

Otis Maurice Robinson #288206

v.

State of South Carolina

Appellate Case no. 2019-000740

Per Se

Motion to vacate, set aside and correct sentence that was imposed under the Federal three strikes Law

SC Court of Appeals

JUN 02 2021

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Otis Maurice Robinson comes before this court asking for re-sentencing base on claim that his prior's convictions for a degree burglary and that one of the 2 prior's did not qualify and classified as violent, the indictment number for the Prior 2 degree burglary conviction is #^{IND.}104812 Date of offense:

April 18, 2006 it was a first degree burglary charge that got dismissed at the preliminary hearing on June 20, 2006 and I got out of the county jail that same night, and that same 1st degree burglary was brought up again on a direct indictment on July 11, 2006, this is Double Jeopardy because there was no new evidence to even open up the case again and the evidence will show this is a abandon house, Nothing stolen, no weapons and the fact that I was already sleeping there for 2 weeks and a half, and the fact that the burglary charge was not a serious violent felony within the meaning of law according to United States v. Michael Minjarez 495 Fed 857 Nov 14, 12 the error was

clear and it affected the outcome of the District court proceeding, and the error seriously affected the fairness integrity or public reputation of the judicial proceedings As Pursuant to Wilson v. Linder Aug 26, 16 WL 10672 the elements of entry of a dwelling Pursuant to 16-11-311 (A) are different from the elements of entry of a building Pursuant to 16-11-312 (B) Mr. Robinson was never indicted for entry of a building and most importantly he did not waive indictment for entry of a building or under the due process clause he was never put on "Notice" he was pleading to entry of a building nor did the court advise Mr. Robinson he was being prosecuted for entry of a building.

My Lawyer on my prior conviction Mary ANN Ford lied to me and was grossly ineffective for failing to bring this omission to the courts attention. Had court properly advised Mr. Robinson he was pleading guilty to entry of a building in the night time he would have corrected the Courts error that he did not enter a building and the fact that Mr. Robinson was never indicted for entry of a building and its not a lesser included offense of entry of a dwelling. it shows Trial Counsel performance fell below professional (Normal) Norms under Strickland v. Washington May 19, 1984 466 US 668. The Court failed pursuant to Pittman v. State 662 Fed 873 to advise Mr. Robinson to the elements of the offense he was pleading to which was the crucial omission in the context of this case. Trial counsel failed to object to Court deviating from the Plea contract and sentence Mr. Robinson under a Statute 16-11-312(B) when Mr. Robinson was not indicted for 16-11-312(B) and did not waive grand jury indictment, the court cannot presume a waiver of constitutional rights from a silent record Johnson v. Zerbst 304 US 458 (1938) Trial counsel Mary ANN Ford had a duty to protect Mr. Robinson from pleading guilty and being sentenced to an offense he was not indicted for, and under United State v. Fletcher 74 F.3d 49, 53 (4th cir 1996) When a defendant is convicted of charge not included in the indictment AN Amendment has occurred which is per se reversible error. Under United States v. Floresca 38 F.3d 706, 709 (4th cir 1994) The fifth Amendment to the United State Constitution provides for a right to be indicted by grand jury. This right is violated when the proof offered at trial permits a Jury to convict a defendant for a

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different offense than that for which he was indicted, upon. And courts failure to ENUNCIATE AND advise Mr. Robinson to the elements he was pleading to rendered the waiver of Mr. Robinson trial rights involuntary Pursuant to PITTMAN v. State 662 Fed Appx 873, and Boyerkin v. Alabama June 2, 1993 395 US 238 89 Ct. the waiver was not knowingly entered, which is directly on point with the facts of this case. Sentencing to an offense that is not a lesser included offense where Mr. Robinson did not waive Grand Jury indictment, Brooks v. State 481 S.E. 2d 712 and for trial counsel errors he would not have pleaded guilty because trial counsel had a duty to advocate for his or her client AND to protect their statutory rights, AND Pursuant to Article I Section 11 of South Carolina Constitution, A Applicant has a right to be indicted AND CAN only waive his rights to be indicted Pursuant to 17-19-20 SC Code of Laws. AND such rights CANNOT be waived based on a silent Record According to Moore v. State 732 SE 2d 871 (2012) AS it is A constitutional Right, AND According to Wienhauer v. State 514 SE. 2d (1999) held that 16-11-312 (B) is not a lesser included offense of 16-11-311 (A) I do have copy's of documents to prove what I'm saying is true. Mr. Robinson is asking the court to vacate prior conviction; Indictment # 104812, Date of offense April 18, 2006 S.C. Code 16-11-311 because they violated my constitutional right, just look on the sentencing sheet, even my PCR failed to present my issue to the judge, but just look at the copy of the transcript, the PCR page I made a copy to show that I never had a right to present my issue, my trial Lawyer Wesley Lockhair III, my PCR Lawyer AND now I'm telling my Lawyer LARA Caudy everything, but she has failed

