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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,)
Plaintiff)
v.)
)
CHARLES R. SOUTHERN)
Defendant)
_____)

Criminal Division

Case No: 2010-CF-1745

MOTION FOR POSTCONVICTION RELIEF

1. The Circuit Court of The Fourth Judicial Circuit, in and for Duval County, Florida entered the judgment of conviction under attack.

2. Date of judgment of conviction was October 1, 2010 and a New Judgment was entered December 13, 2017 is the judgment of conviction under attack.

3. Length of sentence: Count I - Natural Life with 25 years minimum mandatory.

4. Nature of the offense involved is Second Degree Murder.

5. Mr. Southern entered a plea of Guilty.

6. Mr. Southern did not testify at any pretrial hearing, or trial, but did take the stand at his original sentencing.

7. Mr. Southern did not appeal from the judgment of conviction.

8. Mr. Southern has previously filed a motion, with respect to the original judgment in this court pursuant to Fla. R. Crim. P. 3.850(a) and (b)(1) in this Court raising the grounds of (1) Ineffective Assistance of counsel for failure to investigate and discover the facts surrounding Defendant's waiver of his *Miranda* rights; (2) Counsel failed to investigate and discover the facts surrounding the involuntary nature of Defendant's post-*Miranda* statements; and (3) Mr. Southern Mandatory Minimum term of life imprisonment without the possibility of parole for Second Degree Murder committed while he was a juvenile constitutes cruel and unusual punishment under Eight Amendment requiring resentencing pursuant to

Miller v. Alabama, 132 S. Ct. 2455 (2012) (the original 3.850 was amended and Southern's counsel only proceeded with this ground.).

9. The ground was denied without evidentiary hearing and Mr. Southern appealed to the First District Court of Appeal, Case 1D13-4026, which denied relief December 20, 2013 citing *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA 2013). Mr. Southern was granted Discretionary Review by the Florida Supreme Court, Case SC14-91, which later reversed and remanded the case for resenetncing.

10. No other petitions, applications, motions, etc. have been filed with respect to this judgment in any other court except as mentioned above.

11. Grounds for Relief

A. *Ground 1:* Mr. Southern's Waiver To Consent To Rehearing Is Unknowing, Unintelligent, And Involuntary Where Counsel Erroneously Informed Southern That Entering Such Waiver Would Grant Southern A 25 Year Review Of Sentence, When Southern Would Have Been Entitled To Such A Review Regardless of the Waiver, Pursuant to Florida Statute § 921.140(2)(b). Also Where Counsel Erroneously Informed Southern That Entering Such Waiver Would Not Waive His Right On Appeal To Raise Failure To Advise Defendant Of The Possibilities Of Youthful Offender Sentencing.

SUPPORTING FACTS

Counsel Bossen was appointed to represent Mr. Southern on resentencing, after remand. When Mr. Southern first met with Mr. Bossen he advised Bossen of his eligibility for the Youthful Offender Act, and that his prior trial counsel and trial court had failed to consider it during his sentencing. Southern informed counsel he would like to raise the issue on during the resentencing hearing. Mr. Bossen informed Southern he would look into the issue and get back with him.

Months passed before Mr. Bossen returned and presented the waiver order to consent to the rehearing, and during the meeting Mr. Bossen informed Mr. Southern the Court would not entertain the Youthful Offender Act issue, but Southern could raised on appeal. While discussing the waiver order Mr. Bossen insured Southern signing the waiver order would not affect Southern's opportunity to raise the issue on appeal in State or Federal court. Mr. Bossen insured Southern he put certain language in the waiver order which insured that Southern would be able to raise the issue on appeal.

Further, Mr. Bossen explained to Southern a benefit of the plea was that the State was agreeing to Southern being entitled to a sentencing review after 25 years. Counsel explained that such a concession was to Mr. Southern's benefit because Southern would not otherwise be entitled to the review after serving 25 years.

After returning to prison Mr. Southern learned he regardless of waiving his right to a full and fair review hearing under Florida Statute § 921.1402(2)(a) and (b) and he could not raise the Youthful Offender Act issue in State court, because the issue was not preserved for appeal. The resenetncing did not allow Southern to file another Rule 3.850 on an issue he could have raised in his prior 3.850 and the language used in the waiver order was essentially waived Southern making a Youthful Offender argument on appeal, therefore Southern could not raise the issue in State or Federal court, making the advise erroneous.

