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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
WILLIAM A. MCKINNON PRESIDING JUDGE

CASE NO. 2014-CP-32-02548
APPELLATE CASE NO. 2019-000031

ANDRA B. JAMISON, PRO-SE LITIGANT — PETITIONER

VS.

STATE OF SOUTH CAROLINA — RESPONDENT

REPLY TO RESPONDENT'S BRIEF

ATTORNEY GENERAL'S OFFICE
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ANDERSON S.C. 29625

Table of Contents

Table of Authorities

Cases:

Statutes:

Constitutional Provisions:

The Petitioner hereby avers that he stands firmly on all points raised in the amended petition for writ of certiorari. This reply will address the points raised in the States response that requires a reply. After review of the State's response, it became clear that the State, by and through its attorney, made many false and/or inaccurate statements upon this Court. The Petitioner herein presents to this the true facts of this case and the supporting evidence thereto, as follows:

ISSUE I

Acknowledging, the PCR Court's ruling, "The petitioner through his amended application for PCR relief, the petitioner argues that trial counsel did not argue that the petitioner's statutory right to a reasonable opportunity to an independent blood test was violated, **and** that the felony DUI case should be dismissed." See PCR court ruling order of dismissal APP. P. 1069 number 14.This issue was also preserved by and through counsel on record Glen Walters through motion to alter or amend the judgement on all issues addressed in the PCR trial, petition, and amended petition. See motion to alter or amend APP. P. 1076. The court order and respondent evades the actual issue that trial counsel was ineffective for failing to argue the remedy of dismissal as it pertains to the constitutional violation of denying the petitioner of statutory right to a reasonable opportunity to independent blood testing. See State V. Lewis 266 S.C. 45, 221 S.C. 2d 524 (1976). The petitioner does not attempt to re-litigate the ruling from the court of appeals. The court of appeals ruled in favor of the motion to suppress. See court of appeals ruling APP.P. 1309, 1310.

At the PCR hearing petitioner presented the following issue: Trial counsel was ineffective when counsel failed to provide adequate assistance of counsel at critical stages of the proceeding and argue how the state's failure to provide a statutory right to reasonable opportunity to independent blood testing required dismissal. APP.P. 1130 L.10-14, APP.P.1133 L.15-20.

In looking at the said motion to suppress without the remedy of dismissal it simply says that we can go to trial but not with the blood test results that the state performed on their sample of the petitioners blood, and any testimony, evidence, finding reports, etc. Regarding the testing of the petitioner's blood. Because the state failed to comply with provisions of statute requiring independent blood testing. See motion to suppress APP.P. 1304 also see the Trial Counsel's argument APP.P.133 L.4 - P.134 L.11. The purpose of this provision [§ 56-5-2950] is to permit the accused person to gather independent evidence to submit in reply to that of the prosecuting authority here, the accused person (petitions) was denied that right, see Town of Fairfax vs. Smith 285 S.C. 458, 460, 330 S.E. 2d 290 (1985). If trial counsel had moved for dismissal, it would have safeguarded against an unfavorable ruling from Trial court.

This would have alerted the reviewing courts to the fact that the petitioner objected to the proceedings going any further than the denial of a reasonable opportunity to independent blood testing because the error happened before trial, and the dismissal would have helped demarcate the substantial violation and any trial error found in the court of appeals ruling, see court of appeals ruling APP.P.1309, 1310. There was no rational explanation for counsel not asking or preserving the remedy of dismissal and absolutely no risk in doing so, see State vs. Masters 308 S.C. 433, 418 S.E. 2d. 552 (1992). Masters moved for a dismissal at trial thus preserving the issue for this court to reverse, ruling that Masters was effectively denied reasonable opportunity to independent blood testing, trial court should have dismissed the charges.

Had counsel moved to dismiss in the motion to suppress or at trial as Masters (Supra) The outcome of the case would have been different.

The respondent fails to realize that the petitioner was denied a substantial error, denial of a reasonable opportunity of independent blood testing, see return P.10.C Verdict & Subsequent proceeding. Petitioner would like to correct this error see court of appeals ruling APP.P. 1309, 1310.

Unlike and distinguishable from petitioners case Wilson upon release he received his vial of blood, but failed to follow up on having independent blood analysis performed.

In Wilson, this court found overwhelming evidence of intoxication because the defendant admitted to the police "that he had consumed a half pint of Vodka" 296 S.C. at 74, 370 S.E.2d 715. Unlike the petitioner, the defendant had also taken a breathalyzer test "which registered a blood alcohol content of .28" id. This court found that the blood test results were clearly "cumulative to the other evidence" of intoxication. Id. At 76,370 S.E.2d 716. To the other blood respondent.

In Degnan, this court found overwhelming evidence of intoxication because the defendant "admitted drinking five or six beers, was unable to complete the alphabet, was dazed, had trouble walking and had to lean on the car." 305 S.C. at 372, 409 S.E.2d at 348. This court found that this evidence prevented the defendant from showing "prejudice in admission of her refusal to submit to the breathalyzer." Id.

Petitioner's case clearly distinguishable from these cases. There was no open container, no admission of drinking, no eyewitness to petitioner taking an alcoholic drink, there was no properly admitted evidence that conclusively proved that petitioner took an alcoholic drink or drugs prior to the accident.

The respondent has not cited one case of precedent that says this substantial violation is harmless.

Respondent claim the petitioner was unable to operate his motor vehicle in his lane on a straight road. See Respondent's brief P.5 The testimony of Shonda Cheeks, she corrects herself, the collision occurred at the moment her attention was called to the other side. Therefore, she saw no lane changes. See; APP.P.719 L 11-P720 L.3.

