

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
)

Case No.: 98-CP-23-1446

State of South Carolina,

vs.

Douglas J. Hill,

Defendant.

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ORDER

FILED
- 1
APR 12

Douglas J. Hill, Defendant, has petitioned for Post Conviction Relief (PCR) on the ground that he was denied his right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution, and that he was denied his right to due process of law under the Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the South Carolina Constitution.

For the following reasons, I find that the Defendant was denied his right to effective assistance of counsel at the time of his trial and hereby grant his petition.

On June 7, 1995, Douglas James Hill was involved in an altercation in the County of Greenville, State of South Carolina. His trial was held on March 19th and 20th, 1996. At that trial he was convicted of Assault and Battery with Intent to Kill and pursuant to S.C. Code Ann. § 17-25-45 (a) (1) sentenced to life in prison by the Honorable C. Victor Pyle, Jr. Mr. Hill's appeal to the South Carolina Supreme Court was affirmed on January 8, 1998, and he filed his petition for Post Conviction Relief on or about March 31, 1998. The State duly filed its return and an evidentiary hearing was held before me on November 14, 1999 at the Greenville County Courthouse.

The standard of review in PCR cases alleging ineffective assistance of counsel is well

[Handwritten initials]

established. In order to establish a claim of ineffective assistance of counsel, the Defendant must show: 1) that counsel's representation fell below an objective standard of reasonableness; and 2) that, but for counsel's errors, there is a reasonable probability that the result would have been different. Gallman v. State, 307 S.C. 273, 414 S.E. 2d 780 (1992); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). It is generally accepted that a "reasonable probability is a probability sufficient to undermine confidence in the outcome," Martinez v. State, 403 S.E. 2d 113, 114 (S.C. 1990).

Based on the transcripts of the trial, pleadings, the testimony presented at the PCR hearing, arguments of counsel, and other evidence appearing in the record, the Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 and SCRCP 52 (a):

1. At the PCR hearing, Mr. Hill submitted a brief wherein he contends that the jury charge at his trial violated State v. Pilgrim, 320 S.C. 409, 465 S.E. 2d 108 (Ct. App. 1995), Aff'd as modified 326 S.C. 24, 482 S.E. 2d 562 (1997).

2. Mr. Hill's counsel at his first trial, Timothy Sullivan, testified at the hearing that his trial strategy was based on the hope that he could convince the jury that Mr. Hill was guilty of Assault and Battery of a High and Aggravated Nature (ABHAN) rather than Assault and Battery with Intent to Kill (ABWITK).

3. The transcript of the initial trial clearly shows that Mr. Sullivan's strategy was geared toward the ABHAN conviction for his client. If convicted of ABHAN, a non-violent offense, Mr. Hill would not have faced the sentence of life without parole.

4. The trial judge in his charge concerning ABHAN stated the following:

WTP
#2

Now, ladies and gentlemen, although not specifically set forth in this indictment, there is the lesser included offense of Assault and Battery of a High and Aggravated Nature. Ladies and Gentlemen, Assault and Battery of a High and Aggravated Nature is attended by Aggravated circumstances such as the use of a deadly weapon, the infliction of serious bodily harm or a great disparity between the ages or physical condition of the parties involved. Now I told you earlier this is a degree higher than a simple assault and battery. It usually occurs by the use of some weapon. Now Assault and Battery, however, might be so aggravated where no weapon is used as to amount to an aggravated Assault and Battery. If a person seriously or violently injures another without malice and legal excuse but in sudden heat and passion with a sufficient legal provocation that would constitute Assault and Battery of a High and Aggravated Nature...

(Emphasis supplied).

5. This language was rejected by both the Court of Appeals and the Supreme Court in Pilgrim, 320 S.C. at 144, 326 S.C. at 26-27 wherein the Pilgrim conviction was overturned.

6. At trial, Mr. Sullivan did not object to this charge. While the Supreme Court's opinion in Pilgrim, 326 S.C. 24, had not been decided at the time of Mr. Hill's trial, the Court of Appeal's opinion, 320 S.C. 409, had. The decisions of the Court of Appeals are final and binding on lower Courts when they are made. Hamby v. Hamby, 315 S.C. 518, 520 (Ct. App. 1994).

7. In the case at bar, trial counsel should have been aware of the Court of Appeals opinion in State v. Pilgrim, 320 S.C. 409, at the time of trial. Counsel's failure to make an objection to this charge was below the objective standard of reasonableness.

8. Counsel's entire trial strategy was based upon the hope that the jury would find Mr. Hill guilty of ABHAN. The Court's definition of ABHAN was central to the jury verdict. Therefore, I find that there is a reasonable probability that the result of this trial would have been different but for counsel's error.

9. Petitioner raised several other issues in this proceeding. Because of the Court's holding

herein, those issues need not be addressed.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the conviction and sentence of Douglas J. Hill for Assault and Battery with Intent to Kill is reversed and vacated and his case is remanded for a new trial.


Henry F. Floyd, Judge
Thirteenth Judicial Circuit

Greenville, S.C.
Dated: 1/26/2000



STATE OF SOUTH CAROLINA }
County of Greenville }

In Court Common Pleas
2019 - CP - 23 - 5712

Douglas Y Hill)

v. Applicant)

STATE)

RESPONDENT

TO Chief Admin Judge
Common Pleas

AMENDMENT &

Objections to Proposed

ORDER & to

Appoint Counsel for

mentally ill Applicant

In A SUCCESSIVE PCR, APPLICANT ASSENTS THRU
PRISON LEGAL ASSISTANT FIRST PR FEBRUARY V.

