

In The South Carolina Court of Appeals

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JUN 08 2021
SC Court of Appeals

Danquarius Dashon Davis #364690
Petitioner,

Request For Certificate
of Appealability

VS.

Warden of Perry
Correctional Institution,
Respondent,

Before the Court is a Motion For A Request For Certificate of Appealability. For the reasons set forth below Petitioner asks this court to Grant him a Certificate of Appealability.

Background

In June 2014, Petitioner was driving and saw his child's mother car parked at a mutual friend's house. The house was a well known drug related house so, he wanted to stop by and make sure that his child was not in that type of environment. In that particular community the crime rate has always been very high, so when petitioner traveled at night he always carried a firearm for protection. Petitioner stopped the car at the house, knocked on the door stated his name and when the door opened it was Santonio McCoy his child's mother's boyfriend, the two had a fight recently. When McCoy saw petitioner he reached for a gun and petitioner shot him then ran. Petitioner turned himself in to law enforcement 2 days later and was charged with Murder. The witnesses made inconsistent statements the person named in the indictment for 1st degree Burglary which was a direct indictment made a statement saying the incident took place outside while petitioner's baby-momma said he came inside. The Police at the crime scene did not take a gun into evidence, or make any reports to neither question witnesses about the gun, while petitioner awaited trial he continued to request all evidence but never received any in regards to the gun. He admitted to shooting victim, and not to either charges against him. He took a plea and received 40 years. the reason he took a plea is because his counsel misadvised him and he did not have full discovery. Petitioner filed a Direct Appeal but had no attorney help so it was dismissed, and his PCR counsel failed to raise all issues in his PCR Application with additional issues which led to a dismissal of his appeal of Habeas Corpus. Now Petitioner asks this court to grant him a Certificate of Appealability.

Cause For Procedurally Defaulted Claims

• PCR Counsel's Inadequate Assistance at PCR Review is cause for the following procedurally defaulted claims:

1.) PCR Counsel was ineffective for failing to raise "Guilty Plea Involuntary Due To States Brady Violation".

2.) PCR Counsel was ineffective for failing to raise "Plea Counsel was ineffective for failing to file a motion to Quash 1st degree Burglary Indictment."

3.) PCR Counsel was ineffective for failing to raise "Police Misconduct."

• The PCR Counsel should have raised these issues and by not doing so prevented prisoner from getting "A Full one Bite At The Apple" and at the same time depriving prisoner the opportunity for the issue to be preserved and reviewed on later Appeals. *Martinez v Ryan*
Murray v Carrier

• The procedural default resulted from PCR Counsel's "ignorance or inadvertence, counsel failed to exercise a professional judgment in all where claims was substantial."

• Prisoner was Denied Fair Process and the opportunity to comply with the states procedures and obtain an adjudication on the merits of his claims, PCR Counsel was ineffective under standards of Strickland U.S.C.A. Const. Amend. 6

• Failure to consider the claims will result in a fundamental miscarriage of justice.

Guilty Plea Involuntary Due to state's Brady Violation

The prosecution suppressed gun from the crime scene, petitioner was unable to weigh the evidence or use in a defensive strategy, there was no fingerprints or ballistics done to show that the victim had that gun, if it would have been taken into evidence. It was not put through a proper chain of custody, no one was questioned in regards to the gun, the prosecution knew this evidence had great value and chose to ignore it. it is reasonably probable petitioner would have insisted on going to trial rather than entering a guilty plea. Gibson v. state

Brady Analysis - 1st) the withheld evidence was favorable to petitioner because it would have shown proof that victim had the weapon. If the weapon had been disclosed petitioner would have chosen to go to trial rather than pled guilty. 2nd) the evidence was known by the prosecution but suppressed by the state where prosecution knew of the guns presence but refused to send investigators to collect it or try to obtain the weapon or reports from forensic investigators or crime scene officers. 3rd) The evidence was material to petitioner's innocence it would have shown that petitioner was not guilty of murder but acted in self-defense. Brady v Maryland

Police Investigators left a gun on the floor in the same room where victim was shot and killed. the only thing saving its place is a photo of the gun, and nothing else. no chain of custody, no ballistics, nor any documents on it at all.

Petitioner requested all information pertaining to this gun, but received nothing, forensic investigators and crime scene officers did not take gun into evidence. they left it on the floor within 10 feet of the victims body.