ISSUE II

Trial counsel was ineffective, deficient and prejudicial for not objecting to the arresting officer's failure to produce video recording of the incident site as required by § 56-5-2953 and stipulating to Cayce Public Safety affidavit that it cured the requirement under statute § 56-5-2953 (B).

PCR Court ruled as to the admissibility of the roadside video and affidavit. There was no ruling as to whether the video recording and affidavit was in compliance with § 56-5-2953 subsection (A), and/or (B) as published by the solicitor. See APP P. *********

The edited video recording may be admissible but cannot come in as video that satisfies § 56-5-2953 (A) the statute is clear, video recording at the incident site must meet certain mandatory requirements.

The version of section § 56-5-2953 (A) in effect at the time:

SECTION § 56-5-2953. Incident site and breath test site video recording.

(A) A person who violated Section § 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.

(1)(a) The video recording at the incident site must:

(i) not begin later than the activation of the officer's blue lights;
(ii) include any field sobriety test administered; and
(iii) include the arrest of a person for violation of Section § 56-5-2930 or Section § 56-5-2933, or probable cause determination in that the person violated Section § 56-5-2945, and show the person being advised of his Miranda rights

There are three directives that section § 56-5-2953 requires to be in compliance (listed above) for video recording at incident site. Petitioner testifies to the video being insufficient as to statute § 56-5-2953 (A) APP.P 1149 L. 17-1150 L.4.

The video recording that the state entered into evidence does not qualify because it was edited. State exhibit 49 C.D. roadside video see APP.P. 10L.5 also APP.P. 320L.20 – P. 321L.16. Sgt. Marzol testifies to the video being edited to 5 min. from the end of the approximate 25-30 minute recording, see APP.P. 321L.10-16, and APP.P. 354L. 1-10 as according to statute this does not qualify. Statue is clear that the arresting officer provides complete video recording of the accused conduct at the incident site, see § 56-5-2953 (A)(1)(a)(i), City of Rock Hill vs. Suchenski 374 S.C. 12, 646 S.E. 2d 879.

(1)(a). The video recording at the incident site must:

(i). not begin later than the activation of the officers blue light; see city of Rock Hill vs. Suchenski 374 S.C. 12, 646 S.E. 2d 879.

Trial counsel should have objected instead of allowing the improper edited video, thus causing prejudice, and by failing to advocate his client's cause. Trial attorney admits this was to benefit the solicitor, see APP.P.48L.19-21.

The version of section § 56-5-2953 (B) in effect at the time:

Subsection (B) of section § 56-5-2953 outlines several statutory exception that excuse noncompliance with mandatory videotaping requirements. Noncompliance is excusable: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it is impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed; (3) in circumstances including, but not limited to, road blocks, traffic accidents, and citizen's arrest; or (4) for any other valid reason for the failure to produce the videotape based upon the totality of circumstances.

Trial counsel contends there was no legal reason to challenge the admission of the affidavit for not having video of the incident site, but to the contrary, law states (§56-5-2953), dismissal is an appropriate remedy provided by statute §56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B), exception, see affidavit APP.P.1307,1308. See APP.P. 1169 L. 10-1170 L.2

There is no mention of subsection (G) in the PCR court's ruling. Petitioner contends that this is not preserved for review see City of Rock Hill v Suchenski 374 S.C. 12, 646 S.E. 2d 879.

ISSUE V

In the PCR Judge's order of dismissal, the Judge ruled in error on the facts of the ineffective claim against Appellate Council Wanda Carter.

The PCR Judge ruled that Wanda Carter argued explicitly that the State denied the Petitioner his statutory right to obtain an independent blood test.

The actual issue was that the appellate council Wanda Carter failed to reply to the states harmless error claim. See amended petition (application) for post conviction APP.P.1022 Wanda Carter also failed to show how the outcome of the trial was affected see original petition for PCR APP.P.987.

At PCR trial, Petitioner testified to Wanda Carter that the first appellate council failed to address the harmless error issue. This issue, in summary is the fact that the State denied the Petitioner a reasonable opportunity for independent blood testing and this issue was not subject to harmless error see PCR Transcript at APP.P.1172 L.3-1173 L.11.

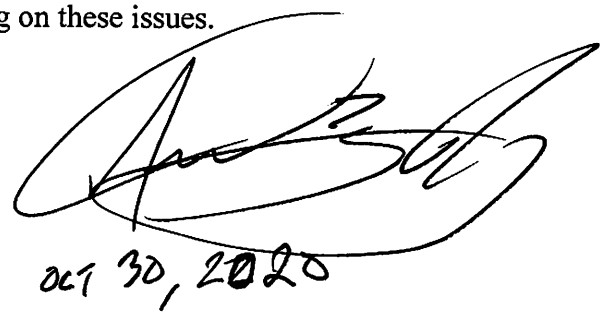
Wanda Carter should have known that the purpose of this provision is to permit an accused person to gather independent evidence to submit in reply of the prosecuting authority see Town of Fairfax v. Smith 385 S.C.458,460,331 S.E. 2d 290 (1985).

This issue is preserved through Motion to Alter or Amend by council on record Glenn Walters see APP.P.1076

This issue has already been exemplified in the Amended Petition for Writ of Certiorari. Please refer to Amended Petition for Writ of Certiorari P.8.

Conclusion

For Reasons stated through the Amended Petition for Writ of Certiorari, Reply to the Respondent's Brief, Petition for PCR, Amended Petition for PCR and also PCR Trial. See Motion to Alter and Amend at APP.P. 1072-1075 and in particular APP.P.1076 Petitioner asks this Court to grant the Petitioner and to allow full briefing on these issues.



Oct 30, 2020