

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 20 2020

On Petition for Writ of Certiorari to Edgefield County

S.C. SUPREME COURT

The Honorable William P. Keesley, Trial Judge
The Honorable J. Cordell Maddox, Jr., PCR Judge

Appellate Case No. 2020-000568

BRYAN J. PHILLIPS,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

DAVID ALEXANDER
Appellate Defender
South Carolina Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211
(803) 734-1330

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 THE COURT: Uh-huh.

2 MR. SIMON: My understanding from the transcript is
3 they were cousins.

4 THE COURT: Cousins? First cousins?

5 THE APPLICANT: (Nods head.)

6 THE COURT: All right. That was more out of
7 curiosity than anything else, but I just wondered.

8 Okay. Thank you. I'll take it under advisement.

9 I've got to take all this back and reread it.

10 Thank you.

11 MR. AIKEN: Thank you, Judge.

12 THE COURT: Thank you.

13 (Whereupon, the proceedings were concluded at
14 3:36 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 13th day of December, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

June 3, 2020

1s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

2015 MAY -4 AM 9: 58 THE COURT OF COMMON PLEAS

BRYAN JORDAN PHILLIPS, #318212)
Applicant,)

2013-CP-19-0386

vs)

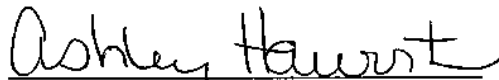
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)
Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150

DATED this 19th day of March, 2015.



Ashley Haworth, Legal Assistant
For Respondent

MING LOUIE

(919) 890 - 1212 Courtney byman
(803) 526 - 1774

William Walker, III

1701 Main St.



2 of 2 DOCUMENTS

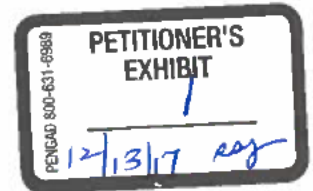
SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

*** This document is current through all legislation enacted in the 2009 Session ***
 *** The most current annotation is dated August 6, 2010 ***

TITLE 17. CRIMINAL PROCEDURES
 CHAPTER 1. GENERAL PROVISIONS

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 17-1-50 (2009)



§ 17-1-50. Interpreters in criminal proceedings.

(A) As used in this section:

(1) "Certified interpreter" means an interpreter who meets the standards contained in subitem (A)(4) and is certified by the administrative office of the United States courts, by the office of the administrator for the state courts, or by a nationally recognized professional organization.

(2) "Legal proceeding" means a proceeding in which a nonEnglish speaking person is a party or a witness.

(3) "NonEnglish speaking person" means a party or a witness participating in a legal proceeding who has limited ability to speak or understand the English language.

(4) "Qualified interpreter" means a person who:

(a) is eighteen years of age or older;

(b) is not a family member of a party or a witness;

(c) is not a person confined to an institution; and

(d) has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight-translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.

(5) "Victim" means a victim as defined in Section 16-3-1110.

(6) "Witness" means a person who testifies in a legal proceeding.

(B)(1) Notwithstanding any other provision of law, whenever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness.

(2) However, the court may waive the use of a certified or otherwise qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a certified or otherwise qualified interpreter is requested by a nonEnglish speaking party, witness, or victim in a legal proceeding; that the waiver has been made knowingly, voluntarily, and intelligently; and that granting the waiver is in the best interest of justice.

(C) The selection, use, and reimbursement of interpreters must be determined under such guidelines as may be established by the Chief Justice of the Supreme Court. All fees for interpreting services must be paid out of the general fund of the State from funds appropriated to the Judicial Department for this purpose by the General Assembly.

(D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and submits a sworn affidavit to the court specifying his qualifications or submits to a voir dire by the court.

HISTORY: 1998 Act No. 390, § 1; 2001 Act No. 103, § 3.

LexisNexis (R) Notes:

CASE NOTES

1. Where defendant, charged with decapitating his wife of four days, argued that the trial judge erred by not allowing an interpreter time to translate everything said in the courtroom and by failing to administer an oath to the interpreter, *S.C. Code Ann. §§ 17-1-50 and 15-27-155*, which addressed interpreters and their qualifications in trials when a party or witness did not speak English well enough to testify, were inapplicable as they became effective after defendant's trial. *State v. Perez*, 334 S.C. 563, 514 S.E.2d 754, 1999 S.C. LEXIS 65 (S.C. 1999).
2. Where defendant, charged with decapitating his wife of four days, argued that the trial judge erred by not allowing an interpreter time to translate everything said in the courtroom and by failing to administer an oath to the interpreter, *S.C. Code Ann. §§ 17-1-50 and 15-27-155*, which addressed interpreters and their qualifications in trials when a party or witness did not speak English well enough to testify, were inapplicable as they became effective after defendant's trial. *State v. Perez*, 334 S.C. 563, 514 S.E.2d 754, 1999 S.C. LEXIS 65 (S.C. 1999).
3. Where defendant, charged with decapitating his wife of four days, argued that the trial judge erred by not allowing an interpreter time to translate everything said in the courtroom and by failing to administer an oath to the interpreter, *S.C. Code Ann. §§ 17-1-50 and 15-27-155*, which addressed interpreters and their qualifications in trials when a party or witness did not speak English well enough to testify, were inapplicable as they became effective after defendant's trial. *State v. Perez*, 334 S.C. 563, 514 S.E.2d 754, 1999 S.C. LEXIS 65 (S.C. 1999).

