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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari To Aiken County

Honorable Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. #2020-000570

Randy Schultz Petitioner,

-vs-

State of South Carolina Respondents.

Petitioner's Pro Se Johnson Petition
For Writ of Certiorari

Randy Schultz
Q3-A-209 #298635
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Pelzer, South Carolina
29669

Pro Se Petitioner

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ISSUE PRESENTED

Appellate Counsel in preservation of the issue upon appeal failed to properly present the "prejudice" and "harm" analysis under a proper scheme that would establish the failure of trial counsel to investigate, interrogate and/or interview the State's lead witness, who has been identified as a "Confidential Informant" ("C.I."). This interview, interrogation and/or investigation would have brought forth inadmissible evidence that would, at this point, undermine the knowingly and intelligently entered into guilty plea.

STATEMENT

The facts are as relayed by Appellate Counsel in their Johnson Petition. In June of 2016, the Aiken County Grand Jury indicted Petitioner, Randy Schultz, for failure to stop a motor vehicle when signaled by a law enforcement vehicle and two counts of distribution of cocaine base, under indictments #2016-GS-20-1057, 1059, and 1060. (App.pp. 40-45). On December 5, 2017, Petitioner appeared before the Honorable Doyet A. Early, III, Circuit Court Judge, and jury selection began. The trial was to start later in that week. On December 7, 2017, Petitioner, once again, appeared before Judge Early and would enter a plea of guilt. Judge Early sentenced Petitioner to three (3) years for failure to stop and two concurrent sentences of fifteen (15) years, each, for the distribution charges. (App.pp. 46-48). No direct appeal was sought after the guilty plea proceedings.

On October 12, 2018, Petitioner initiated this Application for Post-Conviction Relief ("PCR"). (App.pp. 49-70). The Respondents filed their return on February 4, 2019. (App.pp. 71-82). Petitioner filed an amended application on May 6, 2019. An evidentiary hearing was held on January 21, 2020, in the Aiken County Courthouse, before the Honorable Courtney Clyburn Pope, Circuit Court Judge. Petitioner had been represented by Martin C. Puetz, Esquire, during the jury selection and guilty plea proceedings. Petitioner was represented by Authur K. Aiken, Esquire, during the PCR proceedings. Respondents were represented by Brianna L. Schill, Esquire, of the South Carolina Attorney Generals Office. A written Order was signed by Judge Pope on

February 21, 2020. This Order would deny the relief sought within the PCR proceedings. A timely notice of appeal was filed with this State's Supreme Court seeking Certiorari on April 1, 2020. This pro se petition for writ of certiorari sets forth the following.

ARGUMENT

Appellate Counsel, in preservation of the issue upon appeal failed to properly present the "prejudice" and "harm" analysis under a proper scheme that would establish the failure of trial counsel to investigate, interrogate and/or interview the State's lead witness, who has been identified as a "Confidential Informant" ("C.I."). This interview, interrogation and/or investigation would have brought forth inadmissible evidence that would, at this point, undermine the knowingly and intelligently entered into guilty plea.

Petitioner would incorporate the stance and argument that has been presented and preserved in Appellate Counsel's Johnson Petition, where it is evident by the standards set forth in that Petition that there exists Constitutional deprivations under well-settled standards of law. It is undisputed that the basis of the argument sets forth a matter that should be examined by this Court and taken under heavy consideration as relates to the next part of the argument that clearly sets forth how a "harm" occurred and the "prejudice" envisioned by these facts in evidence.

The basis of this Petitioner's pro se Johnson Petitioner arises under the guise of the facts presented and

preserved in the lower court, and must receive its just determination in this Court.

The basis of this claim now before this Court, and relevant to the evidence preserved in the record, there was a complete failure on the part of trial counsel to interview, interrogate and/or investigate the State's lead witness, the C.I., prior to preparation for trial; or the entering of a guilty plea, creates a preponderance of the evidence that trial counsel was grossly and extremely ineffective in his representation of this Petitioner in these matters.

A criminal defense attorney has a duty to perform a reasonable investigation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007)("[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case"). See also, Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008)(PCR Court erred in not finding trial counsel ineffective for failing to investigate). The failure to properly pursue an investigation relating to the C.I., has caused this Petitioner to suffer great and extreme harm and prejudice.

When cross-examining trial counsel during the PCR proceedings, trial disclosed that the C.I., i.e., Marsha Kim Bell, was an essential witness in this case. (App.pp. 4-6). She was of such importance that, if, her credibility was to be placed into jeopardy that critical evidence would have been suppressed, relating to the purported "sale" of cocaine base. So, the failure to interview, interrogate and/or investigate this C.I., was a fatal flaw or decision that placed trial counsel's representation into serious jeopardy; and this Petitioner's rights to a fair and

impartial trial, or guilty plea, completely denied. This type of claim and evidence is the very basis that ineffective assistance of trial counsel is founded upon.