to do anything about this situation I'm in and now I have life without parole for a ^{Prior} conviction that lack subject matter jurisdiction, the Judge did not have the right to even accept the plea, and my PCR attorney Christopher Murphy said in one of his letters that this was a major issue and one which would could very well provide Mr. Robinson the relief he seeks, and Mr. Murphy said he was hoping that Mr. Robinson plead to two Burglary 2nd degree and that one of them would not be classified as violent, its in black and white, Mr. Murphy did not do anything about it, this is not right and fair, what happen to the equal protection of Law. And Pursuant to 28 U.S.C. 2255, to vacate, set aside and to correct his sentence, Mr. Robinson was sentence to consecutive terms for 2 burglary prior conviction, upon his plea of guilty Mr. Robinson can demonstrate that he was not afforded effective representation of counsel and that his plea was involuntary. In Mr. Robinson motion to vacate, Robinson alleged that his court appointed counsel Mary Ann Ford advised him and the judge that they could bring back the same charge again on a Direct Indictment but it was for Burglary 1st degree, but I was convicted improperly for Second degree burglary for entering a building, a charge I never been indicted for, and a court must dismiss a case when it lack subject matter jurisdiction to here a case according to United States v. Javier Hart

v. Hoffman Sept 13, 2015 ¹¹⁸ the proots is in the copy's of the legal documents I have in this motion to vacate please look into this matter carefully and it will show it clear that there was several errors, and the right (41)

to speak to the judge before imposing sentencing is call the allocution, there is so much violation in this case until it make you think that I dont have any constitutional rights at all, and the fact I have newly discovered evidence that was not presented at trial, at trial they showed 16 crime scene photo's, but they were 59 crime scene photo's look at the copy's, I WAS denied the right to Allocution Common Law Plain Error according to (US v. Avila-Cortez 582 F.3d 602 (5th Cir 2009) Newly Discovered evidence were missing Before Trial I told the Judge that I could not represent myself before a court without all the evidence being presented, and the Judge told me I did not have a choice, he said you either let MR-LOCKLAIN here represent you or you represent yourself Mr. ROBINSON and thats a violation of my due process. A constructive Amendments of federal indictment are error per se and must be corrected on appeal even when not preserved by objection and that error was plain, obvious enough to require discriet court to correct it, because error affected defendants rights to grand jury indictment, government violated rights to effective assistance of counsel when it interferes in certain ways with ability of counsel to make independent decisions about how to conduct defense. My trial attorney was disbarred and lost his licene because he was using cocaine, he admitted to it how is that not ineffective and plus he said at trial everytime he came and visit Mr. ROBINSON ended up in arguements, you know why I told him that the Shakedown crew in Charleston County Jail came into our unit and did a shakedown and in the process they took my evidence out of my box without notifying me of anything while every other inmate

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(5)

still had their evidence in their property and when I told my trial attorney Wesley Locklair III about that when he came and visit me he told me he dont want to talk about it and thats when I told him he could not be my lawyer and then came the arguements, I have proof and copy's of evidence to prove what I'm saying is true and I Otis Robinson 288206 Being duly sworn on my oath, Depose and say that I have subscribed to the Foregoing motion, That I know the contents thereof; that it includes every ground to me for vacating, setting aside or correcting the conviction and sentence and that the matters and allegations in this motion therein set forth are true

Otis Maurice Robinson #288206
Otis Maurice Robinson 5/27/21
NAME DATE

Sworn to and subscribed before me this day of 27 2021
[Signature] (L.S.)
Notary Public

My Commission expires 8/4/2021

General Sessions

CASE HISTORY FOR CASE K121639

The State of South Carolina VS Otis Maurice Robinson

FILED DATE: 4/24/2006

CASE TYPE: GS

STATUS: Dismissed

INDICTMENT NUMBER: 0000GS10 4812

ASSIGNED JUDGE: Clerk Of Court C P, G S, And Family Court

DISPOSITION JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: Charleston City Police Department

CASE PARTIES:

Defendant Robinson, Otis Maurice

*SOD LTR BAD ADDR*573 Meeting St., Charleston, SC 294030000

Officer Lane, Officer

Defendant Attorney Ford, Mary Alison

Charleston County Public Defender, 101 Meeting St., 5th Floor, Charleston, SC 29401



CASE HISTORY FOR CASE K121639

Robinson, Otis Maurice

Age: 51

DOB: 10/28/1969

*SOD LTR BAD ADDR*573 Meeting St.