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

2014 APR 30 PM 3:06

State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

WILLIAM P. KEESLEY
JUDGE127 COURTHOUSE SQUARE
POST OFFICE BOX 10
EDGEFIELD, SOUTH CAROLINA 29824-0010
TELEPHONE: (803) 637-4095
FAX: (803) 637-2035
E-MAIL: wkeesley@sccourts.org

MEMORANDUM

Date: April 30, 2014

To: Mr. Bryan J. Phillips, #318212
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472Re: Phillips v. State
2013CP1900386

I wrote you earlier this week in response to your letter of April 16. Today, I received another letter from you which apparently crossed in the mail. In this most recent letter, you are asking me to send you a copy of a subpoena that was issued in your September 2010 trial. You state that you have gotten no response from the Clerk of Court in Edgefield. First, as I have indicated, I am not going to participate in your case because it appears that I was the presiding judge in what I presume to be the underlying cases for which you are seeking post-conviction relief. Second, you should work through your attorney. Third, you should discuss with your attorney whether or not it is likely that there would be a copy of any subpoena in the Clerk of Court's office. Please contact your attorney. Thank you.

cc: ✓ w/enclosure (4/27/14 letter from Mr. Phillips: Clerk of Court's file
" Scott J. Klosinski, Esq. (via email)
" Asst. A.G. Walt Whitmire (via email)

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

2014 APR 30 PM 3:06

April 27, 2014Dear Judge Deesley:

I'm writing this letter in reference to a letter I sent to the Clerk of Court, Mrs. S. Newby, & it appears that she will not respond, seemingly being unprofessional. Judge, I would ask you to send me a copy of a Subpoena, from my Sept. 2010 trial-setting. The subpoena was a "person" in my case, not documents. If you see fit to forward this to the clerk to handle this, do so, but I would only ask for this subpoena & a "stamped-in" copy returned. Thanks you in advance, hope to hear from you soon.

Sincerely, _____

Drew P. P. P.

Graon Phillips 518212
P.O. Box 203 - LC
Ridgerville SC 29472

1508

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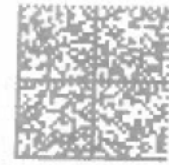
Mr. William P Heesley, Judge
P.O. Box 10
127 Courthouse Square
Edgefield SC 29824

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THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

LIEBER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Bryan J. Phillips,

CA No.: 2013-CP-19-386

Plaintiff,

vs.

ORDER

State.,

Defendant.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2018 MAY 31 PM 12:07

INTRODUCTION

This is a postconviction relief action brought by the Applicant, Bryan Phillips (Phillips), who is currently incarcerated in the South Carolina Department of Corrections under Orders of Commitment issuing from Edgefield County, South Carolina. The State produced for this Court all records concerning Phillips' convictions and sentences as well as a complete Transcript of Phillips' trial. On December 13, 2017, this Court held a hearing in this case at which both Phillips and the State were represented by counsel. Phillips, Phillips' appellate counsel, Lanelle C. Durant (Durant), and Phillips' trial counsel, Randall D. Williams (Williams), testified at the December 13, 2017 hearing.

This Court has reviewed all the records concerning Phillips' convictions and sentences as well as the Transcript of Phillips' trial and has considered all the testimony presented at the December 13, 2017 hearing. This review and consideration convinces this Court that Phillips convictions and sentences violate the Sixth Amendment to the U.S. Constitution because Williams gave Phillips such deficient representation at Phillips' trial that Phillips suffered prejudice. As explained more fully in the following sections of this Order, this Court grants Phillips' Application for postconviction relief and vacates Phillips' convictions and sentences.

FACTS

I. Investigation of the alleged crimes

Four Chinese nationals, Ji Queng Chen, Li Ai Meng, Guang Xing Li, Guan Xin, Selina Li , and Winson Li , who spoke only Mandarin Chinese, reported that they were robbed in Johnston, South Carolina on August 14, 2008. These witnesses alleged that there were three individuals involved in the robbery, but they could not identify the alleged robbers.

An informant, Patrick Stevens (Stevens), reported to Investigator Roosevelt O. Young, III (Young) of the Edgefield County Sherriff's Department (ECSD) that Alvin Phillips, Phillips, and K.C. Langford (Langford) robbed the four Chinese nationals. Johnston Police Department (JPD) personnel detained Alvin Phillips and interrogated him, and Alvin Phillips gave a statement in which he implicated himself, Phillips, and Langford in the robbery of the Chinese nationals.

JPD personnel secured Arrest Warrants charging Phillips with criminal conspiracy, armed robbery, burglary in the first degree, and kidnapping. The Edgefield County Grand Jury true billed Indictments against Phillips that allege criminal conspiracy (2008-GS-19-718), armed robbery (2008-GS-19-723), burglary in the first degree (2010-GS-274), and kidnapping (2010-GS-19-277).

II. Pretrial

The government put Phillips and Langford on trial together. On May 17, 2010, the Court held a pretrial hearing to take up Motions to Dismiss on speedy trial grounds that had been filed by Phillips and Langford. The government presented several justifications for the delay in putting Phillips and Langford on trial. As its principal justification for the delay, the government argued the difficulty that it was having in securing a Chinese language interpreter. The government represented to the Court that South Carolina Court Administration had no certified Chinese interpreters.

