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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Honorable John C. Hayes, and
Honorable Brooks P. Goldsmith, Circuit Judge(s)

HECTOR J. CASES VAZQUEZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2018-001912

Johnson
PETITION FOR WRIT OF CERTIORARI

Hector J. Cases Vazquez, #363120
Lee County Institution
990 Wisacky Highway
Bishopville, SC 29010
Pro Se Petitioner

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ISSUES PRESENTED

- (A). Whether Trial/Plea counsel was ineffective for failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

- (B). Whether Trial/Plea counsel was ineffective for conducting merely a cursory investigation; coerced Petitioner to plead guilty; failure to withdraw plea when spoken agreement came into discord and plea was not knowingly, or intelligently entered.

- (C). Whether Trial/Plea counsel was ineffective for failing to call into question the veracity of Agent Philips arrest warrant affidavit/move to annul warrant; and move to quash indictment obtained upon flawed information and tampering with evidence; and prejudicing defendant by deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and equal protection of the law.

- (D). Whether Trial/Plea counsel was ineffective for failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendment rights of the United States Constitution.

STATEMENT

Petitioner is incarcerated at Lee County Institution, and sent Notice from Daniel E. Shearhouse, Clerk of Court, The Supreme Court of South Carolina, dated January 29, 2020, however received February 3, 2020.

Petitioner herein, hereof, resubmit as if verbatim each and every issue and argument raised in his Post Conviction Relief Application (PCR), and Petition for Writ of Certiorari filed by Appellate Defender Victor R. Seeger. A final judgment entered under the Uniform Post Conviction Procedure Act, SC Code Ann §17-27-100 (Supp 2001), may be reviewed by the South Carolina Appellate Court Rules 71.1(f), SCRCR; and Rule 227(a), SCACR; See *Knight v State*, 284 SC 138, 325 SE 2d 535.

Petitioner were allegedly indicted May 2014, the Horry County Grand Jury indicted Petitioner for Trafficking heroin over 28 grams, and pled guilty February 2015 to 4 to 14 grams of trafficking heroin, and sentenced to fifteen years imprisonment. Plea counsel did not follow upon information provided or make an evidentiary challenge to the weight of alleged heroin he was charged with. Petitioner would not have pled guilty as charged, would not been for plea counsel, and prosecutor coerced, and dupe him under the impression that his pregnant fiancée [Lopez], erroneously charged would be dismissed for lack of evidence, subsequently she was induced by threat and fear of imprisonment and surrender her innocence. Petitioner was unaware charges against Lopez had not been dismissed until he had already entered plea, which was the contingent factor to enter a plea. Counsel fail to withdraw the plea after the government refused to honor all components of the plea agreement as he understood them to be, plea was not knowingly and intelligently entered.

On November 16, 2013, the Horry County Drug Enforcement Unit and police officers smashed through his apartment door and conducted a “no-knock search”, without search warrant in hand, nor was search warrant appearing in record, was never served, Petitioner never had actual control over substance, nor was Petitioner’s fingerprint(s) found on any items.

Petitioner's PCR hearing was held on November 15, 2016, before the Honorable John C. Hayes. In an Order filed on September 29, 2018, Judge Brooks P. Goldsmith denied Petitioner's PCR allegation that plea counsel failed to properly investigate his case, and found that plea counsel provided no deficiency. Moreover, Judge Goldsmith also found that Petitioner did not testify credibly even though he was not the Judge presiding over hearing to observe first-hand Petitioner's PCR hearing.

ARGUMENT – A

This Court should reverse PCR Judge’s Order denying Post Conviction Relief where Trial/Plea counsel was ineffective for failing to challenge substantial Fourth Amendment violation warrantless search and seizure; and failing to protect rights guaranteed him by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

Petitioner herein, hereof, hereby, hereafter incorporate as if verbatim issues and argument raised in his PCR, and further submits:

