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SC Court of Appeals

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Honorable Robin B. Stilwell, Circuit Court Judge

Case No.: 2017 - 001777

Alonzo Columbus Jeter, III,

PETITIONER,

V

State of South Carolina,

RESPONDENT.

**AMENDMENT TO
PETITION FOR WRIT OF CERTIORARI**

Alonzo Columbus Jeter, III
PETITIONER / Pro Se

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

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ISSUE PRESENTED

Was Plea Counsel ineffective as he failed to properly and thoroughly investigate the video(s) of the controlled buy(s) and by also entering into a plea negotiations and an agreement wherein the defendant would not be allowed to view the video(s) and evidence regarding the buys?

STATEMENT

This amendment to the Petition for Writ of Certiorari is intended to be incorporated and added to the Petition for Writ of Certiorari. The intent is that the Court not consider this issue abandoned by Petitioner. This issue was raised in the PCR Court, although not sufficiently raised as to allow Petitioner opportunity to completely address this issue in totality. This issue was also not ruled on in the PCR Court's order.

Petitioner presents this issue to this Court seeing that the Court would adjudicate regarding this issue while taking judicial notice of the Rule 71.1(d), SCRCP, errors which exists in case regarding this issue. See Supplemental Appendix pages 1-6 and Appendix pages 191-208, which now provides the sufficient facts and proof that Petitioner has diligently pursued this issue and the failing to amend the PCR application, failing to sufficiently raise the issue, and the failing to pursue a ruling by the PCR Court was not by fault of the Petitioner. The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence. Frasier v State, 351 S.C. 385, 389, 570 SE2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

ARGUMENT

Plea Counsel was ineffective as he failed to properly and thoroughly investigate the video(s) of the controlled buy(s) and by also entering into a plea negotiations and an agreement wherein the defendant would not be allowed to view the video(s) and evidence regarding the buys.

Petitioner entered in a plea of guilty to the charges of 2 counts of distribution of methamphetamine, two counts of proximity to a school, public park or public playground, and trafficking 10-28 grams of methamphetamine. Plea counsel recommended Petitioner to plead guilty to these charges, it wasn't Petitioner's choice from the start. App.p. 92, lines 7-9. Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. Robinson v State, 422 S.C. 78, 810 SE2d 32 (2018). When a defendant asserts a claim of ineffective assistance of counsel in the context of a guilty plea, undisputed testimony of the defendant that he would not have pleaded guilty to the charges but for defense counsel's advice is sufficient to prove that defendant would not have pleaded guilty. Davie v State, 381 S.C 601, 675 SE2d 416 (2009). Petitioner made it plain and clear throughout his testimony, which was undisputed, that he would not have pled guilty if it were not for counsel's advice, incompetency and ineffectiveness. App.p.67, lines 16-20; App.p.75, line 15-App.p.76, line 22.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v State, 300 S.C. 117-118, 385 SE2d at 625 (1989) (citing Strickland v Washington, 466 U.S. 668, 104 S.ct. 2052 (1984)). This first prong is satisfied as Petitioner will show that Plea Counsel's performance was clearly deficient as it is measured by "reasonableness under professional norms". Plea Counsel did not properly and thoroughly investigate the case nor the video(s) and other pertinent evidence regarding the controlled buy(s). Plea Counsel did not obtain a copy of the video which would have allowed him the opportunity to thoroughly investigate the video, take notes, and to check the authenticity of the video and of the informant. PCR Counsel instead viewed the video in the presence and while it was under the State's control. This in-turn placed plea counsel in the position where he could only question the State regarding what was seen in the video. Plea Counsel was not present during the recording of the video, and therefore would have no idea of where the recording of the video actually started or stopped. Neither did Plea Counsel have access to a copy of the video which would have allowed him to investigate or have investigated whether or not the video had been

altered or edited in any way. This same failure did not allow Plea Counsel to investigate any accompanying audio regarding the controlled buys.

Plea Counsel's performance was also deficient and was not reasonable under professional norms as he entered into plea negotiations and agreements based on the refusal to allow Petitioner to view the video and listen to any and all audio in regards of the controlled buy(s). In a Memorandum of Chief Justice Jean Toal, dated March 1, 2004, the Chief Justice directed all Solicitors in South Carolina to cease the practice of "offering plea agreements to defendants on the condition that they forgo discovery". This matter and Memorandum of Chief Justice Toal was also mentioned and discussed in the 2013 South Carolina Lawyer article by Attorney David Aylor, titled, 'Keys to the South Carolina Plea Process' 25-Jul SCLAW 26.