On the first day of the trial of Phillips and Langford, September 7, 2010, the trial court entertained additional pretrial matters. Most importantly, the trial judge took up the issue of the qualifications of the Chinese interpreter. The Chinese interpreter engaged by the government was not certified by South Carolina Court Administration. After hearing testimony and explaining the proper role of the interpreter, the trial court qualified the Chinese interpreter under S.C. Code § 15-27-55. (Tr. pp. 140-142)¹ Williams made only a general objection to the interpreter's qualifications. (Tr. p. 138)

III. Trial and Appeal

The Chinese nationals were vitally important witnesses; only their testimony could establish the corpus delicti of the alleged offenses. At several points during cross-examination by defense counsel of the three Chinese nationals that testified at trial, Ji Qing Chen, Li Guan Xin, and Li Ai Ming, the Chinese interpreter engaged in conversations in Chinese with the witnesses that were not confined to the attorney's questions and the witnesses' answers to those questions. (Tr. pp. 188, 209, and 214-215) These extraneous conversations were so obvious that the trial judge admonished the Chinese interpreter three times that his translations had to be verbatim the questions and answers. (Tr. pp. 188, 209, and 214-215) Williams did not retain a defense Chinese interpreter to participate in the trial of Phillips and Langford.

In its case-in-chief, the government presented only the testimony of Alvin Phillips to show that Phillips and Langford participated in the alleged crimes. Defense counsel thoroughly and persuasively cross-examined Alvin Phillips. Defense counsel even presented in evidence a written statement signed by Alvin Phillips in which he stated that Phillips and Langford had no participation in the alleged crime. In the defense case, Williams called Young to testify. During his direct examination of Young, Williams elicited testimony about the double hearsay statement

¹ TR references are to the Transcript of the jury trial of Phillips and Langford.

of the informant Stevens that Alvin Phillips, Phillips, and Langford participated in the robbery of the four Chinese nationals. (Tr. pp. 368-393) The testimony of Young figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490)

The jury convicted Phillips on all counts. The trial judge sentenced Phillips to twenty years for kidnapping, twenty years for armed robbery, twenty years for burglary in the first degree and five years for criminal conspiracy with all sentences to run concurrently. Williams timely filed a Notice of Appeal, and Durant of the Appellate Division of the South Carolina Office of Indigent defense perfected the appeal. The South Carolina Supreme Court issued an unpublished opinion affirming Phillips' convictions and sentences. In footnote one of that opinion the Supreme Court observed that that S.C. Code § 15-27-155(B) "is the statute for interpreters in a civil case, not a criminal one." State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1.

LAW

I. The test for ineffective assistance of counsel

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the

result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698).

II. Instances of deficient representation

A. The interpreter statute

As the Supreme Court observed in its memorandum opinion affirming Phillips' convictions and sentences, the trial court erroneously qualified the interpreter under the interpreter statute for civil cases, S.C. Code § 15-27-155, instead of the proper interpreter statute for criminal cases, S.C. Code § 17-1-50. State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1. Evidence was presented at the December 13, 2017 hearing that Williams had a copy of S.C. Code § 17-1-50 that he was referring to during Phillips' trial.

When the trial court announced its ruling qualifying the Chinese interpreter under the wrong statute, Williams made only a general objection as to qualifications. Durant testified at the December 13, 2017 hearing that this objection was much too general to preserve the issue of the proper statute to be used in qualifying an interpreter in a criminal case for appellate review. Williams' failure to preserve the issue of the proper statute for the qualification of an interpreter in a criminal case constitutes deficient representation.

B. Defense Chinese interpreter

On cross-examination at the December 13, 2018 hearing, Williams acknowledged that he knew as of the May 17, 2010 hearing that the government's Chinese interpreter would not be certified by South Carolina Court Administration. During the same cross-examination, he also admitted that the Chinese nationals were critical witnesses because only their testimony could establish the corpus delicti of the alleged crimes.

Williams also testified that an organization known as Foreign Translations with an office in Greenville, SC could have provided defense translation services and that Williams could have had access to South Carolina Commission on Indigent Defense funding for those services. Williams' failure to hire a defense Chinese interpreter was deficient representation when he knew that the government's interpreter would be uncertified and that the testimony of the Chinese nationals was critical to the case.

C. Calling Young as a witness

In presenting Young's testimony, Williams succeeded only in providing an additional connection between Phillips and the alleged crime when the only other connection, Alvin Phillips' testimony, had been weakened by cross-examination and by the introduction in evidence of Alvin Phillips' statement that Phillips and Langford had not participated in the alleged crime. The wound was entirely self-inflicted. The government could not have used Young's testimony about the statement of the informant, Stevens, because testimony by Young on that point would have been double hearsay. Young's testimony about Stevens' statement was allowed in evidence only because Williams' offered it.

At the December 13, 2017 hearing, Williams claimed that he called Young to testify about Stevens' statement as part of his trial strategy. Williams testified that he called Young to show that the early focus on Alvin Phillips originated in an ongoing informant and law enforcement relationship between Stevens and Young. This is not what Young testified to. Williams admitted that he did not interview Young about the circumstances of Stevens' statement before putting Young on the stand. Williams testified that he was acquainted with Young and that he could have spoken with Young before putting him on the stand. Williams' failure to speak with Young before putting him on the stand to testify about the double hearsay statements of the informant, Stevens, constitutes deficient performance.

III. Prejudice

A. The interpreter statute

There is a critical difference in the interpreter statutes. S.C. Code § 15-27-155 permits an interpreter that is an “instructors in a foreign language” or has a sufficient level of fluency in a particular foreign language “to interpret the foreign language of another person.” On the other hand, S.C. Code § 17-1-50 requires that an interpreter be “readily able to interpret simultaneously and consecutively ... from English into the language of the non-English speaking person, or from the language of that person into spoken English.” Because Williams failed to object to the qualification of the Chinese interpreter, there is a reasonable probability that the result of the proceedings against Phillips would have been different in that the interpreter qualified would have been demonstrably more qualified.

