THE STATE OF SOUTHCAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 28 2022
SC Court of Appeals

THE STATE,

RESPONDENT

VS.

Terrell McCoy, 256070

PETITIONER

PCR APPEAL (SCACR (I))
Deadra Jefferson, Circuit Judge
Order No. 2019-00-1193
AMENDED PETITION FOR REHEARING

PURSUANT TO RULE 243(i) SCACR & 221(a) Petitioner respectfully request rehearing pursuant to Kennedy V. South Carolin a Retirement, 349 S.C. 531 (2001) where this Court has overlooked and misapprehendd the facts raise and preserved, regarding Appellate Counsel and trial Counsel was ineffective. There exist no probative evidence to support the PCR Judge ruling. See Pierce V. State, 338 S.C. 139, 526 S.E.2d 225 (2000); Sellner V. State 416. S.C. 606, 787 S.E.2d 525 2016. All issues were raise and ruled on during Petitioner's trial and PCR, therefore he is entitled to a direct appeal, and first bite of the apple. See Odom V. State, 337 S.C 256 (1999)

(1) Did the PCR judge err in denying relief where appellate Counsel was ineffective for failing to raise non frivolous issues during Petitioner's first appeal as of right, when the issue had been Contemporaneously preserved during trial? Petitioner repeatedly discussed the Appellate issues with Appellate

Counsel? Griffen V Illinois, 351 U.S. 12, 20 (1956); Anders V. California, 386 U.S 738 Douglas V. California, 372 U.S. 353. Strickland V. Washington, 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed 2d (1984); Evitts V. Lucey, 469 U.S. 387, 105 S.Ct. 850; 83 LEd 821 (1985); Southerland V. State, 337 S.C. 610, 626, 524 S.E. 2d 833, 836 (1999).

(2) Whether there is any evidence to support the PCR Judges finding that no Brady Violation occurred? Riddle V. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70 (2006); Gibson V. State, 334 S.C. 515, 514 S.E. 2d 320 (1999); Kyles V. Whitley, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 1565-69, 131 L.E.2d 490, 505-10 (1995); Brady V. Maryland 373 U.S 83 (1963); United States V. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 LEd 13; Berger V. United States 295 U.S. 78, 88, 55 S.Ct 629, 633, 79 LEd 1314 (1935); United States V. Agurs, 427 U.S. 97, 96 S.Ct 2392, 49 L.Ed. 2d 342 (1976); State V. Dohlen, 322 S.C. 234, 242, 472 SE 2d 689, 693 (1996), and its progeny. SC Code 17-27-45 (C)

(3) Were there any evidence to support the Summary Judgment Judge ruling that Petitioner could not raise ineffective assistance of trial counsel claims during PCR & Were there any evidence to support the PCR Judges finding that Petitioner did not call trial Counsel Lorelle Proctor to testify at the PCR hearing to determine what advice she gave petitioner regarding a waiver of Constitutional rights to effective assistance of counsel? Gideon V. Wain Wright, 372 U.S. 335, 344 (1963); Strickland V. Washington, Supra. Butler V. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Cert Denied, 474 U.S. 1094, 106 S.Ct 869, 88 L.Ed.2d 908 (1986).

First, Petitioner agrees with the United States Supreme Court, and the South Carolina Supreme Court, that the burden of proof is upon Petitioner to show that counsel performance was deficient as measured by the standard of reasonableness under prevailing norms. Second, Petitioner must prove that he or she was prejudice by such deficiency to the extent of there being a reasonable probability that, but for Counsel's unprofessional errors, the result would have been different. Petitioner is entitled to the effective assistance of appellate counsel.

PCR Judge Deadra Jefferson (hereinafter called PCR Judge) committed an error of law in denying Petitioner PCR relief. Throughout the entire PCR proceeding, She commented that Petitioner had preserved issues Concerning Brady violation, and that it was Appellate Counsel duty to raise those issues during direct appeal. (Record of Appeal Appendix page 955 line 25 through page 956 line 1-14; page 957

line 3-25; page 958 line 4-25; page 959 line 1-25; page 960 line 1-25; page 961 line 1-25; and page 962 line 1-25).