Prosecutors never try to obtain the gun and says that investigator s told him the gun was a pellet pistol, he says he did no investigation or try to obtain gun because he knew the gun was a pellet pistol. PCR Hearing Transcript April 16, 2018 Pg. 48 lines 14-20, Pg. 47 lines 16-17, Pg. 49 lines 3-6

This information first came out during plea sentencing, not one officer made a statement or any legal documentation of what the prosecutor says about the gun, neither did he try to obtain any.

Let Guilty Plea Involuntary Due To State's Brady Violation

- Looking at the picture of the gun it doesn't look like a b.b. gun and if it was a b.b. gun it had been altered to look like a real gun, which should have given the investigators enough reason to take the weapon into custody coupled with it laying on the floor in the same room where victim was shot and killed. see Plea Sentencing Transcript July 13, 2015 Pg. 30 lines 17-25
- Petitioner stated on record that he shot victim because he was reaching for a gun, see Plea Sentencing Tr. Pg. 31 lines 1-4
- Law Enforcement and the prosecution are to blame for not collecting the gun, petitioner was unable to take advantage of that evidence the state violated his Due Process by disposing of gun which diminished his opportunity to put on an effective defense.
- Police Acted negligently and lost valuable evidence, the state's conduct has deprived petitioner and the courts of the opportunity to determine with certainty the import of the evidence. It has interfered with the accused ability to present a defense by imposing on him a requirement which the government's own actions have rendered impossible to fulfill. *Hilliard v Spalding*, 719 F.2d, at 1446
- Not one person mentions the gun besides petitioner and Mercedes Bond who made a statement the same day as petitioner's plea sentencing say the victim was reaching for a gun that's why petitioner shot him.
- Petitioner expressed to his attorney that he wanted to go to trial throughout the case but he did not have all the evidence for his defense.

This error seriously affected the fairness, integrity and public reputation of judicial proceedings error violated Petitioner's 6th Amend. right to make a fundamental choice regarding his own defense. Fundamental Unfairness resulted when petitioner was convicted based on Const. Invalid Guilty Plea.

Substantial Issue #2

Plea Counsel was Ineffective for Failing to raise "Plea Counsel was Ineffective for failing to file a motion to Quash 1st Degree Burglary Indictment,

- The key elements of the 1st degree Burglary Indictment are missing, making the indictment invalid.
- Kadeem Cobb the named person within the 1st degree Burglary Indictment made 2 statements. The first statement was taken by Sgt. John Rainier, Mr. Cobb said that the altercation took place outside the residence, and his second statement he never says petitioner came inside the dwelling.
- The 1st degree Burglary Indictment says petitioner willfully and unlawfully entered the dwelling of Kadeem Cobb without consent. But how could this be possible if Mr. Cobb makes a statement saying the altercation took place outside?
- Based on the evidence Plea Counsel should have moved to quash 1st degree Burglary Indictment due to the indictment being invalid.
- The 2 statements made by Kadeem Cobb are not consistent, but in neither statement does he mention petitioner coming inside his dwelling.
- Plea Counsel was ineffective for allowing petitioner to be convicted of 1st Degree Burglary where the indictment was insufficient.
- This prejudiced petitioner because had counsel filed a motion to Quash Burglary Indictment for the reasons stated above petitioner would not have been convicted or had to answer to an indictment that was insufficient.
- Plea Counsel was ineffective for advising petitioner to take a plea instead of going to trial and challenging the indictment, where the evidence shows petitioner never went inside the dwelling.

Substantial Issue #3

PCR Counsel Was Ineffective For Failing To Raise "Police Misconduct"

- The Forensic investigators/officers took a photos of a gun found at the crime scene in the same room where victim was shot, but failed to take the gun into evidence.

- They failed to establish any chain of custody to the gun

- They failed to question any witnesses in regards to the weapon

- They failed to make any reports of the weapon.

- They failed to have the gun tested for fingerprints, no ballistics was done.

- They failed to make any forensic expert reports on the gun.

The gun was found behind the sofa and beside it was a set of gloves and wipes, it looks to me and would to any reasonable person like the weapon was hidden by someone in the house.

The absence of the weapon prevented petitioner from perfecting a defense of self-defense if the evidence would have been produced petitioner would have insisted on going to trial.