Durant testified at the December 13, 2017 hearing that she did not raise the interpreter statute issue in Phillips’ appeal because the issue was undoubtedly not preserved for appellate review because of an insufficient objection. Durant further testified at that hearing that if the interpreter statute issue had been preserved for appellate review, she would have prominently placed it in her appellate brief as the first and most substantial issue on appeal. If Williams had made a sufficient objection on the interpreter statute issue, there is a reasonable probability that the result would have been different in that there is a reasonable probability that Phillips’ convictions and sentences would have been reversed on appeal.

B. Defense Chinese interpreter

During the cross-examinations by defense counsel of the Chinese nationals who testified at trial, the government’s Chinese interpreter engaged in conversations in Chinese with the testifying Chinese nationals that were not restricted to the questions and answers. (Tr. pp. 188, 209, and 214-215) In fact, the trial judge had to warn the government’s Chinese interpreter three times to

confine his statements to the questions and answers. (Tr. pp. 188, 209, and 214-215)

To this day, only the government's Chinese interpreter and the Chinese nationals know for certain what the government's Chinese interpreter said to the testifying Chinese nationals in these extraneous comments. A defense Chinese interpreter would have ensured that the trial judge and all parties to the trial knew what the government's Chinese interpreter said to the testifying Chinese nationals in these comments. Phillips was prejudiced by Williams' failure to hire a defense Chinese interpreter. If Williams had hired such an interpreter, there is a reasonable probability that the result of the trial would have been different.

C. Calling Young as a witness

Young's testimony about his interaction with the informant, Stevens, was, without doubt, adverse to Phillips' case at trial. By calling Young as a witness and questioning him about these matters, Williams did harm to Phillips' case. Because of the double hearsay nature of Young's testimony about what Steven's told Young, the harm done to Phillips' case by Williams' calling and examination of Young was harm done by Williams to Phillips' case that could not have been done by the government alone. Young testified to the effect that Stevens was acting as a good citizen. This testimony and Young's testimony about Stevens' statement figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490) But for Williams' deficient representation in calling and examining Young, there is a reasonable probability that the result of Phillips' trial would have been different.

CONCLUSION

Phillips has demonstrated that Williams gave him deficient representation and that each of the three instances of deficient representation prejudiced Phillips in the sense that there is a probability sufficient to undermine confidence in the outcome of Phillips' trial that, absent the deficient representation, the jury would have had a reasonable doubt respecting Phillips' guilt. For

these reasons this Court **GRANTS** Phillips' PCR Application and **VACATES** Phillips' convictions and sentences.

AND IT IS SO ORDERED!



J. Cordell Maddox, Jr.
Presiding Circuit Court Judge

Anderson, SC
May 25, 2018

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) FOR THE ELEVENTH JUDICIAL CIRCUIT

2018 JUN 19 PM 2:19

Bryan Jordan Phillips, SCDC # 318212,
Applicant,

Case No.: 2013-CP-19-0386

vs.

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO
RULE 59(E), SCRCP**

State of South Carolina,
Respondent.

Respondent, above named, respectfully moves this Court to alter or amend the Order filed in this action on May 31, 2018. Respondent received written notice of entry of the Order on June 5, 2018. Respondent submits the Order should be amended to deny the application for post-conviction relief, and should further be amended to affirm Applicant's convictions and sentences for the following reasons:

1. The finding that trial counsel was deficient for not retaining a Chinese interpreter should be altered to find that trial counsel was not deficient. The Order fails to reflect that counsel Williams indicated in his testimony that he did not believe an interpreter was needed because he knew the three Chinese victims did not implicate Applicant or his co-defendants as the perpetrators.

Further, Respondent submits the Order overstates Counsel Williams' testimony regarding Foreign Translations as a source for obtaining a defense translator for trial. Counsel Williams was shown a printout from the website for Foreign Translations. He indicated that it appeared from the printout that the company was in existence at the time of trial, and that the printout indicated they offer Chinese translation services. Outside of what was available on the printout, counsel had no knowledge regarding the services offered by Foreign Translations.

The printout, which was introduced as an exhibit at the evidentiary hearing, does not indicate whether a Chinese interpreter would have been available to translate for the defense at the time of Applicant's trial. There was no evidence presented that established Foreign Translations (or any other service) had Mandarin Chinese interpreters available at the time of Petitioner's trial. Respondent would note that the trial court record would appear to call into question the finding that an interpreter would have been available. The Clerk's Office advised the trial court that it had engaged in diligent efforts to find an interpreter, and the interpreter used was the one they could find. (Tr. 134-35).

Third, the Order incorrectly states that the three Chinese victims were the only witnesses who established the corpus delicti for each of the offenses. This is not true. Alvin Phillips testified as to each element of each crime committed by Applicant. (Tr. 222-53).

2. The finding that trial counsel was deficient for presenting Investigator Young as a witness should be altered to find trial counsel was not deficient. First, the Order fails to reflect the context in which Investigator Young was called to testify. Defense counsel noted he initially intended on calling Joseph Patrick Stevens to testify at trial. The transcript reflects that Mr. Stevens was subpoenaed, and he did not comply with his subpoena. (Tr. 359). The purpose of calling Stevens was to show that he was an informant, and that he had a motive to provide names to law enforcement. When it became apparent that Stevens would not be available to testify, Counsel Williams decided to call Investigator Young to testify to elicit that information.