Had Mr. Bossen not misadvised Southern regarding the erroneous benefit of the waiver order Mr. Southern would not have signed the waiver and would have proceeded to a full and fair sentencing hearing pursuant § 921.1401(a)-(j) presenting mitigating evidence of immaturity and inability to appreciate the risks and consequences of his actions; no prior criminal history and peer pressure on the Southern to participate in the offense; Southern's positive ties to the community and family members; evidence that Southern has matured and is rehabilitating himself through available program via prison programs, mental health participation and correspondence courses; Southern showed remorse and assisted authorities after the crime; as well as other characteristics attributable to the Southern's youth on the his judgment. Based on the totality of the circumstances surrounding the crime and the hearing Southern would not have been sentenced to Natural Life with 25 years minimum mandatory where his mitigating factor out weighed the aggravating factors.

SUPPORTING LAW

Where trial counsel neglects to fully inform a Defendant regarding the consequence waiving admission of mitigation at sentencing, because he failed to make himself knowledgeable of the applicable law, his performance is objectively unreasonable. Cf. *Williams v. Taylor*, 529 U.S. 362, 395,120 S. Ct. 1495, 1514, 146 L. Ed. 2d 389 (2000) (counsel's performance fell short of professional

standards where he failed to uncover important information, not because of any "strategic calculation," but because he misunderstood the law); *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984) ("Counsel . . . has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.").

Mr. Southern was entitled to the effective assistance of trial counsel during the resentencing proceedings. "Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance."" *Lafler v. Cooper*, 566 U.S. 156; 132 S Ct 1376 (2012)(Quoting *Glover v. US* , 531 US 198, 203).

It was Mr. Bossen's responsibility to investigate and fully inform Southern regarding waiving his sentencing rights pursuant to § 775.082, § 921.1401, and § 921.1402, before advising Southern to enter into such a waiver. Mr. Bossen's failure to do so resulted in Southern entering into an Unknowing, Unintelligent, and Involuntary waiver of his substantive due process rights during sentencing. Where trial counsel neglects to raise an available defense because he failed to make himself knowledgeable of the applicable law, his performance is objectively unreasonable. Cf. *Williams v. Taylor*, 529 U.S. 362, 395,120 S. Ct. 1495, 1514, 146 L. Ed. 2d 389 (2000) (counsel's performance fell short of professional

standards where he failed to uncover important information, not because of any "strategic calculation," but because he misunderstood the law); *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984) ("Counsel . . . has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.").

Mr. Bossen's failure to discover and present familial mitigation and other significant mitigating evidence was below the range expected of reasonable, professional competent assistance of counsel. Counsel's performance thus did not measure up to the standard required under the holding of *Strickland v Washington*, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984), and [if it had,] "there is a reasonable probability that the result of the sentencing phase would have been different." Id.

Mr. Southern incorporates the facts and law in B. Ground 2. in support of this Ground.

B. Ground 2: Counsel Was Ineffective On Remanded Of Resentencing Where Counsel Failed To Recuse Judge Who Informed Him That She Would Not Consider Any Sentence Other Than Natural Life for Mr. Southern Who Was To Be Resentenced Consistent With Florida Statutes § 775.082, § 921.1401, and § 921.1402.

SUPPORTING FACTS

During the meeting with Mr. Bossen and prior to signing the waiver order counsel informed Southern that the waiver order was in Mr. Southern best interest

because the judge would not consider imposing any sentence less than life with 25 years minimum mandatory. Southern asked if there was any way around having Judge Senterfitt as his judge, because from his understanding of the juvenile sentencing statute the Court could impose a lesser sentence. Mr. Bossen informed Southern there was no way around it and encouraged Southern to sign the waiver order, without denying the inevitable in his case. Southern signed the waiver order and Mr. Bossen failed to recuse Judge Senterfitt where she had abused discretion when informing Mr. Bossen that she would impose no sentence less than life, regardless of mitigation for Southern's crime of Second Degree Murder.