Also in 2012, in the case of Hyman v State, 397 S.C. 35, 723 SE2d 375 (2012), Judge Michael G. Nettles expressed that he was, "concerned over the seemingly widespread policy of withholding evidence from criminal defendants to allegedly protect the identity of confidential informants," which he describes as, "effectively impairing a defendant's ability to make an intelligent choice regarding his jury trial rights." This unethical plea agreement should not be deemed "reasonable under professional norms".

In the second prong in evaluating allegations of ineffective assistance of counsel, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v State, 300 S.C. at 117-118, 386 SE2d at 625 (1989). A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. Ard v Catoe, 372 S.C. 318, 331, 642 SE2d 590, 596.(2007); Johnson v State, 325 S.C. 182, 480 SE2d 733 (1997).

Plea Counsel never testified of any defense that he discussed with Petitioner other than, "I'm sure I did". App.p.90, lines 1-7. When asked whether Petitioner ever told him he was guilty, Plea Counsel testified, "I believe he did". App.p.89. Petitioner never told Plea Counsel that he was guilty. Petitioner emphasized that he told Plea Counsel that it wasn't right. App.p.73 and App.p.75. Plea Counsel testified that he never even discussed the defense of entrapment with Petitioner because, "it doesn't seem to me that that that was an issue I woulda brought up to him." App.p.97, lines 13-18. Plea Counsel testified regarding the buys, "I didn't see anything wrong with the way they had done it." App.p.84, lines 10-11. If not for counsel's errors, ineffectiveness, and incompetent advice it is clear that Petitioner would not have pled guilty and would have rather insisted on going to trial. Hill v Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Proper and sufficient investigation requires a level of competency of counsel. The less competent a person who investigates is, the less that person can "see". Even

though error and constitutional violations are right before the eyes, the person would not “see” unless they are competent and therefore the eye becomes keen due to awareness. For example... Plea Counsel could not “see” that the plea agreement in which Petitioner’s right to view the video and listen to any and all audio of the controlled buy(s) was unethical because Plea Counsel was not competent and knowing in those regards. Plea Counsel could not “see” the element of entrapment in Petitioner’s case and never even discussed the defense of entrapment because he was not competent in those regards. Plea Counsel could not “see” that there were two controlled buys and not three because he was no competent in those regards, mainly because he had not obtained a copy of the video(s) for his personal use, viewing and inspection. Plea Counsel could not “see” anything wrong with Petitioner being charged with proximity of a basketball goal belonging to and on a private church’s private property. Plea Counsel could not “see” that Petitioner was under duress and was traumatized at the time of the plea due to lack of medication and Petitioner’s constantly being assaulted at the jail prior to the plea because Plea Counsel was not competent in those regards. Plea Counsel could not “see” that there was no prior conviction on Petitioner’s record and Rap sheet that would have allowed him to be convicted of a third offense at the time of the plea because Plea Counsel was not competent in those regards.

Plea Counsel stated that he viewed the video of the controlled buy(s). Close attention should be given to the fact that Petitioner asked the PCR Court for discovery. This request for discovery was sought and motioned for prior to Plea Counsel’s testimony. As part of Petitioner’s request for discovery, Petitioner sought the SLED drug analysis and BEST bags to dispute the fact that a sale or drug transaction took place on the January 12th date. App.p.52-App.p.53. Next, Plea Counsel testified, “they did two controlled buys I believe.” App.p.83, lines 20-21. Next, Plea Counsel stated, “I did review the video and I did get two screenshots that showed Mr. Jeter and his face.” App.p.84 lines 3-4. Finally, Plea Counsel was asked by Petitioner’s PCR Counsel, “I heard two controlled buys, I’m, so I got a little confused... were there two buys shown or three buys shown?” App.p.97, lines 19-App.p.98, line 1. Plea counsel’s reply was, “I don’t remember. I know that I saw two of ‘em.” App.p.98, Line 1. Defense attorneys have a duty to conduct reasonable investigations in a case. Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). A new trial is warranted when trial counsel’s failure to investigate prejudices the accused. See, e.g., Cobbs v State, 305 S.C. 299, 408 SE2d 223 (1991).

In the Supplemental Appendix pages 1 and 2 there is a letter dated December 30, 2016, wherein Petitioner wrote to PCR Counsel asking that PCR Counsel would obtain a copy of Plea Counsel’s case file of Petitioner’s case, the Rule 5 discovery, Brady material. Petitioner also asked in this letter that all be obtained and made present at Petitioner’s PCR hearing including the video and all audio recordings regarding the controlled buys for Petitioner’s presentation. Petitioner makes it plain

in this letter as he states, "the burden of proof is on me, and without these things I will be unable to provide the facts needed in setting forth my grounds for PCR." Rule 71.1(e), SCRCP.