The Order does not reflect that Investigator Young did testify that Stevens was facing a bench warrant for a family court matter at the time he called. Nor does the Order reflect that Stevens sought out Young because he may have been looking for help with dealing with the warrant.

The Order also improperly states that Young's testimony relating to Stevens constituted double hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. First, it is questionable whether Investigator Young's testimony reflected a statement made by Stevens. He did note that Stevens provided him the names of individuals involved. (Tr. 375). Second, the testimony regarding this information was not offered to prove the truth of the matter asserted. It was not offered to prove that Applicant and his co-defendants were involved. To the contrary, it was offered to explain why law enforcement contacted Alvin Phillips as part of their investigation. As such, it was not hearsay. State v. Thompson, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) ("[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken.")(citing United States v. Love, 767 F.2d 1052 (1985), cert. denied, 474 U.S. 1081, 106 S.Ct. 848, 849, 88 L.Ed.2d 890 (1986)).

3. The finding that Applicant was prejudiced by counsel's failure to object to the interpreter based upon S.C. Code § 17-1-50 (Order p. 7) should be amended. Respondent submits Applicant failed to establish there is a reasonable probability the result at trial would have been different had counsel objected to the trial court qualifying the interpreter using the wrong statute. First, it was not established that the interpreter could not have been qualified under S.C. Code § 17-1-50. No testimony or evidence was presented that established the interpreter could not interpret simultaneously and consecutive. Second, there was no testimony or evidence presented that indicated the interpreter's translation of the witnesses' testimony was inaccurate. Applicant did not present testimony from the three Chinese witnesses at the evidentiary hearing, nor did he present any evidence that the interpretation done at trial was not accurate. Thus, the finding of prejudice is based upon speculation, which is improper. Jackson v. State, 329 S.C. 345, 349-51,

495 S.E.2d 768, 770-711 (1998) (noting mere speculation and conjecture not enough to establish prejudice for ineffective assistance of counsel); see Putnam v. State, 417 S.C. 252, 262, 789 S.E.2d 594, 599 (Ct. App. 2016), reh'g denied (Aug. 17, 2016), cert. denied (May 30, 2017); Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999); Sellers v. State, 362 S.C. 182, 190, 607 S.E.2d 82, 86 (2005), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Third, the Order's reliance upon Counsel Durant's testimony is misplaced. In assessing prejudice, the Order fails to reflect that appellate counsel Durant did raise an issue on appeal regarding the qualification of the interpreter, and the South Carolina Supreme Court found the trial court did not abuse its discretion. The Supreme Court cited to the statute for civil cases (S.C. Code § 15-27-155) because the parties cited to it. Further, there is no support for Order's finding that Applicant's case would have been reversed on appeal because the trial court cited to the wrong statute for qualifying the interpreter. In Melton v. Olenik, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008), the Court of Appeals indicated a showing of prejudice was necessary to support a finding that a trial court abused its discretion in regard to an interpreter issue. Here, Applicant cannot show that his case would have been reversed on appeal because he could not show that the trial court erred in qualifying the interpreter, and he has not shown that he was prejudiced.

Fourth, Applicant could not show there was a reasonable probability the result at trial would have been different had he objected to the interpreter under S.C. Code § 17-1-50. Not only was there no evidence that the interpreter would not have been qualified under the statute, the testimony of the three witnesses who needed an interpreter did not implicate Applicant as one of the perpetrators. The first witness could only describe the race of the perpetrators. (Tr. 189, 190, 191). He did not provide a description of the perpetrator's height, build, clothing, or voices

to law enforcement on the night of the robbery. (Tr. 192-93). He also did not see their faces. (Tr. 195-96). He only saw their hands. (Tr. 196). Similarly, the second witness could only identify the race of the men. (Tr. 204). He also had not described the height, clothing, voice, or any other distinguishing characteristic of the perpetrators. (Tr. 205-06). He also noted that he only saw the hands of the perpetrators. (Tr. 208). The third witness testified the perpetrator who came inside the house had covered his face. (Tr. 217). Her testimony reflected that she did not give a description to the police; instead, she told her son (the second witness), and he told the police. (Tr. 218). She could only say that the person who entered the home was a black male. (Tr. 220).

Fifth, the Order incorrectly finds “there is a reasonable probability that the result of the proceedings against Phillips would have been different in that the interpreter qualified would have been demonstrably more qualified.” Again, there was no testimony or evidence presented that the interpreter used at trial would not have been properly qualified under S.C. § 17-1-50. Further, Applicant failed to present the name of any more qualified interpreter that may have been available at the time. This finding is based upon pure speculation, and is not supported by the record. See Jackson, 329 S.C. at 349-51, 495 S.E.2d at 770-711; Putnam, 417 S.C. at 262, 789 S.E.2d at 599; Foye, 335 S.C. at 590, 518 S.E.2d at 267; Sellers, 362 S.C. at 190, 607 S.E.2d at 86.

4. The finding that Applicant was prejudiced by counsel’s decision not to retain a Chinese interpreter for the defense should also be amended. (Order pp. 7-8). Applicant failed to establish he was prejudiced. First, there was no testimony or evidence presented that indicated the interpreter’s translation of the witnesses’ testimony was inaccurate. Applicant did not present testimony from the three Chinese witnesses at the evidentiary hearing, nor did he present any evidence that the interpretation done at trial was not accurate. Thus, the finding of prejudice

is based upon speculation, which is improper. See Jackson, 329 S.C. at 349-51, 495 S.E.2d at 770-711; Putnam, 417 S.C. at 262, 789 S.E.2d at 599; Foye, 335 S.C. at 590, 518 S.E.2d at 267; Sellers, 362 S.C. at 190, 607 S.E.2d at 86.