Trial/Plea counsel were further ineffective for failure to object or Motion in Limine, or Motion to Exclude any and all related evidence as to alleged 317.7 grams of heroin, and 255.7 grams of green leafy substance that was not in his possession and control over. Whereby law enforcement had Petitioner apartment stake out/under surveillance maintain prior to the arrival of the drugs being brought to the apartment, and the record is clear that Petitioner was excluded and *not identified* having control over/carried drugs to location, or from vehicle. Therefore the prosecution/law enforcement description of events of offense(s) and/or charge(s) are misleading and fraud upon the court did undermine the integrity of the proceeding occurring due to misrepresentation of facts. Moreover, there was an unconstitutional search and seizure and the evidence seized should have been excluded, or at some time during criminal proceeding where Petitioner has standing to object to its introduction for lack of search warrant constitutionally preferred and may be dispensed with only in certain exigent circumstances that did not exist at time, _____ v. _____, 380 US 102, 106. Evidence obtained by violating statute and Petitioner’s Fourth Amendment guarantee against unreasonable search and seizure, which provide the otherwise admissible evidence may not be used in a criminal trial if it was the product of illegal police conduct.

Furthermore, presumption evidence is insufficient evidence to prove that Petitioner on November 16, 2013, [Quite Law Enforcement] “...deliver, purchase, or bring into this state, or did aid, abet, attempt or

constructive possession of a quantity of heroin in an amount of twenty-eight grams or more...” Wholly unsupported by fact. Petitioner’s plea was sufficient on its fact, but so clearly and indisputably false should be stricken from the record as *extrinsic fraud*; Fraud in the inducement, and/or fraud in the factum, knowingly on part of counsel and prosecution making representation at time was to be false.

Plea counsel was ineffective for pleading and coercing Petitioner under pressure bearing on his free will, and interfering with his ability to decide whether or not to incriminate himself, see _____ v. _____, 385 US 493, 496-500; also see _____ v. _____, 444 SW 2d 498, 505.

ARGUMENT – B

This Court should reverse PCR Judge's Order denying Post Conviction Relief where Trial/Plea counsel was ineffective for conducting merely a cursory investigation; coerced Applicant/Petitioner to plead guilty; failure to withdraw plea when spoken agreement came into discord, and plea was not knowingly, or intelligently entered.

Petitioner herein, hereof, hereby, hereafter incorporate as if verbatim issues and argument raised in his PCR, and further submits:

Petitioner assert that mere association with potential felon without more is insufficient to tie his fiancée [Lopez] to a conspiracy, *State v Barroso*, 328 SC 268, 493 SE 2d 854 (1997). In addition mere presence and/or prior knowledge that a crime was going to possible committed without more is insufficient to constitute guilt, *State v Thompson*, 374 SC 257, 647 SE 2d 702 (Ct App 2007). Petitioner submit that he was induce and coerced into plea under compulsion, _____ v. _____, 385 US 493, 496-500, whereby threat, in-terrorem, and intimidation, to bring erroneous charges against his pregnant fiancée [Lopez] perfectly innocent, the Court should have dismissed bogus charge when there was no probative evidence in support, *Holland v State*, 322 SC 111, 470 SE 2d 378 (1996). However, Petitioner was not informed that his fiancée had entered a plea prior to his plea. Plea was induced by erroneous and defective counsel advise, *Hinson v State*, 377 SE 2d 388. Fifth Amendment right are applicable tot eh states by reason of the Fourteenth Amendment, *Malloy v Hogan*, 378 US 1, 845 SCt 1489, privileged against compulsory self-incrimination. The *constituent* parts of a criminal offense which the prosecution must prove to sustain a conviction, elements must relate to indictment charge(s), and facts constituting offense. Petitioner asserts that Notice Instrument (Indictment) did not put him on notice that charged weight of heroin was 317.7 grams. Counsel plead Petitioner to a heighten charge, then the Court

erroneously claim to have sentenced him to a lesser included offense denied due process of law. Petitioner sentence should be reversed solely for his culpability as a matter of law, and guilty plea reversed where Petitioner's guilt is not conclusively proven by competent evidence such that no other rational conclusion could be reached, *State v Berry*, 332 SC 214, 503 SE 2d 770, and where the evidence is insufficient, and where evidence is insufficient and denotes difference charge(s). The record show that Petitioner did not intelligently and knowingly enter plea, as to possession and control over 317.7 grams of heroin. *State v Thomason*, 341 SC 524, 526, 534 SE 2d 708, 710 (Ct App 2000), noting that where an appellant seeks to reopen a guilty plea proceeding, the inquiry is generally confined to whether the plea was knowingly, intelligently, and voluntarily entered.

