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IN THE SUPREME COURT OF THE STATE OF
MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

ALLEN SMITH

V.

NO. 2007-CP-1631

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S TRAVERSE TO
RESPONDENT'S ANSWER

RECEIVED

MAY 01 2008

BY: _____

IN THE SUPREME COURT OF THE STATE OF
MISSISSIPPI

ALLEN SMITH
V.
NO: 2007-CR-1631
STATE OF MISSISSIPPI
APPELLANT
APPELLEE(S)

APPELLANT'S TRVERSE TO RESPONDENTS
BRIEF

Comes Now, the Appellant in the above
Styled Caption files this his Traverse to
the Appellee(s) Brief in response to the
Appellant's Post-Conviction Petition.

STATEMENT OF THE CASE

Smith pled guilty to a charge of Murder in the Circuit Court of Yazoo County, Mississippi on August 3, 2004. He was sentenced to serve a term of life in the custody of the Mississippi Department of Corrections.

On July 19, 2007, Smith filed his motion for Post Conviction Collateral Relief on the grounds that the plea was involuntary and invalid, and that he was denied a copy of his trial transcript, and that it constituted ineffective assistance of Counsel.

On September 7, 2007, the trial court held that Smith's request for records, as a matter of law, states no grounds for justifying a trial transcript ~~on~~ a copy of his records being prepared and given him. However Appellant, does have copies of letters that he had wrote to the courts as well as his Attorney Contrary to this statement of the Appellee.

The trial court further held that Smith failed to satisfy either prong of the Strickland test. On September 18, 2007, Smith filed his notice of appeal from the trial court's dismissal.

ARGUMENT

1) The trial court dismissed Smith's Petition for Post Conviction Collateral Relief stating that Smith was supposedly unable to meet the proof requirements of Strickland.

However, as alleged in petitioner's petition for Post Conviction relief brief. In support of Post Conviction that petitioner Smith upon several occasions wrote letters to his Attorney as well as had his sister personally go to the court house to obtain these important documents upon several occasions.

See post conviction (pages 17 & 18) petitioner sought these documents in order to properly file a post conviction but was not heard. In fact, he wrote the Judge seeking information why

he could not obtain the transcript, but was never heard.

Case:

As discussed in petitioner's post conviction in discussing ineffective assistance of counsel that counsel never investigated the circumstances of the case as was explained in Strickland supra. Respondent challenged counsel's assistance in six respects. He asserted that counsel was ineffective because she failed to move for a continuance to prepare for sentencing, to request a psychiatric report, to investigate and present character witness, to seek a presentence investigation report to present meaningful arguments to the sentencing judge and to investigate the medical examiners report or cross examine the medical experts. None of these things were conducted in petitioner Smith's case, none of this was conducted yet the court says petitioner had adequate representation.

Prejudice:

Petitioner Smith was prejudiced because

his attorney did nothing that resulted in a plea that was in fact done unknowingly because he was not informed of the circumstances, that caused him to be sentenced unfairly. Respondent(s) state that there were no affidavits to substantiate that the petitioner was denied effective assistance of court appointed counsel.

How could petitioner Smith provide an affidavit when he cannot even be granted his own transcript?

The Sixth amendment right recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. And that result was not given to petitioner Smith

A convicted defendant's claim that counsel made errors so serious that counsel was deficient. This requires showing that counsel must show that counsel's performance was has two components. First, the defendant reversal of a conviction or death sentence assistance was so defective as to require

Not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. When counsel failed to properly investigate the case. At this point the petitioner was prejudiced, because a proper investigation would have possibly shown that the murder was in fact accidental and instead of being subjected to a murder conviction.

Petitioner possibly could at receive a manslaughter conviction or at the least accidental death. But this is impossible when the attorney never even gave these issues thought. And/or consideration.

It is well understood that an attorney has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See Rowell v. Alabama, 287 U.S. at 68-69. Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See Cuyler v. Sullivan, supra at 346.

From Counsel's function as assistant to defendant deny the overarching duty to advocate the defendant's cause and more particular duties or important decisions and to keep the defendant informed of important developments in the course of the prosecution.

Petitioner Smith was never given this guarantee. If the case was not investigated and witnesses examined and talked to. What type of defense could his Attorney possibly put on, and how could she be effective without investigating the circumstances? It's ventrally impossible. Yes, I am optimistic that Petitioner Smith's Attorney passed the Bar. However, that still does not change the fact that she was ineffective in her duties to her client. For it cannot be a trial strategy when she failed to investigate and question potential witnesses in this case against her client Petitioner Allen Smith. There by prejudicing him.

Petitioner Smith is not an Attorney. This is why he depended upon his attorney to aid him, but when she failed him he was forced to plead guilty. But, he had no other alternative when his Attorney failed to even investigate and contact witnesses, etc.

Then the Court would not allow him to even possess a copy of the supposed transcript/record in this matter. If everything is according to law there should be nothing to hide.

The Federal Courts have held that a party seeking collateral relief is "entitled to a free transcript of his trial if necessary to make out his case" Poe v. United States, 229 F. Supp. 61, 71 (D.C.D.C. 1964); See also Bentley v. U.S., 431 F.2d 250, 253 (6th Cir. 1970) (Holding that "in any case where a transcript is necessary for the taking of an appeal (either direct or post conviction) an indigent appellant has a constitutional right to have one furnished by the government.

Petitioner Smith is not an attorney, yet he asks that this court will give his past conviction a de novo consideration in light of the facts set forth in his past conviction because petitioner has witnesses that would have testified at trial had they been contacted. Also there were possible witnesses that could have further testified as to the petitioner's character but again no one was contacted because of the petitioners case as set forth in the Strickland, supra, 466 U.S. 668.

CONCLUSION

Wherefore, premises considered the petitioner Allen Smith, pro se litigant seeks this Honorable Court to take into consideration this Traverse to Respondents Answer to his past conviction pursuant to Miss. Code Ann. Sec. 299-39-1, etc. AND any and all other relief this Court deems appropriate under the circumstances of this case and the set forth contents.

Respectfully Submitted,
Allen Smith
Allen Smith.

CERTIFICATE OF SERVICE

This is to certify that I Allen Smith,
have caused to be mailed via United States
Postal Services through the prison law
library facility a true and correct copy
of the foregoing Appellant's Traverse to
Respondents Answer.

Hon. Jim Hadd
Attorney Gen.
P.O. Box 222
Jackson, MS 39205-
0249

This the 22nd day of April, 2008

Respectfully Submitted,

Allen Smith #46787

Unit 38-D-B-201E #216

Parchman, MS 38738