- PCR Counsel Rodney Davis then asked Petitioner, "Were you aware that discovery was requested?
- Petitioner testified he was aware that SCRCrimP Rule 5 & 6 was served upon the Solicitor on April 10, 2006. (Appendix page 965 line 17-25; page 966 line 1-25; page 967 line 1-25; page 968 line 1-22; page 969, page 973; page 974; and page 979.)
- During the hearing, the State agreed that Petitioner had made pretrial motions that Solicitor failed to produce evidence. (Appendix page 932 line 16-24).
- PCR Judge Stated, "Appellate Counsel could be questioned about that, because he has reviewed the record, and there must be a reason he didn't pursue it. Either he was ineffective in failing to pursue it, or he had a good reason not pursuing it. (Appendix page 932 line 25; page 933 line 1-9)
- Appellate Counsel also testified he was not aware of any evidence by 911 call or DNA (Appendix page 945 line 5-13). He also testified He was unaware of any issues dealing with a dispatcher log that Petitioner attempted to be introduce and the State objected to. (Appendix page 944 line 11-18).
- PCR Counsel then asked Appellate Counsel about evidence requested ~~from~~ the state and it was not provided, would you agree that's a Brady Violation. Appellate Counsel agreed. (Appendix page 945 line 9-25; 946 line 1-15).
- PCR Counsel finally asked "Are you aware of cases that have been -- conviction that have been reversed for a Brady Violation?" Appellate Counsel agreed. (Appendix page 947 Line 8-11)
- PCR Counsel introduced an affidavit by Chris Neely into the PCR record without objection, which shows material facts that a 911 tape existed during the time Counsel requested the 911 tape. (Appendix page 958 line 4-25; page 959 line 1-6).
- As stated earlier, the motion for evidence was made on April 10, 2006. The document was attached to Petitioner's PCR application. (Appendix page 965 line 17-25; page 1066).
- Petitioner raised pretrial motions concerning evidence never disclosed or destroyed. (Appendix page 52-85; page 639 through pages 644; page 663 line 13-25; page 664 line 1-5).
- Standby Counsel Lorele Proctor explained, she made specific request for the 911 tape. (Appendix page 642 line 12-25).
- PCR Counsel made a note for the record, that Petitioner's trial transcript would become part of the PCR record. (Appendix page 957 line 3-9) Regarding any Brady issues.

• During Petitioner's trial, Trial Judge informed Petitioner, that if he prove that any evidence was destroyed by the State, he would give a certain Jury instruction regarding any evidence destroyed. (Appendix page 77 Line 14-22)

• Petitioner sought to call Jenie Fowler, North Charleston Police Dispatcher, to testify concerning the 911 call she received on March 25, 2006. The State misinformed Petitioner that the subpoena for Jenie Fowler went to another Jenie Fowler that allegedly work at NCPD. (Appendix page 639 line 15-25; page 640 line 1-11).

• Petitioner continued, "I think its only one." (Appendix page 640 line 13).

• Standby Counsel Lorelle Proctor asked the State to stipulate regarding the contents of the 911 call in order to continue trial, while Petitioner requested the disclosure of the 911 tape.

• Petitioner stated, "I subpoena the 911 tape." (Appendix page 641 line 1-9)

• Trial Judge abused and stated, "We couldn't bring somebody in just to read what is on that." (Appendix page 643 line 21-22)

• The State's objection was based on Hearsay, the Unavailability of a witness, Jenie Fowler, and the 911 Caller. See State V. Doctor, 306 S.C. 527, [illegible] 36 (1992);

• The Court held "We first adopted the rule that out of court statements against penal interest made by an unavailable declarant are admissible at trial. However, if offered to exculpate the accused in a criminal trial, they are admissible only if corroborating evidence indicates the trustworthiness of the statement. State V Forney, 321 S.C. 353, 468 S.E.2d 641 (1996).

• The dispatcher was unavailable under SCRE Rule 804(a)(5). officer Jason Ray testified concerning the dispatcher call he received. (Appendix page

• After discovered evidence revealed it was only one Jenie Fowler. (Appendix pages 855; pages 856; page 857; page 858; pages 845 through 849)

• Solicitor Burns Wetmore stated "Ive never heard a 911 tape. I know they're kept for a certain period of time, and then they're destroyed. (Appendix page 641 line 20-25 through page 642 line 1-5).