Counsel in addition were ineffective for failing to *bifurcate* the individual cases and charges, whereby different times and/or places when events took place, in fact Counsel removed any chance of Petitioner being charged with a lesser included offense for sells, or distribution, the appearance of commingling all drugs into one total, the evidence was shown in a light more favorable to the prosecution, concoctive and made up to heighten Petitioner's charge.

ARGUMENT – C

This Court should reverse PCR Judge's Order denying Post Conviction Relief where Trial/Plea counsel was ineffective for failing to call into question the veracity of Agent Philips arrest warrant affidavit/move to annul warrant; and move to quash indictment obtained upon flawed information and tampering with evidence; and prejudicing Defendant be deliberately pleading him to a greater charge while dismissing lesser offense, denied due process and protection of law.

Petitioner herein, hereof, hereby, hereafter incorporate as if verbatim issues and argument raised in his PCR, and further submits:

Petitioner's Counsel was ineffective for failure to file Motion to Quash indictment, where facts in the case show that charge brought against him was heighten from sale of less than twenty eight grams to trafficking 317.7 grams of heroin. Record reflect that Petitioner never had custody or control over drugs that was brought to location and seizure by law enforcement on arriving. There is no clear and convincing evidence indicating that Petitioner was the principle person in control over drugs seized on arrival, is insufficient without more. Petitioner was given *hostile possession* and erroneous possession and control over 317.7 grams, despite police officers dusted open within minute that the drugs arrived. Lesser included offense in contrast to sells of 28 grams to agent, and possession 317.7 grams that was never established to be in Petitioner's actual possession or control, or where facts fail to establish guilt of the greater charge without being indicted with actual possession of 317.7 grams of heroin, or on multiple indictment(s), or served with notice instrument for greater charge is unconstitutional. Petitioner has right to view the Grand Jury Record/Minutes, in instant case where he is deprived of life, liberty, or property without due process of law, *Rector*, 158 SC at 230, 155 SE 2d 392, and whether indictment meets the sufficiency standard, *State v Adam*, 283 SE 2d582. The circuit court does not have subject matter jurisdiction to convict a defendant of an offense unless there is an indictment which sufficiently state the

offense, or the defendant waives presentment, or the offense is a lesser included offense of the crime charge in the indictment, *State v Parker*, 571 SE 2d 288, 351 SC 567. The state constitution requires a person be indicted, South Carolina Constitution Article 1, §11, *State v Owens*, 552 SE 2d 745, 346 SC 637.

ARGUMENT – D

This Court should reverse PCR Judge's Order denying Post Conviction Relief where Trial/Plea counsel was ineffective for failing to object to unconstitutional search and seizure, and fail to protect his Fourth and Fourteenth Amendment rights to the United States Constitution.

Petitioner herein, hereof, hereby, hereafter incorporate as if verbatim issues and argument raised in his PCR, and further submits:

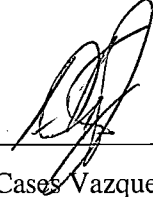
Petitioner assert that Arguments [A, B, C, and D] submitted in his Post Conviction Relief Application (PCR), and Petition for Writ of Certiorari, Pro Se Brief, that the *Cumulative Error Doctrine* provides relief to Petitioner when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial, *State v Johnson*, 334 SC 78, 512 SE 2d 795 (1999), Petitioner was unduly prejudiced. See also *State v Peterson*, 287 SC 244, 335 Se 2d 800, cumulative error warranted reversal because each error caused prejudice against the Petitioner.

In addition, when Judicial bias, or the appearance of it existed, due process was denied. Justice must satisfy the appearance, *In Re Murchison*, 349 US 133, 75 S Ct 623. The principle is reflected in a long line of cases involving a variety of circumstances real, or apparent bias. In the instant case bias came from in-part where the Judge presiding at PCR hearing did not write the Order/Decision to deny PCR, thus relief should be granted.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari should be issued to allow for full briefing on these issues, and put any uncertainty, and any concoquere of facts.

s/



Hector J, Cases Vazquez, #363120

Pro Se Petitioner

This 27 day of February, 2020.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Honorable John C. Hayes, and
Honorable Brooks P. Goldsmith, Circuit Judge(s)

HECTOR J. CASES VAZQUEZ,

PETITIONER

V.

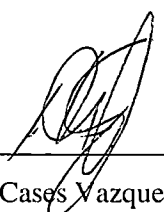
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2018-001912

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix 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.

s/ 
Hector J. Cases Vazquez, #363120
Pro Se Petitioner