Petitioner has shown in totality and demonstrated the first and second prongs in evaluating the allegations of ineffective assistance of Plea Counsel. Petitioner has shown both that Plea Counsel's representation was deficient and that the representation was below the standard of reasonableness. Petitioner was prejudiced and if not for Plea Counsel's errors, the result of the proceeding would have been different.


Decisions made in ignorance of relevant, available information cannot be characterized as strategic, for purposes of reviewing claim of ineffective assistance of counsel. Weik v State, 409 S.C. 214, 761 SE2d 757 (2014).

Defendant should not suffer for mistakes of his counsel. Castleberry v Crisp, 414 F. Supp. 945 (1976).

Certiorari should be granted and Petitioner's case should be reversed and remanded for a new trial.

CONCLUSION

Based on the above, Certiorari should be granted, Petitioner's convictions and sentences reversed and the case should be remanded.

Respectfully Submitted, 

Alonzo Columbus Jeter, III
PETITIONER / *Pro Se*

This 5th day of June, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Cherokee County
Honorable Robin B. Stilwell, Circuit Court Judge

Case No.: 2017 - 001777

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Alonzo Columbus Jeter, III,

PETITIONER,

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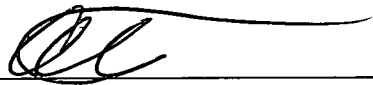
State of South Carolina,

RESPONDENT.

CERTIFICATE OF SERVICE

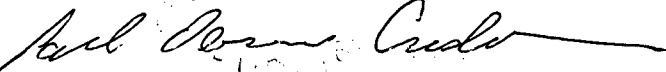
I, Alonzo C. Jeter, III, hereby certify that I have served a true copy of the *MOTION FOR JUDICIAL NOTICE OF SUPPLEMENTAL APPENDIX, MOTION TO AMEND PETITION FOR WRIT OF CERTIORARI AND TO ENLARGE PAGE LIMIT*, and *AMENDMENT TO PETITION FOR WRIT OF CERTIORARI* upon the Respondent by placing the same inside of a postage prepaid envelope and placing said envelope in the hands of Tyger River Correctional Institution's mail room personnel on this 6th day of June, 2019, for mailing via the United States Mail, addressed as follows: Vann Henry Gunter, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

S/


Alonzo C. Jeter, III, #282902
PETITIONER PRO SE

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

SWORN and Subscribed before me
This 6th day of JUNE, 2019



Notary Public for South Carolina
My Commission Expires: Nov. 10, 2024

June 5, 2019

Alonzo C. Jeter, III
Tyger River Correctional Institution
U-7-101 / #282902
200 Prison Road
Enoree, South Carolina 29335

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

RE: Alonzo C. Jeter, III, v State of South Carolina
Appellate Case No. 2017-001777

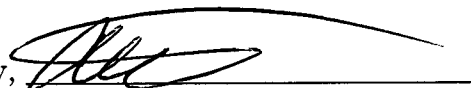
Dear Ms. Kitchings:

For filing in the above referenced PCR appeal, please find enclosed the original of the *MOTION FOR JUDICIAL NOTICE OF SUPPLEMENTAL APPENDIX, MOTION TO AMEND PETITION FOR WRIT OF CERTIORARI AND TO ENLARGE PAGE LIMIT, AMENDMENT TO PETITION FOR WRIT OF CERTIORARI* and *CERTIFICATE OF SERVICE* for the same.

Please also find, enclosed, one (1) true copy additional of the same along with a self-addressed stamped envelope. Please return to me by way of this SASE, file-stamped copies of these said documents.

Thank you for your assistance in this matter.

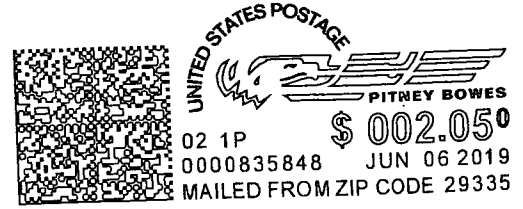
Sincerely,



Alonzo C. Jeter, III
PETITIONER / Pro Se

Cc: Vann Henry Gunter, Jr., Esquire
FILE

Alonzo C. Jeter, III
Tyger River Correctional Institution
U-7-101/#282902
200 Prison Road
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The Honorable Jenny A. Kitchings
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