The credibility of this purported C.I., as would be evident due to her status or contractual obligations as a C.I., were placed into serious jeopardy due to the fact that she had been arrested, and charged, several days, prior to this trial/plea for distribution charges. The question at stake is one of whether there existed bias on the applicability or dismissal of the charge for possession of crack cocaine, on December 4, 2017, three days prior to the selection of a panel of jurors; and did this charge being dismissed have the propensity to lead to a credibility issue in a confrontation context for failing to abide by the terms of her contractual obligations as a C.I.; or that such an arrest would damage the admissibility of the video and/or photographs due to the C.I.'s recent criminal actions.

Evidence of a witness' bias can be compelling impeachment evidence, and for that reason "considerable latitude is allowed" to defense counsel in criminal cases "in the cross-examination of an adverse witness for the purpose of testing bias." State v. Brown, 3030 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). This State's appellate courts have followed the "general rule" that "'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony'" so that "'on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.'" State v.

Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976)(quoting 98 C.J.S. WITNESSES §§460, 560a). "Rule 608(c), [of the South Carolina Rules of Evidence] 'preserves this longstanding] South Carolina precedent.'" State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) and citing Brewington, 267 S.C. at 1, 226 S.E.2d at 250). See Rule 608(c), SCRE ("Bias, prejudice, or any motive to misrepresent may be shown to impeach a witness by evidence otherwise deduced").

In Sims, which was decided three months prior to Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), this Court discussed the use of pending charges as evidence of bias to impeach a State's witness. 348 S.C. at 23-26, 558 S.E.2d at 522-23. This Court stated, "There was the substantial possibility [the witness with pending charges] would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he cooperated" 348 S.C. at 25, 558 S.E.2d at 523. In this case, the State's witness had been arrested, 3 days prior to the selection of the jury panel for the purpose of a trial in a criminal prosecution for possession of crack cocaine. Trial counsel failed to perform under reasonable norms where he did not interview, interrogate or investigate the potential lead witness for the State; where he did not pursue the matter to trial and "open the door" as to this recent arrest that would have (1) challenged the credibility of the State's witness; (2) caused the status of the C.I. to be non-existent in the fact she failed to abide by her contractual obligation as a C.I.; and (3) where the challenge to the testimony of the C.I., had the propensity in which to cause the video or photographs to be suppressed due to the C.I.'s arrest for drugs.

It is a matter of record that trial counsel was aware of the identity of the C.I., and the fact that the C.I. had been arrested for drug offenses three days prior to the time the C.I. would have had to come forward and testify as the State's lead witness in the Petitioner's criminal trial. The failure on the part of trial counsel to interview, interrogate and/or investigate this lead witness; then continue on to trial, after a jury had been impaneled, was a fatal error which prejudiced Petitioner's fundamental rights guaranteed him by our State and Federal Constitutions ... (1) notice and trial by jury; (2) confrontation/cross-examination of witnesses; (3) present evidence that would have been beneficial to his version of the facts of the facts relating to his defense; and (4) notice of crucial evidence that could impede and/or support his case. Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 642 S.E.2d 565 (2007)(relying on In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003)). Due process is a guarantee that assured by both our State and Federal Constitutions. (Article I, :3) and (Fifth, Sixth and Fourteenth Amendments). When trial counsel persuaded Petitioner to waive these fundamental rights, it was done so in a manner that was not fully knowingly and intelligently made. It is evident by these matters that, had Petitioner had knowledge of the very essential benefits of challenging the State's lead witness and the recent arrest for drug charges, which could have led to her credibility being a prime issue, under a bias framework, and the possible suppression of the purported critical evidence, Petitioner would have surely demanded to proceed to trial.

During the guilty plea, trial counsel had coached Petitioner to respond as he did, because it is now evident to

Petitioner that, had he not responded in such a coached manner, the plea judge would have refused to accept the plea and this matter would have proceeded to trial. It was trial counsel advise that Petitioner plead and abandon the jury process. It is further evident that Petitioner had desired a jury trial due to the fact that he had empaneled a jury for such purposes.

It is reasonable to presume by the testimony during the PCR proceedings that trial counsel had ample experience, (41 years), to comprehend the value of the claims related to the issues of bias, interviewing, interrogation and/or investigation of the lead witness, and where it became evident during the PCR proceedings that trial counsel had prior knowledge of the C.I.'s recent arrest that could have changed the course of the trial that would have been favorable to this Petitioner. Even as a course of procedure during and within the trial, trial counsel could have moved for a motion to dismiss, (see State v. Dean, 427 S.C. 92, 828 S.E.2d 243 (2019)(motion to dismiss due to assurance of witness's testimony for leniency), thereby securing the matter, or having the trial court dismiss the claims for these reasons stated above. Trial counsel botched the case, for whatever reasons, in an effort to be done with this case. This case should be reversed, the PCR Court's Order reversed due to the above argued reasons and remanded to the lower court for further proceedings consistent with this Court's Order.

CONCLUSION

WHEREFORE, Petitioner prays this Court order that the PCR Court's Order be reversed and this matter remitted to the lower court for proceedings consistent with this Court's Order.

December 22, 2020

12-22-20

Respectfully Submitted,

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PRO SE PETITIONER