detail; especially the fact that Lieutenant Lamb had tried to question me in the car, during the drive from Edgefield but I refused to sign the miranda form he presented and that I requested a lawyer multiple times and demanded to be taken "straight to the Spartanburg County jail," but

Once we got to Spartanburg, I was taken to the narcotics building, cuffed to a desk and was shown evidence while being interrogated for hours until I finally confessed. Mr. Bartosh had possession of the discovery material; if he at all looked through the discovery, he should have known that it contained that waiver that I had "refused to sign" and that should have served as some sort of proof or, clear evidence to him that I had invoked "all" of my Miranda rights at the time Lt. Lamb presented that first pre-interrogation waiver at 09:50 a.m., and his most prejudicial error was that he did not move to have the subsequent 14:18 p.m. signed waiver and statement suppressed because the "never ceasing" interrogation that led to that 'unlawful' subsequent 14:18 p.m. signed waiver was a clear violation of the Miranda rules. If a defendant invokes his or her right to counsel while in custody, then the interrogation must cease; and if not, then the statement is inadmissible into evidence. State v. Johnson, 41 SC 6458, 776 S.E.2d 367 (2015). Citing to Edwards v. Arizona, 451 U.S. 477 (1981). Once an

accused has expressed his desire to deal with police only through Counsel, he is not to be subjected to further interrogation until Counsel has been made available to him unless the accused himself initiates further communications with police, see Edward v. Arizona, supra. There must be a determination of whether the accused invoked his right to counsel and whether he subsequently waived the right to be invoked. Edwards, supra

In the case at hand, it is clear that I invoked my Miranda rights at 09:50 a.m. (see pro se Appx. 3), then subsequently waived my Miranda rights at 14:18 p.m. (see Pro se Appx. 4). So clearly, Edwards v. Arizona applies in this case. In light of the fact that the police initiated, interrogation literally "never ceased," the signed 14:18 p.m. statement and waiver was inadmissible into evidence and there is a reasonable probability that a suppression action would have been granted prior to trial, and the case against me would have been dismissed because the indictment itself is the fruit of the poisonous tree because the details in the indictment came from the illegally obtained statement. Appx. 175.

Trial Counsel erred in failing to investigate and develop the Edwards v. Arizona error in this case, which constituted deficient legal representation in violation of the Sixth Amendment, and me and my case was prejudiced due to the ineffective assistance of counsel. see Hill v. Lockhart 474 U.S. 52 (1985)

Although I cannot prove that I "verbally" repeatedly requested an attorney prior to the signed pre-interrogation waiver, there is, irrefutable evidence that I exercised my Fifth Amendment right to remain silent by refusing to talk or sign that 09:50 a.m. initial pre-interrogation waiver, which is essentially one and the same as being violated of my Fifth and Fourteenth Amendment right to have counsel present during custodial interrogation. Edwards v. Arizona. supra. Therefore, Trial Counsel was Constitutionally ineffective for failing to object to the waiver of rights form and statement from being placed into evidence during the guilty plea proceeding when the solicitor and the court had explicitly given him the opportunity to object, and because the waiver of rights form had clearly been successive, and should have been suppressed

Along with the statement because I informed trial counsel
that the police ignored my repeated requests for counsel
prior to that signed waiver and statement. Claims of
ineffective assistance of counsel must be raised in a
motion for post conviction relief, rather than on direct
appeal, unless the record conclusively demonstrates
ineffective assistance. U.S. v. Reid, 436 Fed. Appx. 141
(4th Cir) 2011 quoting, United States v. Benton, 523 F.3d
424 (4th Cir.) 2008.

Trial Counsel's "No Objection" response to the plea
judge, in reference to the "inadmissible" waiver and statement
conclusively shows that he was constitutionally ineffective for
allowing the Edwards violation. It was because of trial
counsel's deficient performance in not challenging the
statement, I ultimately followed his erroneous advice to
plead guilty; his unprofessional errors prejudiced me,
because without my confession to be used against me,
I would not have pled guilty because the statement
was the only evidence the state had to prove that
the victim was deceased, or that I was involved.

CONCLUSION

Based on the forgoing argument, appellant's
Conviction and sentence should be reversed.


Christopher L. Hampton
pro se Appellant

This 02 day of March 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Spartanburg County
Honorable Larry B. Hyman, Circuit Court judge

CHRISTOPHER HAMPTON,

APPELLANT

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v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true Copy of the Pro se Brief of Appellant pursuant to White v. State and Pro se Affidavit in response to the State's return pursuant to Austin v. State in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire at the Rembert Dennis Building, 1000 Assembly street, Room 519, Columbia, SC 29201, on this 02nd day of ~~March~~ 2020.

Christopher L Hampton

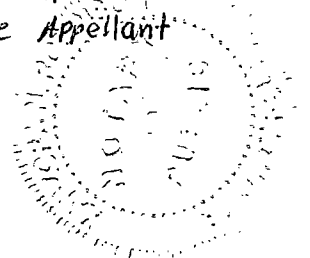
Christopher L Hampton

PRO se Appellant

SWORN to AND SUBSCRIBED TO Before Me:

THIS 2nd DAY OF MARCH 2020

Kongon Robinson
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 8/5/2024



March 02, 2020

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South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

RECEIVED
MAR 04 2020
SC Court of Appeals

Re: Christopher L. Hampton v. State
Appellate Case No. 2017-002374

Dear Ms. Kitchings:

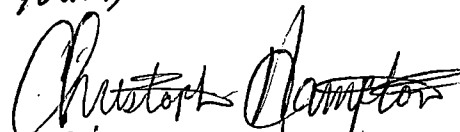
I wrote your office about a month and a half ago to find out if my pro se appeal pursuant to White v State was accepted; also in that letter I ask if I could get permission to submit a supplemental affidavit to respond to the state's return pursuant to Austin v. State, on my own behalf.

I did, on February 06, 2020 receive the stamped copy of my pro se appeal that you mailed me in response to my letter; however, you did not inform me on whether I would be allowed to submit a pro se affidavit to give my personal response to the state's return pursuant to Austin v. State.

On February 25, 2020 I received another letter from you giving me permission to submit a response within 15 days; however, I found the letter a bit confusing, but I, to the best of my knowledge, interpret your letter as a response to my letter asking for permission to submit the affidavit.

Inclosed, I have submitted a supplemental affidavit in response to the state's return pursuant to Austin v. State. Also, I have submitted another pro se brief pursuant to White v. State. In my newly submitted prose brief, I only modified one of my previous issues because I was not sure if I had applied the CORRECT Standard of review for that issue. It is my hope that this brief will be accepted and considered along with my original pro se response.

Very truly yours,


Christopher Hampton

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South Carolina Court of Appeals

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LEGAL MAIL