• Petitioner requested a final ruling in order to receive an adverse Jury instruction. The Trial Judge stated. "There is no evidence the State destroyed anything, so your motion is denied. (Appendix page 663 line 18-25; page 664 line 1-4).

• This issue was properly preserved for Appellate review.

• During PCR, Appellate Counsel testified, "I can tell you if Mr. McCoy ask for that and I didn't raise it, it would kind of be my common practice to say, listen, Ive raised the issue, or issues, that I think give you the best chance of winning, and if Ive missed something there is -- your playing with a net and that net is called Post Conviction Relief. (Appendix page 943 line 14-25)

JOM

• Petitioner has met the first requirement under Strickland V Washington, Supra. Appellate Counsel performance was deficient. Second, Petitioner was prejudice by Appellate Counsel deficient performance.

• See State V. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). ("An Appellate Court will not reverse the trial [court]'s decision regarding a Jury instruction absent abuse discretion. State V. McBride, 416 S.C. 379, 389, 786 S.E.2d 435, 440 (Ct.App 2016) ("Adverse Inference Charges are rarely permitted in criminal cases".) State V. Batson, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973). ("[W]e entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference...." Id. ("[A] Charge of this proposition to a Jury on behalf of either the State or the defense is not warranted except under most unusual circumstances ...") State V. Cheesebore, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). ("The State does not have absolute duty to preserve potentially useful evidence that might exonerate a defendant.") Id at 538-39, 552 S.E.2d at 307 ("To establish a due process violation, a defendant must demonstrate (1) that the State destroyed evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means.

• In this case, (1) the 911 tape was in the State Possession before its destruction (2) Its apparent that the 911 tape possessed exculpatory value before it's destruction, it was destroyed (3) two months after trial Counsel made specific request. (Appendix page 968 line 2-22; page 971 line 9-13) See Brady V. Maryland Supra, "The United States Supreme Court held," That the Suppression by the Prosecution of evidence favorable to the accused upon request, Violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or Bad faith of the prosecution. The State's Suppression of favorable material evidence undermines the confidence in the Jury's Verdict.

Standby Counsel made Specific request. (Appendix page 642 line 12-25). See State V. Hoover Appellate Case No. 2018-00-3040 (S.Ct. App. May 19, 2021).

• Trial Judge believed the evidence did not exist. "Miss Proctor said back when she use to represent you, her office tried to obtain it, and they were informed it did not exist...." "Appendix page 644 line 1-6)

• As Stated earlier, PCR Counsel introduced affidavit of Chris Neely Verifying a 911 tape did exist. PCR Counsel also introduced the dispatcher's report into the record. (Appendix page 958 Line 8-25) Attached to this petition for the Appellant Record, SC. Code 17-27-45 (C)

The 911 Caller reference call that someone was banging on the door, the door flew open and someone was shot. She does not know who he is. (Appendix page 820). This evidence was in the possession of the State.

IL ROOM

• PCR Counsel asked Appellate Counsel, "If there were items of evidence that Mr. McCoy -- or any defendant. If there were items of evidence that the defendant requested from the State, and it was not provided, would you agree that's a Brady Violation?"

• PCR Counsel replied," If it would have assisted his defense, whatever the evidence was, yes, I would agree with that." (Appendix page 945 line 9-25; page 946 Line 1)

• The State asked "If the prosecution does not possess evidence, they have no duty to turn over what they don't possess?"

• Appellate Counsel testified. "I partially agree .... evidence in the possession of say the police department .... is imputed to the State or to the Solicitor is my understanding of the law." (Appendix page 953 line 15-25)

• The State then ask, "If the police don't possess it, then the Solicitor Cant possess it Correct?" Appellant Counsel agreed. (Appendix page 954 line 1-7)

• In this case, police did possess the Undisclosed evidence (911 tape). See Affidavit of Chris Neely Introduced into the record. (Appendix page 958 line 4 through 24; page 959 Line 1-9, and attached to this Petition For Rehearing).

• PCR Judge stated "It doesn't Change anything, it's a direct appeal issue .... The 911 tape you have to ask within -- I would imagine that Ms. Proctor would have asked for the 911 tape originally. Did she not? The State would have produce it at the time of the original trial, didn't they?