DL#:

SSN: 248-360

Charleston, SC 294030000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0079 BURGLARY 1ST DEGREE	4/18/2006	Dismissed at Preliminary Hearing	6/20/2006

SENTENCING:

DISMISSED AT PRE-LIM/OFFICER NOT PRESENT DISMISSED AT PRE-LIM/OFFICER NOT PRESENT

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
4/19/2006	2:00 PM	Court event: Bond Hearing
4/19/2006	12:00 AM	Filing recorded: TRANSFERED FROM: CASE ID: 2006SU83003786 DEFENDANT: A COUNT
4/19/2006	12:00 AM	Bond 1 was set in the amount of 0 by
4/19/2006	12:00 AM	recorded the following Case Note: TRANSFERED FROM: CASE ID: 2006SU83003786 DEFENDANT: A COUNT: 01
4/24/2006	12:00 AM	Filing recorded: NO BOND ON COUNT #1- BURGLARY 1ST- LOMBARD
4/24/2006	12:00 AM	recorded the following Case Note: OW102006002226
5/16/2006	2:00 PM	Court event: Preliminary Hearing Scheduled w/ Notices
6/20/2006	11:00 AM	Court event: Preliminary Hearing Scheduled w/ Notices

Print Date: 01/20/2021

Print Time: 4:58:50PM

Requested By: COCPSE

CaseHistory.rpt V6.1

Page 1 of 2

ATTEST A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK C.P., G.S. & F.C.
 BY *Paula Lewis*
 DEPUTY CLERK

1 Caudy of the Office of Public Defense perfected that appeal.
2 Following the submission, a brief was submitted pursuant to
3 *Anders v. California.*

4 South Carolina Court of Appeals dismissed his
5 appeal on June 8th, 2012, in an unpublished opinion. The
6 remittitur was returned to the circuit court June 24th,
7 2016. The State filed a return and partial motion to
8 dismiss on June 27th, 2017.

9 The allegations as listed in his application were
10 ineffective assistance of counsel, failure to challenge the
11 chain of custody of evidence, a denial of due process due to
12 false testimony, prosecutorial misconduct for failure to
13 challenge a prior conviction.

14 The State moved to dismiss the due process issue
15 and the prosecutorial misconduct issue. I'm not sure if
16 those will be pursued at trial; however, I just wanted to
17 state that for the record.

18 The State is present and ready to proceed.
19 Mr. Robinson is present, represented by Christopher Murphy.

20 MR. MURPHY: Thank you, Your Honor. Before we
21 begin, the only issue we are going to be presenting is a
22 breakdown in communication between Mr. Robinson and his
23 attorney in a failure to explain the nature of the charges
24 against him, the elements and the consequences and so forth.

25 I would like to hand up, Your Honor, and ask the

→
this
is
not
right

Proof Cops's

ATN-10X005209020
WARR-NA @*
CIT-16-1-57-FELONY

ARREST CHARGE 01-PROPERTY
OFFENSE, 3RD OR SUBSEQUENT
OFFENSE DATE-07/28/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS MAURICE 09/19/2005
SC0100000 CHARLESTON CNTY SO
CASE-2005021283
ATN-10X005263014
WARR-77812DF
CIT-44-53-370(D)(4)-MISDEMEANOR

MY PCR
LAWYER TOLD
ME LIES AFTER
LIES

ARREST CHARGE 01-POSS 28G OR
LESS MARIJ OR 10G OR LESS
HASH 1ST
OFFENSE DATE-09/19/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS MAURICE 11/29/2005
SC0100100 CHARLESTON POLICE DE
CASE-0525736
ATN-10X005334003
WARR-H975625
CIT-16-13-160(A)(1)-FELONY

ARREST CHARGE 01-BREAKING
INTO AUTO OR TANKS, WHERE
FUEL STORED
OFFENSE DATE-11/29/2005
PHOTOGRAPH AVAILABLE

ROBINSON, OTIS A04/18/2006
SC0100100 CHARLESTON POLICE DE
CASE-129602
ATN-990000180975
WARR-K121639
CIT-16-11-311 FELONY

Counsel did
not protect my
Rights to a Fair
Trial

ARREST CHARGE 01-BURGLARY -
FIRST DEGREE
OFFENSE DATE-04/18/2006
PHOTOGRAPH AVAILABLE

CHECK
this out

CIT-16-11-311-FELONY
DOC-00GS10 WARR-K121639

COURT CHARGE 01-BURGLARY -
FIRST DEGREE
COURT DISP-NON-CONVICTION;
DISMISSED AT PRELIM
COURT DATE-06/20/2006
ATN-990000180975

DOUBLE
JEOPARDY

ROBINSON, OTIS MAURICE 07/04/2006
SC0100100 CHARLESTON POLICE DE
CASE-06013322
ATN-10X006185013
WARR-0120060704@
CIT-16-17-530-MISDEMEANOR

DIRECT
IN PICTURE
IS FOR
1ST DEGREE
BURGLARY

ARREST CHARGE 01-PUBLIC DISOR
DERLY CONDUCT
OFFENSE DATE-07/04/2006

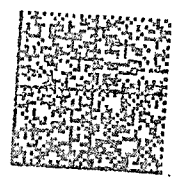
So How CAN I ~~not~~ be charge

for 2nd degree AND convicted for

A charge that doesn't have... RULE 5-00027... AG's JURY

Otis Robinson 288206 WA1-254
Broad River Correctional Institution
1460 Broad River Road
Columbia, South Carolina

29210



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Daniel E. Shearouse, Clerk of Court
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Columbia, South Carolina

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