Second, Applicant could not show there was a reasonable probability the result at trial would have been different had he retained a defense interpreter. As explained in section 3, the three Chinese witnesses did not implicate Applicant as being involved in the armed robbery and kidnapping. Not only did they not identify Applicant as one of the perpetrators, they also failed to give any description of the perpetrators that would have led to Applicant being considered a suspect. As reflected in the trial transcript and as reflected in counsel Williams' testimony at the hearing, the three witnesses' testimony was consistent with the very limited statements they provided to law enforcement.

Third, Applicant failed to present any testimony establishing any other information that could have been gleaned had the defense retained an interpreter. He did not present the testimony of any of the three witnesses through an interpreter to show they had more information to provide for the defense, or that any of the testimony they gave at trial was not accurately reflected. In light of Applicant's failure to present any evidence to show there was a reasonable probability the result of his trial would have been different had the defense retained its own interpreter, Respondent requests the Order be amended to deny relief because Applicant failed to establish he was prejudiced.

5. The finding that Applicant was prejudiced by counsel's decision to present testimony from Investigator Young should also be amended. (Order p. 8). Applicant failed to establish he was prejudiced.

First, contrary to the Order's findings, Young's testimony did not undermine Applicant's defense. Before Investigator Young testified, the jury had already heard the testimony of Alvin

Phillips, Applicant's co-defendant. (Tr. 222-90). They were also aware that law enforcement talked with Phillips after being provided information that he was involved. (See Tr. 308). The jury also knew that the information was provided by Joseph Patrick Stevens. (Tr. 321, 327-28). Thus, to the extent Investigator Young indicated Stevens provided the information, that testimony was cumulative to information already presented to the jury. It was not prejudicial. Cf. State v. Hughes, 419 S.C. 149, 159, 796 S.E.2d 174, 179 (Ct. App. 2017)(noting admission of inadmissible testimony not prejudicial error when cumulative to other testimony admitted without objection).

Second, the Order misconstrues the State's use of Young's testimony in closing argument. While the State did refer to Young's testimony about Stevens coming to him with information in the closing argument, the State also noted it did not matter if Stevens had an ulterior motive in providing the information to Young. (Tr. 477). The State further argued that the jury knew it was accurate because Alvin Phillips' testimony also implicated the same three individuals as being involved, and other evidence corroborated that Phillips, Alvin, and Langford were the ones who robbed the three victims. (Tr. 477-79). Also, the Order's citations to pages 488 and 490 are improper. On page 488, there is no reference to Investigator Young's testimony at all. On page 490, the only reference to Investigator Young is in regards to what Alvin Phillips told him, not any of the information relating to what Stevens told Young. Alvin Phillips testified he gave his statement to Investigator Young. (Tr. 242).

Third, Applicant failed to show there was a reasonable probability the result at trial would have been different had Young not been called to testify. In regards to Mr. Stevens, Investigator Young's testimony reflected that Stevens was not one of Young's informants at the time. (Tr. 373). Stevens had a family court bench warrant at the time, and he sought Investigator Young. (Tr. 374-75). Young did note that Stevens was still arrested on that

warrant. (Tr. 375). Young also testified that Stevens provided the names of Alvin Phillips, Bryan Phillips, and K.C. Langford. (Tr. 375). During cross-examination by the State, Investigator Young indicated Stevens was not working as an informant for him, and that Young had no influence or power to assist with anything relating to family court. (Tr. 380-81). The only other information relating to what he obtained from Stevens was that investigators spoke with Veronica Phillips. (Tr. 381). Respondent submits that had this limited testimony not been presented, there is not a reasonable probability the result at trial would have been different. This information does not reflect on Applicant's guilt. It only provided a little more context to why law enforcement's investigation went in a certain direction. As already noted, the testimony was cumulative to information already presented to the jury.

CONCLUSION

WHEREFORE, premises considered, for the reasons stated above Respondent respectfully requests that this Court grant its Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF, deny Applicant's Application for Post-Conviction Relief in full, and restore Applicant's convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Senior Assistant Attorney General
(Bar No. 74713)

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-6305

June 15, 2017

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD 2018 JUN 19 PM 2:19

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

2013-CP-19-0386

BRYAN JORDAN PHILLIPS, #318212,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP**, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
2231 Devine Street, Ste. 201
Columbia, SC 29205

DATED this 15th day of June, 2018.



Donna D'Alessio
Legal Assistant to Alphonso Simon, Jr.
Senior Assistant Attorney General

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

2019 JUN 21

COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Bryan J. Phillips #318212,

C/A No.: 2013-CP-19-386

Applicant,

vs.

State.,

Respondent.

**APPLICANT'S MEMORANDUM IN
OPPOSITION TO RESPONDENT'S
MOTION TO ALTER OR AMEND**

STATEMENT OF THE CASE

This is a post-conviction relief (PCR) case. On December 13, 2017, this Court held a full hearing in this case. Having carefully considered the facts and having examined the applicable law, this Court entered an Order granting the Application of the Applicant, Bryan J. Phillips (Phillips), and vacating Phillips' convictions and sentences on May 31, 2018. (Exhibit 1) On June 15, 2018, the State filed and served a Motion to Alter or Amend this Court's May 31, 2018 Judgment under Rule 59(e) SCRPC. (Exhibit 2) Phillips files the following Memorandum in opposition to that Motion.