• PCR Counsel testified it was never produced. (Appendix page 959 line 11-25; page 960 line 1-25; page 961 line 1-24)

• Appellate Counsel testified," If Mr. McCoy identified a winning issue that I didn't raise, I would have any strategic reason, not to raise something that I thought was the winning issue." (Appendix page 949 line 25 through page 950 line 1-21) (See Also page 941 line 14-17; page 942; Page 943; page 944; page 945; page 946; page 947; page 948 line 1-17)

• Petitioner was prejudice by Appellate Counsel deficient performance. See Brady V. Maryland 373, U.S. 83 (1963); Kyles V. Whitley, Supra; United States V. Bagley, Supra, Berger V. United States, Supra; United States V. Agurs; Supra; Strickland Vi Washington; Southerland V. State, Supra; Riddle V. Ozmint, Supra; Gibson V. State, Supra; State V. Dohlen Supra.

• Petitioner is guaranteed the effective assistance of Appellate Counsel pursuing a first appeal as of right. Griffen V. Illinois, Supra.

• See Pennsylvania V. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed 2d 40 (1987). In Ritchie the United States Supreme Court held that defendant was entitled to have the trial court examine undisclosed evidence to determine whether it contained material information that would have Change the outcome of trial. 480 U.S. at 58, 107 S.Ct at 1002; 94 L.E.d 2d at 58. (In So holding it speci-

fied that the defendant must first establish a basis for his claim that the undisclosed information contains material evidence. 480 U.S. at 58 n 15 ; 107 S.Ct. at 1002 n. 15 ; 94 L.Ed 2d at 58, n 15.)

- During the PCR hearing, Petitioner clearly states "There existed a 911 tape never given to my attorney. It was a 911 tape that contradicts the State's witness testimony. (Appendix page 968 line 6 through 9.
- PCR Counsel then mark the CAD report as Exhibit 1. (Appendix page 969 Line 6-25; page 970 Line 1-25; page 971 line 9-13; pages 974; 975; 976; 977; 978; 979; 980; 981; 982; 983;)
- PCR Judge denied Relief. PCR Judges order fails to address the material evidence the state failed to disclose. No portions of the PCR Judge's order did she address the material evidence Under Brady pursuant to the prongs. PCR Judge indicated that the Brady claim has no merits although it was preserved for Appellate review. She misapplied the facts by stating the 911 tape was not in possession of the State, although PCR Counsel introduce an affidavit by Chris Neely which shows the evidence was in possession of the police.
- PCR Judge misapplied the law under Brady & Pennsylvania v. Ritchie See. Appendix page 1082 through 1086) The evidence was material because it contradicts the State theory of the crime. The evidence was exculpatory, and could have been used to exonerate the petitioner.
- PCR Counsel admitted the evidence under the Rules of Evidence pursuant to Fraizer v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). The Court held, "The burden of Proof is on the applicant to prove his allegations by a preponderance of the evidence. Citing Rule 71.1 (e) SCRCP.
- Under Brady, Petitioners due process was violated where the evidence is material. either
- Appellate Counsel was ineffective for failing to raise Petitioner Brady claim on appeal. See Southerland v. State, Supra; Strickland v. Washington, Supra. There is no evidence in the record to support the PCR findings. See Pierce v. State, Supra. The PCR Judge order should be reverse and Petitioner granted a new trial.
- Next, the State filed a Summary Judgment motion to dismiss Petitioner's claim trial Counsel gave erroneous advice to waive his Constitutional rights to effective assistance of Counsel under Gideon v. Wainwright, Supra, See (September 9, 2015 Summary Judgment hearing transcript pages 896 through 917).
- At the conclusion of the hearing, Judge Hyman dismiss Petitioners Claims of ineffective assistance of Counsel and granted a PCR hearing on ineffective assistance of Appellate Counsel claims and Brady violation of Appellate Counsel Claims and Brady violation Claims.
- At the beginning of the PCR hearing, PCR Counsel stated for the record. "If you could

LEGAL MAIL P

give me a moment, Im letting Ms. Proctor Know that we called this one. (Appendix page 923 line 7-9).