The photos of the weapon alone, does not show who had the weapon, it does not show ballistics, it does not show witness statements in regards to the weapon and it's roll in the crime scene

- The evidence was favorable to petitioner, it would have shown that victim in fact had that gun, had it been taken into evidence and tested ² The evidence was known by the Prosecution but suppressed by the state where prosecution knew of the guns presence but refused to send investigators to collect it or try to obtain any reports to it or any reports by forensic investigators or crime scene officers. ³ The evidence was material to petitioner's innocence it would have shown that petitioner was not guilty of murder but instead acted in self-defense.

- Police and Prosecution are to blame for not collecting the gun, Petitioner was unable to take advantage of the evidence the state violated petitioners Due Process

- Police permit the destruction of evidence that could eliminate petitioner from certain charges showing Innocence such loss is material to petitioner and is a Denial of Due Process

Substantial Issue #4

The District Court Erred when it found plea counsel effective providing representation where there was proof that counsel's did not discuss the elements of self-defense, since petitioner said he only shot the decedent because he thought the decedent was going to shoot him first.

- The credibility of petitioner should not be compared to the credibility of the plea counsel at the PCR hearing to determine whether counsel's performance was deficient because counsel admits to not completely advising petitioner of the applicability of self-defense.
- Petitioner testified at the PCR hearing that he did not bring on the difficulty but merely knocked on the door, and said he shot the victim because the victim immediately reached for a gun to shoot him first upon identifying petitioner.
- If petitioner would have been informed that by giving his version of events at trial, the state would have been forced to disprove self-defense, and petitioner would have rather went to trial than take a plea.
- According to *Strickland v. Wash.* petitioner only has to show that his counsel was ineffective and that it prejudiced him and not that his credibility should be compared to petitioner's in order to suffice for counsel's wrong doings. When counsel admits to not completely advising petitioner of the applicability of self-defense the *Strickland* requirement is satisfied showing that counsel was ineffective. To show that petitioner was prejudiced he only needs to say that had his counsel informed him fully of the applicability of self-defense he would not have taken a plea but instead would have went to trial.

☞ Counsel Admits to Not Fully Advising Petitioner of Self Defense At PCR Hearing

- There is clear and convincing evidence that counsel did not fully inform petitioner of the applicability of self-defense where PCR transcript reflects counsel testimony admitting to not doing so.
- 1.) Plea Counsel stated that he did not advise petitioner that with his version of events it would have entitled him to a self-defense charge. PCR Hearing Transcript Pg. 40 lines 16-23

Substantial Issue #4

2) Plea Counsel was asked at PCR Hearing, "Did he go over elements one through four with petitioner?" Counsel stated simply that "He Does NOT Know" "But that he certainly told petitioner he cannot be at fault in bringing on the difficulty." PCR Hearing Tr. April 16, 2018 Pg. 40 lines 7-10

3) Plea Counsel stated at PCR hearing that he particularly went over was petitioner in danger and was petitioner without fault in bringing on the difficulty, but not all the elements clearly. PCR Hearing transcript page 40 lines 13-15

4) Plea Counsel was ~~asked~~ asked at PCR "did he go over the burden, who bore the burden of proving or disproving of self-defense with petitioner?" Counsel stated He did but he doesn't know that he explained how it occurred. PCR Hearing Tr. Pg. 41 lines 7-11

• Plea Counsel prejudiced petitioner by keeping crucial information from him that should have informed his decision of whether to plead guilty or exercise his right to trial.

• If petitioner had been properly informed of the elements of self-defense by his counsel, he would have known that by giving his version of events at trial, the state would have been forced to disprove self-defense.

• There was a gun at the crime scene found in the same room where victim was shot, it was not collected or disclosed by the state.

• Petitioner stated he only shot victim because he thought victim was going to shoot him first.

• The undisclosed gun, the state refers to it as a pellet pistol, but it does not look like a pellet pistol and if it was it was modified to look like a real gun.

• Police Acted negligently and lost valuable evidence, the states conduct has deprived petitioner and the courts of the opportunity to determine with certainty the importance of the evidence.

It has interfered with the accused ability to present A Defense by imposing on him a requirement which the governments own actions have rendered impossible to fulfill.

Hilliard v. Spalding, 714 F. 2d, at 1146

Petitioner's Habeas Petition was rejected by The United States District Court. Petitioner now is requesting A Certificate of Appealability using the four issues presented within this motion.

The four issues had made a substantial showing of the Denial of a Constitutional right, and Petitioner has demonstrated that a reasonable jurists would find the court's assessment of petitioners constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable.

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