STATEMENT OF THE FACTS

The subject Order is attached. (Exhibit 1) Phillips' rendition of the facts is consistent with the facts set forth in the Order.

ARGUMENT

Phillips responds to the arguments set forth in the State's Motion as follows:

AS TO POINT 1

On this point, the State makes an argument that is simply unsupported by the record from the hearing. Phillips' trial counsel, Randall D. Williams (Williams) was questioned in detail

about the availability of Chinese interpreter and about his access to funding for such an interpreter. The document introduced in evidence at the hearing amply demonstrated that Chinese interpreters were available from Foreign Translations of Greenville, SC. This Court should not alter or amend its Order on this ground.

AS TO POINT 2

Williams did damage to Phillips' case by calling Investigator Roosevelt Young (Young) to testify about hearsay statements of Joseph Patrick Stevens (Stevens) that Phillips was involved in the alleged crimes. Williams' supposed trial strategy also makes no sense. Williams claimed that he called Young to testify with the objective of establishing that Young and Stevens had an officer-informant relationship in an effort to discredit the information provided by Alvin Phillips. Of course, Young's testimony simply bolstered the State's case because Young testified that there was no officer-informant relationship between him and Stevens. By the simple expedient of asking Young a few questions before putting him on the stand, Williams could have avoided the self-inflicted harm that he did to Phillips' case. The Court should not alter or amend its Order on this ground.

AS TO POINT 3

Phillips was prejudiced by Williams' failure to object to the qualification of the Chinese interpreter under the civil interpreter statute. As noted in this Court's Order, the criminal interpreter statute has more stringent requirements than the civil interpreter's statute. Having the correct interpreter statute applied was of vital importance in this case because, as Williams was well aware S.C. Court Administration had no certified Chinese interpreters. Moreover, had Williams objected on this basis, Phillips' convictions would have been reversed on appeal. This Court should not alter or amend its Order on this ground.

AS TO POINT 4

A defense Chinese interpreter was absolutely vital to an effective defense in this case, Williams knew that the interpreter supplied by the State was not certified by SC Court Administration. Phillips also testified that Williams had a copy of the criminal case interpreter's statute; yet, he failed to argue that statute to ensure that the State's interpreter was properly qualified. Phillips was prejudiced by Williams' failure to secure a defense Chinese interpreter because the State's interpreter had conversations with the witnesses during the defense cross-examinations that could not be interpreted by anyone in the courtroom except for the State's interpreter and the State's Chinese witnesses. The prejudice to Phillips flowed directly from this interference with the critical adversarial function of evidence testing by cross-examination. This Court should not alter or amend its Order on this ground.

AS TO POINT 5

On this point, the State spills a great deal of ink in a vain attempt to minimize the adverse impact of Young's testimony on Phillips's defense. Alvin Phillips implicated Phillips. However, Alvin Phillips's credibility was called into question by effective cross-examination and a written statement signed by Alvin Phillips that Phillips was not involved in the alleged crimes. With this slender reed sustaining the State's case, Williams calls Young as a witness and elicits from him Stevens' statement that Phillips was involved in the crimes. Williams' examination of Young established a separate connection between Phillips and the alleged crimes when the State's only other connection, Alvin Phillips' testimony, was suspect. This Court should not alter or amend its Order on this ground.

CONCLUSION

The points raised in the State's Motion have no merit. This Court should deny the State's

Motion to Alter or Amend its May 31, 2018 Judgment.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 

Arthur K. Aiken (SC Bar #12983)

2231 Devine Street, Suite 201

Columbia, SC 29205

Tel: (803) 799-5205

Fax: (803) 799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
June 17, 2019

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

COURT OF COMMON PLEAS
NINETEENTH JUDICIAL CIRCUIT

2019 JUN 21 PM 1:11

Bryan J. Phillips,

CA No.: 2013-CP-19-386

Plaintiff,

vs.

CERTIFICATE OF SERVICE

State.,

Defendant.

I, Arthur K. Aiken, certify that on this date, June 18, 2019, I served Applicant's Memorandum in Opposition to State's Motion to Alter or Amend in this case on the State's attorney, Taylor Z. Smith, by US Mail addressed to the South Carolina Attorney General's Office, PO Box 11549 Columbia, SC 29211 and by email at tsmith@scag.gov.



Arthur K. Aiken
Aiken & Hightower, PA
2231 Devine Street, Suite 201
Columbia, SC 29205
Tel 803-799-5205
Fax 803-799-5206
art@aikenandhightower.com

Columbia, South Carolina
June 18, 2019

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

2019 JUN 21 PM 1:11

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Bryan J. Phillips,

CA No.: 2013-CP-19-386

Plaintiff,

vs.

ORDER

State.,

Defendant.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2018 MAY 31 PM 12:07

INTRODUCTION

This is a postconviction relief action brought by the Applicant, Bryan Phillips (Phillips), who is currently incarcerated in the South Carolina Department of Corrections under Orders of Commitment issuing from Edgefield County, South Carolina. The State produced for this Court all records concerning Phillips' convictions and sentences as well as a complete Transcript of Phillips' trial. On December 13, 2017, this Court held a hearing in this case at which both Phillips and the State were represented by counsel. Phillips, Phillips' appellate counsel, Lanelle C. Durant (Durant), and Phillips' trial counsel, Randall D. Williams (Williams), testified at the December 13, 2017 hearing.

