

11-3-2011

Clark v. State Appellant's Brief Dckt. 38107

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COPY

Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

William E. Clark #79648,)
)
Appellant, pro per)
)
vs.)
)
State of Idaho,)
)
Respondent.)
_____)

APPELLANT'S BRIEF

Supreme Court No. 38107

Appeal from the District Court of the Second Judicial District
for Idaho County.
The Honorable John Bradbury, District Judge presiding.

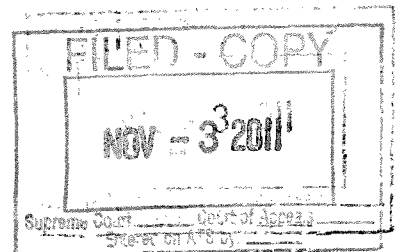


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TABLE OF CASES AND AUTHORITIES

① *Strickland v. Washington*, 406 U.S. 668, 687, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

② *Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S. Ct. 316, 322, 92 L. Ed. 309 (1948)

③ *Padilla v. Kentucky*, 130 S. Ct. 1473, 1484, 176 L. Ed. 2d 284 (2010)

④ *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)

⑤ *Smith v. Mahoney*, 611 F.3d 978, 979 (9th Cir. 2010)

⑥ *Harding v. Davis*, 878 F.2d 1341 (11th Cir. 1989)

⑦ *U.S. v. D'Amore*, 56 F.3d 1202 (9th Cir. 1995)

⑧ *Burger v. Kemp*, 483 U.S. 776, 107 S.Ct. 3114, 97 L. Ed. 2d 638 (1987)

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STATEMENT OF THE CASE

A. Introduction

I William E. Clark, in his own and proper person, does intend to prove that my rights to a wholesome and vigorous defense, due process and equal protection under the law as set apart and defined in the 5th, 6th and 14th amendments of the constitution of the United States of America has been wholly violated from the very onset of this case. This denial of rights prejudiced every aspect of this case.

I intend to show this Honorable Court that Jonathan Halin was not only ineffective in providing me counsel and acting as such on my behalf, he was in fact negligent in the performance of his duties and responsibilities as appointed him.

I also intend to show that Ms. Diane Walker, the Deputy State Appellate Public Defender also prejudiced my case in that Ms. Walker and Mr. Halin both exhibited serious conflicts of Interest allowing neither the time to investigate, formulate and prepare a viable defense on my behalf.

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STATEMENT OF THE CASE

B. Statements of Facts and Course of Proceedings

1. Ineffective Counsel

a. That, Jonathan Halin was the Public Defender assigned to me in the case at issue CR2009-39849.

b. That, Mr. Halin called me at the Idaho County Jail on 6/1/07 and spoke to me for approximately 10 minutes.

c. That, there was no contact visits with Mr. Halin prior to my Preliminary Hearing

d. That, on 7/12/07 Mr. Halin visited for approximately 10 minutes

e. That, on 7/18/07 Mr. Halin spoke with me long enough to inform me the plea hearing was re-scheduled.

f. That, on 7/19/07 Mr. Halin visited me twice, 1 visit for approximately 10 minutes and again later for approximately 20 minutes.

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STATEMENT OF THE CASE

B. Statement of Facts and Course of Proceedings (Continued)

g. That, on 7/19/07 Mr. Halin violated client privilege by sending Idaho County Sheriff Rick Shira to ascertain an answer in regards to my case.

h. That, through the course of these proceedings covering approximately 4 months, Mr. Halin spent approximately 50 minutes with me of which all efforts were to a plea agreement, none to a defense.

2. Conflict of Interest

a. That, the case load of Mr. Halin and Ms. Walker prevented even the slightest degree of investigation of the points that would have changed the outcome of this case at either level of this process.

b. That, the attorney's at mention did not effectively schedule adequate time to advise or discuss possible strategies that may have been available to this defendant.

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STATEMENT OF THE CASE

B. Statement of Facts and Course of Proceedings (Continued)

c. That, the attorneys mentioned exhibited a callous and unprofessional attitude and demeanor toward their duties and responsibilities as it pertained to this case and this defendant;

d. That, any degree of loyalty to this defendant was negligent at best.

e. That, motions necessary to dismiss attorneys of record or withdrawal of plea were not filed in a timely manner or at all. Confidence in my attorneys of record is minimal, in that other motions, petitions or courses of action that could have been available yet are unknown to this defendant were not discussed or filed.

3. Attorney-Client Conflict

a. That, Mr. Halin in his effort to require this defendant to plead guilty exhibited extreme swings in his mood and degrees of frustrations toward this defendant.