STATE (2008) HE WAS SO MENTALLY DEFICIENT

AND OUT OF TOUCH W/ REALITY DURING HIS PREVIOUS

PCRS HE COULD NOT ASSIST HIS APPOINTED

COUNSEL AND SUBMITS HIS SCDH MEDICAL

& MENTAL HEALTH RECORDS THAT HE WAS

(1)

id and at Gilliam Psychiatric Hospital
suffering under Alin delusions etc. (1)

And that this court appoint counsel and
funds for mental evaluation if needed by court

This Amendment is based on 17-27-20

A) illegal sentence, Roberts v. State 418 SC 50.
(SC 2016)

(1) 2/3 STRIKE STATUTE went into effect

JANUARY 1996 Applicant offense occurred

JUNE 1995, the LWOP sentence is

Ex Post Facto & counsel(s) @ Plea/Trial

PCN (etc) Grossly negligent for FAILURE RAISE

This DEAD BARE WINNING ISSUE SEE

Banks v. Reynolds (4th 1995)

(2)

1) Applicant Requests SCDC

STATE Supplement Record w/ SCDC Medical/Mental Records

(2) In Fox v. State Mental Deficiency
he could not I.D. & raise the most
obvious of issues

II Failure to provide written notice
w/ proof of service of process of

Defendant RC 17-25-45 (H)
SC code (1996) on 95 indictment

of ABWIK: Gross Negligence @

trial. PERS of counsel not objected
to lack of (proof of) service of Def.

AS MANDATED BY STATUTE.

JAMES v. STATE 347 SC 67 (2007) SEE

~~W~~ The Priors used to enhance
do not meet Definitive Issue :

Prior do not meet definitive

(3)

to constitute a Prima Facie
As reduced to common law Assault
& Battery Breach so A > not to
be strike.

That mentally ill applicant is in need
of counsel per *Feng-sai v. STATE* (2008)
to toll statute: successive procedural
bars see *Butler v. STATE* (2010)
Denial of fundamental fairness to sentence
mentally ill under et post facto
LWOP not in effect @ time of
offense (6/95)

and funds for expert if deemed
by court to be just: proper
Respectfully

~~★~~
Proof of service
mailed to SC ATTY
Gen PO Box 11549
Columbia SC 29211
this 27 July 2010

~~SI~~ Douglas Hill
MCCI
MCOMMIL SC
29899

(4)

(RV)

Douglas & Hill

135153

MCCI

MCCMICK S

29 899

Honorable Paul B. Wickensimer
OFFICE OF CLERK COURT
COMMON PLEAS

305 E NORTH STREET

Greenville SC 29601

Douglas J. Hill v STATE

2017 - CP - 23 - 5712

Dear Sir

ENCLOSED PLEASE FIND APPLICANT
Rule 59(E) AND 60(B) 1-6 AND
AMENDMENT to P.C.R. MOTION
to Supplement Record, AND MOTION

for Counsel @ Effort Pun Ferguson

v. STATE (2008) w/ Proof of SERVICE

Respectfully,

s/ Douglas Hill

7-27-20

STATE of South Carolina } 2019-CP-23 5719
County of Greenville }
III court of common pleas

Douglas Hill

v.

STATE

Rule 59 e AND

60(B)1-6 to

enforce mandate of
25449 @ p 4

APPLICANT ASSENTS EACH PER COURT
AND EACH PER COUNSEL AND COURTS
HAVE IGNORED THE RULING OF SC
SUPREME COURT DOUGLAS & HILL V
STATE # of 25499 e. p 4

! The STATUTE (3 STRIKES) WAS AMENDED
IN 1995. BUT THE AMENDMENT APPLIED
PROSPECTIVELY TO CRIMES COMMITTED ON/

OR AFTER THE AMENDMENT EFFECTIVE
DATE JANUARY 1, 1996, AND SO

DOES NOT APPLY IN THIS CASE.

The ATTORNEY GENERAL HAVE MADE FALSE
ALLEGATIONS AND PURPOSELY IGNORED
WHAT AMOUNTS TO A MANDATE

OF SC SUPREME COURT JULY 22, 02

17-25-45 (b) DOES NOT APPLY

TO APPLICANT AND HE MUST BE

RESENTENCED TO 0 - 20 yrs

RE ABWICK 1995

RULE 60 (B) WAS DESIGNED FOR THE

SPECIFIC CASE OF FRAUD UPON COURT

THRU MISREPRESENTATION OF

THE ATTORNEY GENERAL OFFICE

BEEBEY V. US 118 SCT 909 (1998)

WHO KNOWS APPLICANT MUST BE

RESENTENCED

Rule 59 (e) requires in SELF
SAME MANDATE of Supreme court
AND ORDER RESERVING to

enforce mandate # 25449

@ P84 SC Supreme court

mandate (2) Applicant Douglas

HILL U. STATE

So moves Applicant per 50, 52

59(e), AND 60(B)

SI
MCCF
MCCOMM SC

7/27/20

RECEIVED

AUG 06 2020

S.C. SUPREME COURT

Dear Mr. Wickensimer.

I was unable to obtain multiple copies of my paperwork for my case. Could you please make an additional copy and forward it to the Attorney General's office. Thank you.

Sincerely,

Douglas G. Hill

SC Supreme Court
P.O. Box 11330
Columbia, SC, 29201