• PCR Judge stated to both parties. "Did you all get Judge Hyman order?" (Appendix page 923 line 15-16)

• PCR Counsel explained he never received any order from Judge Hyman. (see Appendix page 923 line 19-24). The evidentiary hearing proceeded with PCR Counsel only allow to examine Appellate Counsel Robert Dudek. (Appendix page 920 through 1004).

• At the Conclusion of the hearing, PCR Judge denied Relief. There is no probative evidence in the record to support the PCR Judges finding that Petitioner did not call Ms. Proctor as a witness eliminating the Court's ability to make an independent factual determination as to what advice, if any, MS. Proctor provided to the Petitioner regarding the consequences of his waiver of Constitutional rights to effective assistance of Counsel. (See Appendix page 1079)

• Petitoner filed a timely SCRCP Rule 59(e). (Appendix page 1004 - 1110) See McCray Vs State 305 S.C. 329, 408 S.E.2d 242 (1991); ODom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999). Melisa Gay and attorney general agreed the Motion was timely filed.

• This Court has already granted, vacated, and Remanded PCR Judge's order to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented pursuant to Marlar V. State, 357 S.C. 407, 653 S.E.2d 266 (2007)

• The Judges ruling regarding trial Counsels erroneous advice is not consistent with Rule 56(d) SCRCP which allows for granting of Summary Judgment for some of the issues in a trial, but not all the issues.

• The rule indicate that trial shall proceed on the remaining issues, when Summary Judgment is not rendered upon the whole case or for all the relief asked a trial is necessary.

• PCR Counsel filed an Amended Application for PostConviction Relief on December 4, 2015 requesting the conditional order of dismissal be rescinded. (Appendix page 918-919). The State filed no response.

• Summary Judgment is proper when there is no genuine issue of material fact and the moving party is entitled to Judgment as a matter of law. Baughman V. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). With respect to an issue upon which the non moving party has the burden of proof, this intial responsibility may be discharge by pointing out to the trial Court that there is an absence of evidence to support the non moving party's case. Id. at 545. In determining whether any triable issue of fact exist, the evidence and all inferences which can be reasonably drawn therefore must be viewed in the light most favorable to the non moving party.

• Petitioner's sworn PCR application clearly states (1) Trial Counsel gave Applicant erroneous legal advice leading to Applicant's self-representation, (2) trial Counsel failed to object to Judge Jefferson declaring a hung Jury during Applicant's

mistrial when the jury did not decide whether the Applicant was innocent or guilty (3) trial counsel failed to send the Applicant to have mental evaluation after suggested by Judge Jefferson that Applicant may suffer from bipolar disorder. (Appendix page 868 and 869)

- Petitioner amended his PCR application and included trial counsel failure to subpoena witness when she was directed by Judge Dennis to do so. (Appendix page 845)
- Judge Hyman's ruling was based on Judge Dennis's order. He failed to review the January 28, 2009 self representation hearing transcript in State v. McCoy 2011-UP-471 (S.C. Ct App. filed October 26, 2011) page 29 Line 11-18.
- Judge Dennis order could not have been appealed until ten (10) days after the imposition of the Sentence. Rule 29(a) SCRCrimp. State v. Wilson, 385 S.C. 597, 693 S.E.2d 923 (2010)
- Petitioner arguments in PCR Application states "Trial Counsel gave erroneous advice leading to Self-representation. This claim was summarily dismissed. Judge Deadra Jefferson mis applied the facts in the PCR order and stated PCR Counsel failed to call Lorelle Proctor, As stated earlier, PCR Counsel attempted to call Lorelle Proctor, and PCR Judge denied PCR Counsel request to call Lorelle Proctor.
- This Court Overlooked Petitioner was denied his "One bite of the apple" on this particular claim. See O'Dom V. State 337 S.C. 256, 523 S.E.2d 753 (1999) Petitioner filed a timely SCRCP Rule 59(e). Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to relief S.C. Code Ann § 17-27-70(b), C (2014). "When considering the State's motion for Summary dismissal, where no evidentiary hearing has been held, the PCR Judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant." McCoy V. State, 401 S.C. 363, 369 737 S.E.2d 623, 626 (2013) Similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion." Leamon V. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005).
- There is no probative evidence in the record to support the PCR Judge ruling that Petitioner did not call Lorelle Proctor thereby eliminating the Court's ability to make an independent factual determination as to what advice, if any, Ms. Proctor provided. Appendix page 1079

• Petitioner has a VI Amendment right to the effective assistance of Counsel. See Gideon V. Wainwright Supra

• This Court has overlooked the facts that the State Suppressed exculpatory and impeaching evidence which was requested by Petitioner.