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STATEMENT OF THE CASE

B. Statement of Facts and Course of Proceedings (continued)

b. That, it is this defendant's perception that Mr. Halin avoided, even refused to schedule appointments and though I had perfect knowledge he was present at the jail and would not come see me.

c. That, everytime I was allowed time to meet with Mr. Halin, it was to inform this defendant of a hearing and never to discuss a defense of any kind or at any length.

d. That, tensions were always at a level that prohibited any positive dialogue or the ability to further a defense.

e. That, from the onset there was not any confidence, trust or degree of Loyalty available to this defendant in his; the attorney of record, in his desire or ability to provide me a defense. (5)

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ISSUES PRESENTED ON APPEAL

1. That, Mr. Halin failed to be present during the Change of Plea Hearing when Honorable Judge Bradbury ordered him to be in the Courthouse until 3:00pm on 7/19/11.
2. That, Mr. Halin failed to discover, raise issues and object at the appropriate times throughout the case.
3. Didn't advise me of the consequences of a Rule 11 when entering into a plea agreement. (2)
4. That, Mr. Halin did not provide any advice, options or information in regards of a defense.
5. That, Mr. Halin failed to keep reasonable communication with me. Only visited with me 3 times while incarcerated in Idaho County Jail on current case.
6. That, Mr. Halin was virtually silent throughout this case, especially during the Change of Plea hearing / sentencing. (6)

ARGUMENT

A. Introduction

From the very beginning of this criminal case; resulting in a conviction for ① Leaving the Scene of an Injury Accident, and ② Injury to a Child, has been by what I believe and to be a situation where despite opportunity to show evidence and argument that would have most assuredly changed the outcome of this case my attorney Mr. Hahn a public defender refused to represent me in a fashion that would support his office and uphold the Constitution of the United States. This claim is based upon ① effectiveness of counsel ② Conflict of Interest ③ Negligence.

ARGUMENT

B. ARGUMENT

It is the point of this case to show that I was prejudiced in a manner that brings to bear every argument available under the 2 pronged standard set by Strickland v. Washington, the prejudice standard as set by Hill v. Lockhart and negligence issues that I couldn't find landmark case law on because of the lack of accessibility to proper means of researching yet I know they exist.

Mr. Halin's failure to provide even a minimal standard of an expected standard of professionalism resulted in my case being shoved through court.

While incarcerated in the Idaho County Jail I made numerous attempts to contact Mr. Halin with no results. Any and almost all contacts made were a result of Mr. Halin informing me of a hearing and what he was going to do at that hearing. At no time did he seek my input or will. At no time did he discuss pros and cons, and at no time did I completely understand what he was doing and why.

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ARGUMENT

B. ARGUMENT (continued)

This entire mind set was me accepting a plea agreement and never a defense.

I tried to give him informations and facts that if investigated would have made a difference in the outcome of my case.

I have letters from family members expressing the need for Mr. Halin to contact me and also a need to investigate or consider pertinent information.

Mr. Halin was so busy with other cases that he expressly told me he didn't have much time, said in reference to my case, my information and my need to understand what he was trying to do. I had hoped Mr. Halin in that he was supposed to be my advocate yet my hopes were quickly dashed and I soon found that I had no confidence in him or his desire to be my attorney of record.

The Supreme Court has held time and again a defendents rights to a "wholesome and vigorous Appellant's Brief" -pg. 12

ARGUMENT

B. ARGUMENT (continued)

defense..." and that a "plea agreement is not, nor will ever be a defense". If this is the case then again Mr. Halin has fallen substantially short of an expected standard.

Loyalty to a client is perhaps the basic foundation and responsibility of counsel. (8)

Throughout the proceedings of my case Mr. Halin was virtually silent. He failed to investigate issues at hand, discover or raise issues obvious to the record that is available to His Honorable Court.

There was no need in showing of prejudice, for ineffectiveness was established, per se. (6)

Mr. Halin applied so much pressure and even threats of maximum sentences etc. that I had no hope of a defense in, nor could understand what position I truly had, except to plead guilty.

Because of the total attorney-client breakdown I sent letters to the Honorable Appellant's Brief

ARGUMENT

B. ARGUMENT (Continued)

Judge Bradbury requesting new counsel and even asked in Court for Mr. Halin to be dismissed as my attorney.

I do not know why every attempt at dismissing Mr. Halin was overlooked and even denied when all evidence showed the breakdown in communication, and confidence was overwhelming.

Mr. Halin even failed to be present at my change of plea hearing and that the Honorable Judge Bradbury took Judicial notice on sentencing without proper time restraints.

The foundation of this Appellant's argument is the fact that Mr. Halin was detrimental to my case and prejudiced me in (3) three distinct and important areas:

1. Effectiveness
2. Conflict of Interest
3. Negligence

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CONCLUSION

THEREFORE, this appellant respectfully requests that this Honorable Court set the issue at hand to the appropriate court for hearing and adjudication, I would also respectfully request any and all other remedies this Honorable Court may deem appropriate in the essence of Justice.

Respectfully submitted this 1st day of November, 2011.

William E. Clark


Appellant, Pro per

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of November, 2011, I mailed a true and correct copy of the APPELLANT'S BRIEF via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010


Appellant, *Pro se*