The Judge's comment to the Mr. Bossen, that she would impose no sentence less than life regardless of her discretion to impose a lesser sentence pursuant to Fla. Stat. s. 775.082(1)(b)1, did constitute a prejudgment of the pending resentencing; the circumstances of the Judge's comments would lead any reasonable person to conclude and fear that the judge would not be objective. Had counsel filed a motion to recuse Judge Senterfitt Mr. Southern would not have signed the waiver which imposed a life sentence with 25 years minimum mandatory and would have received a full and fair resentencing hearing pursuant to Fla. Stat. s. 775.082 and 921.1401 in front a non bias judge. Such a hearing would have resulted in Mr. Southern receiving a sentence of 40 years, based on the

mitigating factors established in s.921.1401 and not the life sentence with 25 years imposed.

SUPPORTING LAW

In *Barrow v. State,* 27 so. 3d 211 (Fla. 4th DCA 2010) the trial judge's statement to counsel that he "do[es]n't do read backs," the Court found, "It is an abuse of discretion for a trial judge to refuse to exercise discretion, to rely on an inflexible rule for a decision that the law places in the judge's discretion." Id. at 218. The District Court of Appeal found the lower court's "apparent adoption of an ad hoc rule prohibiting read backs amounted to a failure to exercise the discretion granted to trial judges in this area." Id. at 213.

In the present case Judge Senterfitt ad hoc rule not to sentence a Defendant to any thing less than life in a Second Degree Murder case even if the Defendant was less than 18 at the time of the offense amounted to a failure to exercise discretion, where s. 775.082(1)(b)1. gives the court discretion to sentence a Defendant from a sentence of 40 years up to a sentence of life.

The Court's statement to counsel that she would not sentence Southern to anything less than life based on the fact the crime was Second Degree Murder would cause a reasonable fear that the judge would not be objective. Therefore, reasonable counsel would have moved to have such a judge disqualified.

Mr. Bossen's failure to disqualify Judge Senterfitt where she expressed an ad hoc policy to not exercise discretionary pursuant to the Florida statute 775.082 was below the range expected of reasonable, professional competent assistance of counsel. Counsel's performance thus "did not measure up to the standard required under the holding of *Strickland v Washington*, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984), and [if he had,] there is a reasonable probability that the result of the sentencing phase would have been different." Id., at 429, 80 L Ed 2d 674, 104 S Ct 2052. Particularly Mr. Southern would not have entered the waiver and would have presented mitigation during the resentencing which would have gained him a sentence less than life.

Mr. Southern incorporates the facts and law in A. Ground 1. in support of this Ground.

12. The grounds listed in 14 A, and B were not previously presented on your direct appeal, such grounds of ineffective assistance of counsel are not cognizable on direct appeal.

13. Mr. Southern does not have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack.

18. Each attorney who represented Mr. Southern in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Rhonda Peoples-Waters, 625 West Union Street, Suite 2, Jacksonville, FL 32202;

(b) At arraignment: Rhonda Peoples-Waters, 625 West Union Street, Suite 2, Jacksonville, FL 32202;

(c) At sentencing: Rhonda Peoples-Waters, 625 West Union Street, Suite 2, Jacksonville, FL 32202;

(d) In any postconviction proceeding: Dane K. Chase, 111 2nd Avenue NE, Suite 334, St. Petersburg, Florida 33701;

(e) On appeal from any adverse ruling in a postconviction proceeding Dane K. Chase, 111 2nd Avenue NE, Suite 334, St. Petersburg, Florida 33701;

(f) Rehearing from remanded of appeal of postconviction proceeding Michael S. Bossen, 1639 Emerson Street, Jacksonville, FL 32207.

WHEREFORE, Mr. Southern requests that the court grant all relief to which he may be entitled in this proceeding, including but not limited to granting Mr. Southern a resenetncing hearing consistent with the requirements of Florida Statutes § 775.082, § 921.1401, and § 921.1402, also such other and further relief as the court deems just and proper.

OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English and read this motion.

/s/ Charles S. Southern
Charles Southern, Pro Se

Certificate of Mailing

I certify that I placed this document in the hands of Everglades Correctional Institution personnel for mailing to the Clerk of Court for the Fourth Judicial Circuit in Duval County, 501 West Adams Street, Room 1262, Jacksonville, Florida 32202 and the Office of State Attorney, East Bay Street, 6th Floor, Duval County Courthouse, Room 600, Jacksonville, Florida 32202 on 21st May 2018.