• This Court has over looked the facts that Petitioner's claim were preserved and not defaulted, the Colorable claims were stronger than the claim, Appellate Counsel raised on direct Appeal. See Anders V. California, 386 U.S at 744; 87 S.Ct. At 1140.

• This Court has overlooked the facts that Appellate Counsel testimony that he wasn't aware of any Brady violation claims, or claims concerning the State failure to collect DNA evidence in Petitioner's trial Shows he was ineffective.

• This court has over looked the facts that Appellate Counsel did not file a Nonmerits brief, inwhich if he had filed an Anders brief, the Petitioner would have been allowed to present his preserve claims, and the Court of Appeals would have been allow to review the trial transcript for any trial error pursuant to Anders V. California

• This Court has over looked the facts that Petitioner was prejudice by Appellant Counsel performance, had Brady issue been raised on Appeal, the Court would have been made aware, that 911 tape contradicts the State witness testimony. This witness gave (3) three inconsistent Statements to police, admitted lying to police, and was not a truthful witness.

• The 911 tape rebut the State's evidence. State Witness Cerenda Snowden, testified that Petitioner, the victim, and two others were inside here house drinking and smoking cigarettes. Travis Johnson, who is not Petitioner's brother was arguing with Petitioner ~~about c~~ and the victim approach Petitioner, and Petitioner shot the victim and then ran out of her house.

• The Court overlooked the facts that the Undisclosed 911 tape, was material evidence which the 911 caller reference Someone banging on the door, the door flew open, and someone was shot.

• This Court Overlooked the facts Appellate Counsel testifiedhe was unaware of the dispatcher reports introduced at PCR hearing, which during trial the parties stipulated grounds for admission. (App. page 969 line 3-25; 970 Line 1-23)

• This Court over looked the facts In State V. Benton, 338 S.C. 151 526 S.E.2d 228 (2000). State V. Hamilton, 327 S.C. 440, 486 S.E. 2d 512 (Ct. App. 1997). Parties can Stipulate on material evidence. State V. McDonald, 343 S.C. 319, 540 S.E. 2d 464 (2000)

• This Court has over looked the facts that trial Court has great discretion in ruling on the admissibility of evidence, and that Petitioner Writ of Certiorari state's that the State objected to Petitioners admission of dispatcher report, and the trial Judge Sustain. This issue was also raised in Petitioner's reply brief. See Petition for Writ of Certiorari page 19.

• This Court over looked the facts that during Pretrial petitioner made a Motion in limine. Trial Judge explained he would give a spoliation of evidence charge if Petitioner prove anything was destroyed by the State. (Appendix page 62 line 3-4. This is abuse of discretion. Petitioner's due process right were violated. U.S. Const. Amendment 5, 14 Brady, See State V. Cheseboro, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001)

• See State V. Wanna Maker, 346 S.C. 495, 499, 522 S.E.2d 284, 286 (2001) State V. Atieh, 397 S.C 641, 725 S.E.2d 730 (2012) This Court over looked the facts that Petitioner requested a final ruling on the destruction of evidence. Petitioner does not have to prove bad faith because the evidence was specifically requested before its suppression.

• This Court has over look the facts that Petitioner was prejudiced, had Appellate Counsel raised all petitioner's preserved appellate issue during Appeal, his conviction would have been reversed pursuant to Brady V. Maryland, Arizona V. YoungBlood Supra, where Petitioner proved that evidence he requested from the state was destroyed afterwards, the evidence was material, and was in the possession of the state before its destruction, where the trial record shows Crime Scene Investigator testified she found the front door kick in. [redacted] Appendix page 421 line 19-25. This supports the 911 tape recording.

• This Court overlocked the facts that none of the beer bottles or cigarettes had Petitioners DNA evidence. (Appendix 411 Line 8-16)

• This Court has overlooked that Petitioner alibi witness Travis Holcombe testified that he and the Petitioner did not have an agrument which caused the death of the Victim. See Appendix page 622 Line 1-25, pages 632 through 639 line 1.

