SUPREME COURT OF FLORIDA

TALLAHASSEE. FLORIDA

FILED
DEBBIE CAUSSEAUX
FEB 0 9 2000
CLERK, SUPREME COURT
BY

LLOYD M. JONES #083987,

Petitioner,

SC99-37

vs.

CASE NO: 99137

ROBERT A. BUTTERWORTH, et. al.

Respondents.

/

ON INTIAL BRIEF OF PETITIONER

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THIRD DISTRICT COURT OF APPEAL

CASE NO:98-2921

JONES v. STATE OF FLORIDA

CERTIFICATE OF INTERESTED PERSONS

HONORABLE COPE. LEVY AND GREEN

(THIRD DCA JUDGES)

ROBERT A. BUTTERWORTH (ATTY GENERAL)

MARK ROSENBLATT (ASSIST ATTY GENERAL)

LLOYD M. JONES (APPELLANT)

STIRLING BAKER (COMPLAINING WITNESS)

BY: _____

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STATEMENT OF JURISDICTION

JURISDICTION IS INVOKED PURSUANT TO RULE 9.030(2)(A)(IV) and Article (V)(3)(b).

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STATEMENT OF THE CASE AND FACTS

On May 22, 1996, Mr. Jones (hereinafter) referred as the (Petitioner) was charged by instrument with burglary to an... unoccupied conveyance with which the jury returned a guilty verdict as... charged burglary. A sentencing hearing took place on April 4, 1997.

Not-ice of intent to seek an enhanced penalty was songht by the Respondent, on May 17, 1996, which the state asked that Mr. Jones he sentenced as a violent career criminal to served 15 years with a 10 year minimum mandatory term.

The trial court, found that Jones qualified as a violent career criminal and sentenced him to serve 15 years. **F.S.P..**

Notice of appeal was timely filed and opinion filed April. 8, 1998, conducted pursuant to ANDERS-V. CALIFORNIA, 386 U.S. 738 (1967).

Based upon the foregoing Anders decision, Jones filed pursuant to **Fla.R.Crim.P.Rule** 3.850, petition to vacate and among the two claims raised, Jones appealed an order denying his rule 3.850 to the Florida Third District Court of Appeal, the Court after reviewing the record conclusively established that Jones was entitled to no rule 3.850 relief.

For the very reason written by Florida Third District. Court of Appeal, Mr. Jones invoked discretionary jurisdiction on December 6, 1999, this brief is as follows.

1 / MR. JONES RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO AVAILABLE EVIDENCE NOT PRESENTED AT TRIAL.

Mr. Jones, first argued that his trial level counsel was ineffective for failing to investigate and all two witnesses at trial, namely, Robin Chimilio and Johnny Morell. As a result would have provided exculpatory evidence on his behalf.

A claim of ineffective assistance of counsel is a mixed question of law and fact requiring de novo review HARRIS V. WOOD, 64 F.3f 1432 (9th Cit. 1995), (adopting) THOMPSON V. CALDERON. 109 F.3d 1358 (9th Cir. 1996).

Most importantly, Florida third District determined within their written opinion page (7) filed November 3, 1999, relevant, to the trial testimony of the states witnesses as well as Mr. Jones own testimony chat he offered return of the stolen toolbox to the victim, It. was abundantly clear that Jones could not meet. his burden under STRICKLAND V. WASHTNGTION, 466 U.S. 668 (1984).

Tactical decisions of trial counsel deserve deference when (1) counsel in fact bases trial counsel on strategic consideration, (2) counsel makes an informed decision based upon investigation. and (3) the decision appears reasonable under the circumstances. SANDERS V. RATELLS, 21 F.3d at 1456.

It is true that Mr. Jones own past miranda offer to return the stolen toolbox to the victim, however, this is not dispositive

Had Mr. Morel1 and Mr. Chimilio been called at trial, the jury of their peers, not the judge would have made the credibility call which well may have been much more favorable, Had they found there credible, Mr. Jones would have been patently justi-

fied in returning the stolen toolbox and no reasonable jury would have found him guilty due to, inconsistent: time frame.

Given the fact. that the material. witnesses could not agree on whether it was daytime or nightime when the crime was committed.

Witnesses not called included Robin Chimilio, Mr. Jones' girlfriend, which could have impeached the witnesses unfavorable testimony. Mamely, that his affidavit indicates the two of them were together from 5:30 or 6:00 P.M. until the police officer arrived in the early morning hours. Eventhough the second affidavit filed by Jones brother, contradict the victim's own testimony, however, the question at least should have been given an evidentiary hearing. MC. MILLIAN V. STATE, 717 So.2d 102 (FLA. 4th DCA. 1998); ANTHONY V. STATE, 660 So.2d 374. 376 (FLA. 4th DCA 1995).

Naturally, Jones contends that prejudice may result from the cumulative impact on multiple deficiencies e.g. COOPER V. FITZHARRIS, 586 F.2d 1325, 1333 (9TH Cir 1978 (EN BANC), CERT. DENIED, 440 U.S. 974, 99 S.Ct. 1542, 59 L.Ed. 2d 793 (1979). According the order should be reverse and the cause remanded for an...evidentiary hearing. per FLA.R.APP.P. 9.140 (I). Jones should at a bare minimum receive a new trial.... complete with new counsel who will be more careful.

JONES V. STATE OF FLORIDA

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2 / MR. JONES SHOULD BE REMANDEDE FOR RESENTENCING PURSUANT TO STATE V. TUOMPSON'S DECISION OPINION FILED DECEMBER 22, 1999, 25 FLA.L.WEEKLY S1

Once again, Mr. Jones sentence for burglary OF an unoccupied conveyance enteres pursuant to the "Officer Evelyn Gort" should be remanded for resentencing since defense well as Jones argued that ho should not be sentenced as a violent criminal because this offense was a property crime, which posed no danger to the community.

Additionally, at. the sentencing hearing held on April 4. 1997, revealed that defense stipulated to the accuracy of three of his client's prior record. (1) a 1993 allege robbery, (2) a 1990 conviction for robbery and burglary, and (3) a 1989 conviction for robbery suregly does not qualify as a violent career criminal eventhough the trial court: agreed.

Therefore, in light of THOMPSON'S decision rendered by the Florida Supreme Court, this cause should be remanded for resentencing.

CONCLUSION

BASED UPON THE FOREGOING DECISION OF THOMPSON, AND CERTIFY CONFLICT, The Petitioner's sentence should be vacated in the very least, the cause remanded for an cvidentinry hearing.

Respectfully submitted,

Lloyd Jones #083987

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C.C. furnished this 23 day of January 2000

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