/s/ Charles S. Southern
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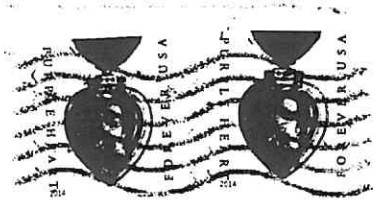

To: Clerk of the Court for the
Judicial Circuit in Duval County
501 West Adams Street
Room 1262
Jacksonville, FL 32202

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32202-295999

Date, Time	Story	Location
Sept 12 2018		
Dec 13 2017	Southern is resentenced to life in prison, with review after 25 years.	
Oct 27 2017	Pridgen is resentenced to life in prison, with review after 25 years.	
Aug 22 2013	After a request to vacate Southern's sentence is denied, his lawyer files an appeal with the Florida 1st	The appeal invokes the ruling by the SCOTUS that life sentences for juveniles are unconstitutional.
Oct 6 2011	Documents filed in the lawsuit contend Pridgen should never have been at UCS, because he'd been asked to withdraw because of drug use. He was allowed to re-enroll, despite the	
March 3 2011	Makia's parents file lawsuit vs University Christian	
Jan 13 2011	Detective Bobby Bowers named JSO's Officer of the Year for his work on Makia's murder.	
Nov 19 2010	17 CDs and DVDs of evidence released, including Southern and Pridgen's	
Oct 1 2010	Lengthy sentencing hearing in which both Pridgen and Southern apologize to Makia's parents. Prosecutor Mark Caliel shows both the photo of Makia, saying "you blew her face off."	Makia's mother presents tearful victim impact statement. Caliel asks for life in prison for what he called "an execution." Judge Senterfitt sentences both to life in prison.
July 29 2010	Pridgen and Southern plead guilty to 2nd degree murder, will be sentenced 40-years to life, with a mandatory minimum of 25 years.	They told prosecutors it was a thrill killing. They'd stolen the guns to pull robberies, and shot her to see what it would feel like.
July 15 2010	Both suspects appear in court, but don't talk to each other during a pretrial. SAO says plea discussions have been held.	
June 4 2010	Jail calls released. Southern tells his grandmother on the day he and Pridgen were indicted for the murder of Makia Coney, it was "no big deal," and the prosecutors moved quickly to bring the charges because of media pressure.	Later on, the grandmother is telling him he will need money to buy things like TVs when he gets to "regular prison." He tells her it isn't over yet, that all the evidence isn't out, and "things happen for a reason."

Crew	Live
Both Southern and Pridgen are granted new sentencing hearings.	

Date, Time	Story	Location
April 28 2010	Another 60 pages of reports released. Coney and Southern were having a relationship. Rumors were rampant thru the school Southern and Pridgen were involved, and in fact became POIs quickly.	The first shot to Coney's head was a thru and thru her cheeks. The 2nd one was in her mouth. Fragments matched the gun found at Pridgen's house. School surveillance showed Coney leaving with Pridgen the day she disappeared.
April 1 2010	Southern & Pridgen indicted for 1st degree murder.	
March 11 2010	About 100 pages of reports released. Blood was found on one of Southern's shoes. The guns recovered are the murder weapons.	
Feb 16 2010	Southern and Pridgen are charged as adults. SAO says they did NOT turn themselves in, but rather came in for questioning, and eventually admitted to the murder under interrogation.	
Feb 14 2010	UCS holds memorial service for Makia. Students say they are in shock; no one knows why she was killed.	
Feb 13 2010	JSO says both suspects confessed to shooting Makia, but provided no motive. They are ordered held w/o bond at 1st appearance.	Pridgen is later assaulted by 8 inmates at the juvenile lockup.
Feb 12 2010	UCS classmates, 17-yr old Charles Southern and 16-yr old Connor Pridgen, turn themselves in, are charged with murder.	
Feb 11 2010	Family says they were notified last night of the discovery of Makia's body. JSO will only say the two	Family spokesman says Makia was viciously beaten. School offers $5000 reward for info in the case.
Feb 10 2010	17-yr old Makia Coney disappears after leaving an after-school program at University Christian School. Her body is found 3-hours later in a drainage ditch at the 7400 block of Powers	Note: EARS never done on the homicide callout. The CCR is 2010110226.

Crew	Live
Southern denied any involvement to JSO, who tired to get him to help himself by coming clean. Still no clear motive.	
Attorney James Crumbie discovers his two 44 caliber handguns have been stolen from his home. His son Daniel goes to UCS, and played football with Pridgen.	A neighbor told JSO she'd seen Pridgen and Southern on the roof of Crumbie's house 2-weeks ago.