• This Court has overlooked that all evidence proven Petitioner's innocence was destroyed by the State before trial, denying Petitioner's due process right to a fair trial guaranteed by the V, VIII Amendment U.S. Constitution. See Brady. Berger v. United States, Strickland v. Washington Supra, Southerland v. State, Supra, Evitts v. Lucey Supra. VI Amendment U.S. Constitution.

• Petitioner through Counsel has filed a timely SCRCP Rule 59(e). The South Carolina Supreme Court Vacated, and Remanded, for PCR Judge to make an order which Complies with the law. The PCR Judge second order, does not comply with the law. See: Brady, Kyles v. Whitley, Riddle v. Ozmint Supra

• This Court overlooked the fact that PCR Judge order stats the State did not possess the 911 tape, so NO Brady violation occured. Petitioner admitted an affidavit as stated earlier, which attest that North Charleston Police Department was in possession of the 911 tape, but destroyed it. The evidence was exculpatory. For these Reason, PCR Judges should Be Reverse, & Petitioner granted a new trial.

• SC Rcrimp Rule 5(a)(1)(C)(C); SC code § 17-1-40(a) The SC Carolina Supreme Court has vacated PCR Judge order. The Order did not Comply with the law.

• This Court overlooked the facts that all issues raised in Petitioner's writ of Certiorari Were raise during trial, and PCR hearing. Petitioner argues no new issues that has'nt been ruled upon by the trial Judge or PCR Court.

/s/ Jeneel Macy
MCIF4-175
386 Redemption Way
McCormick SC 29899

Exhibit 3

AFFIDAVIT OF KRISTON D. NEELY

I, Kriston D. Neely, after being duly sworn, say:

I am employed with the Legal Department for the City of North Charleston, South Carolina.

In that capacity, I was involved in litigation with Terrell McCoy in his claim against the City and the North Charleston Police Department (Civil Action #: 2013-CP-10-06876).

In the course of that litigation, the City admitted that a 911 recording and CAD report pertaining to Mr. McCoy's criminal trial (CADOPERATION REPORT #: 2006036162/ Indictment #: 2006-GS-10-4987) was destroyed on (Recording) June 25, 2006, and (CAD Report) March 25, 2009, in compliance with the retention policies of the State of South Carolina and the City of North Charleston.

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME
This 11th day of December, 2015

Notary Public for North Carolina

My Commission Expires: 11-24-2024

11/19

DEFENDANT'S EXHIBIT 41 Neely Affidavit

Proof of Service

"I do not wish to Relieve Counsel" letter was placed into a ~~Manilla~~ envelope to be Mail to Clarissa Joyner, & Samantha JoWeidauer, Esquire, and I also submitted my Petition For Rehearing to my counsel to be filed in the Court of Appeals on my behalf.

Samantha Jo Weidauer
Attorny general office
P.O. Box 11549
Columbia SC 29211

Clarissa Joyner, Esquire
259 Amelia Street Suite A
P.O. Box 1724 Orangeburg SC
29116

/s/ Jewellnez
MCI F417S
386 Redemption Way
McCormick SC 29899

LEGAL MA
MAIL RO

Terrell McCoy, 256070
MCI F4175
386 Redemption Way
McCormick SC 29899

June 22, 2022

RECEIVED
JUN 28 2022
SC Court of Appeals

South Carolina Court of Appeals
Jennifer Abbott, Kitching, Clerk
Postoffice Box 11629
Columbia SC 29211

RE: Terrell McCoy VS STATE
Appellate Case No. 2019 001193

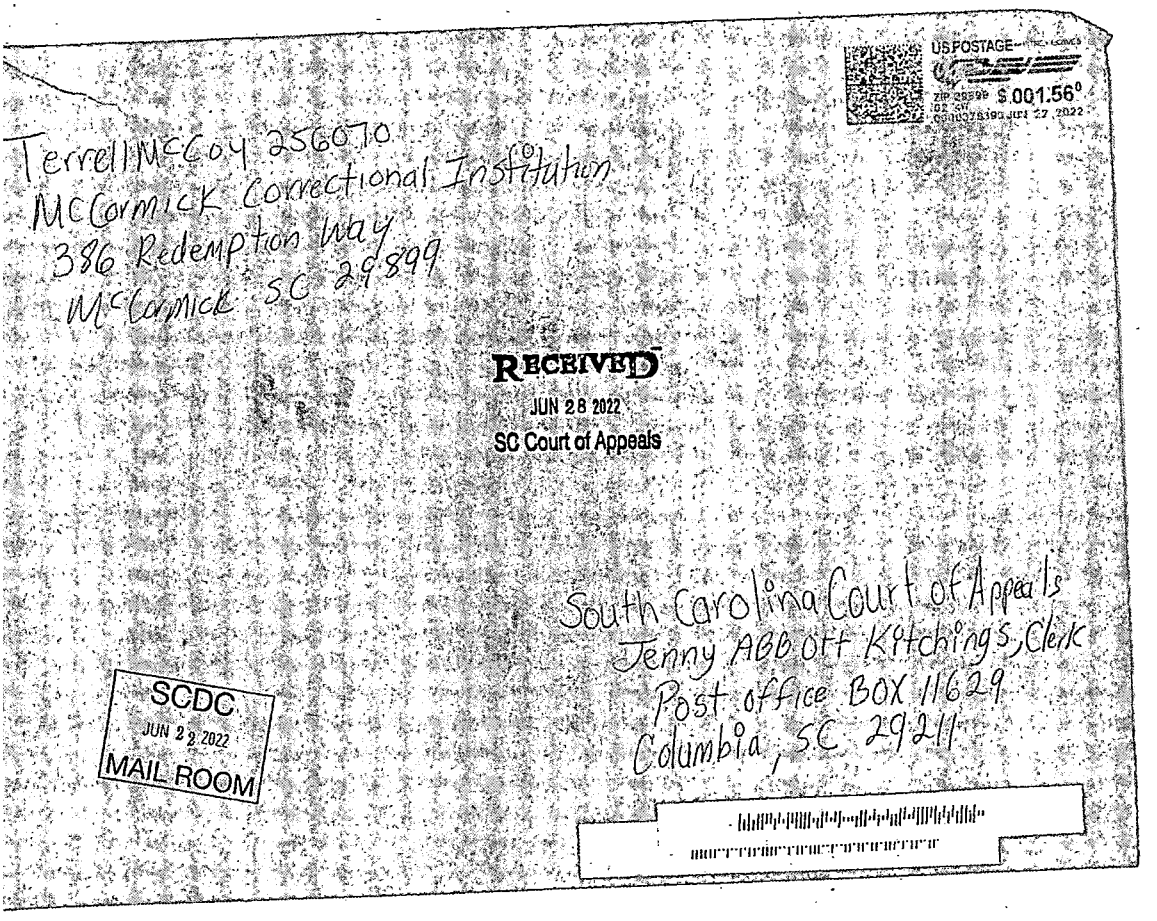
I sent the Petition for Rehearing to my counsel to file in the Court, I didn't understand that My counsel could file a motion for Petition in the Court of Appeal & that I can't Petition the Supreme Court until the Appeal is final pursuant to SCA CR 242 (a).

I ~~wasn't aware she was~~ ~~I thought she wasn't~~ going to file my Petition for rehearing timely, So i mailed it to the Supreme Court who transferred it to the lower court pursuant to SCACR Rule 202. If she's representing then I want to keep Counsel.

I do not believe i'm more competent than any attorny in the State of South Carolina because I do not have the intelligence in law as a Student to the bar. My Counsel informed me my case has merits and therefore I do not wish to relieve counsel. This motion is not to delay the proceedings it was my layman skills that did not put trust into my competent attorny to filed, when I paid a retainer. I apologize to the Court and my attorny Sincerely. Lineliness

---

I also submitted a document to Relieve counsel, I do not wish to relieve Counsel, I'm not submitting any documents unless through Counsel if I have one.



Terrell McCoy 256070
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

US POSTAGE
ZIP 29899 $ 001.56°
02 4W
0000278199 JUN 27 2022

RECEIVED
JUN 28 2022
SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post office BOX 11629
Columbia, SC 29211

SCDC
JUN 22 2022
MAIL ROOM