This Court has reviewed all the records concerning Phillips' convictions and sentences as well as the Transcript of Phillips' trial and has considered all the testimony presented at the December 13, 2017 hearing. This review and consideration convinces this Court that Phillips convictions and sentences violate the Sixth Amendment to the U.S. Constitution because Williams gave Phillips such deficient representation at Phillips' trial that Phillips suffered prejudice. As explained more fully in the following sections of this Order, this Court grants Phillips' Application for postconviction relief and vacates Phillips' convictions and sentences.

FACTS**I. Investigation of the alleged crimes**

Four Chinese nationals, Ji Queng Chen, Li Ai Meng, Guang Xing Li, Guan Xin, Selina Li, and Winson Li, who spoke only Mandarin Chinese, reported that they were robbed in Johnston, South Carolina on August 14, 2008. These witnesses alleged that there were three individuals involved in the robbery, but they could not identify the alleged robbers.

An informant, Patrick Stevens (Stevens), reported to Investigator Roosevelt O. Young, III (Young) of the Edgefield County Sheriff's Department (ECSD) that Alvin Phillips, Phillips, and K.C. Langford (Langford) robbed the four Chinese nationals. Johnston Police Department (JPD) personnel detained Alvin Phillips and interrogated him, and Alvin Phillips gave a statement in which he implicated himself, Phillips, and Langford in the robbery of the Chinese nationals.

JPD personnel secured Arrest Warrants charging Phillips with criminal conspiracy, armed robbery, burglary in the first degree, and kidnapping. The Edgefield County Grand Jury true billed Indictments against Phillips that allege criminal conspiracy (2008-GS-19-718), armed robbery (2008-GS-19-723), burglary in the first degree (2010-GS-274), and kidnapping (2010-GS-19-277).

II. Pretrial

The government put Phillips and Langford on trial together. On May 17, 2010, the Court held a pretrial hearing to take up Motions to Dismiss on speedy trial grounds that had been filed by Phillips and Langford. The government presented several justifications for the delay in putting Phillips and Langford on trial. As its principal justification for the delay, the government argued the difficulty that it was having in securing a Chinese language interpreter. The government represented to the Court that South Carolina Court Administration had no certified Chinese interpreters.

On the first day of the trial of Phillips and Langford, September 7, 2010, the trial court entertained additional pretrial matters. Most importantly, the trial judge took up the issue of the qualifications of the Chinese interpreter. The Chinese interpreter engaged by the government was not certified by South Carolina Court Administration. After hearing testimony and explaining the proper role of the interpreter, the trial court qualified the Chinese interpreter under S.C. Code § 15-27-55. (Tr. pp. 140-142)¹ Williams made only a general objection to the interpreter's qualifications. (Tr. p. 138)

III. Trial and Appeal

The Chinese nationals were vitally important witnesses; only their testimony could establish the corpus delicti of the alleged offenses. At several points during cross-examination by defense counsel of the three Chinese nationals that testified at trial, Ji Quing Chen, Li Guan Xin, and Li Ai Ming, the Chinese interpreter engaged in conversations in Chinese with the witnesses that were not confined to the attorney's questions and the witnesses' answers to those questions. (Tr. pp. 188, 209, and 214-215) These extraneous conversations were so obvious that the trial judge admonished the Chinese interpreter three times that his translations had to be verbatim the questions and answers. (Tr. pp. 188, 209, and 214-215) Williams did not retain a defense Chinese interpreter to participate in the trial of Phillips and Langford.

In its case-in-chief, the government presented only the testimony of Alvin Phillips to show that Phillips and Langford participated in the alleged crimes. Defense counsel thoroughly and persuasively cross-examined Alvin Phillips. Defense counsel even presented in evidence a written statement signed by Alvin Phillips in which he stated that Phillips and Langford had no participation in the alleged crime. In the defense case, Williams called Young to testify. During his direct examination of Young, Williams elicited testimony about the double hearsay statement

¹ TR references are to the Transcript of the jury trial of Phillips and Langford.

of the informant Stevens that Alvin Phillips, Phillips, and Langford participated in the robbery of the four Chinese nationals. (Tr. pp. 368-393) The testimony of Young figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490)

The jury convicted Phillips on all counts. The trial judge sentenced Phillips to twenty years for kidnapping, twenty years for armed robbery, twenty years for burglary in the first degree and five years for criminal conspiracy with all sentences to run concurrently. Williams timely filed a Notice of Appeal, and Durant of the Appellate Division of the South Carolina Office of Indigent defense perfected the appeal. The South Carolina Supreme Court issued an unpublished opinion affirming Phillips' convictions and sentences. In footnote one of that opinion the Supreme Court observed that that S.C. Code § 15-27-155(B) "is the statute for interpreters in a civil case, not a criminal one." State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1.

LAW

I. The test for ineffective assistance of counsel

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the

result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698).

II. Instances of deficient representation

A. The interpreter statute

As the Supreme Court observed in its memorandum opinion affirming Phillips' convictions and sentences, the trial court erroneously qualified the interpreter under the interpreter statute for civil cases, S.C. Code § 15-27-155, instead of the proper interpreter statute for criminal cases, S.C. Code § 17-1-50. State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1. Evidence was presented at the December 13, 2017 hearing that Williams had a copy of S.C. Code § 17-1-50 that he was referring to during Phillips' trial.

When the trial court announced its ruling qualifying the Chinese interpreter under the wrong statute, Williams made only a general objection as to qualifications. Durant testified at the December 13, 2017 hearing that this objection was much too general to preserve the issue of the proper statute to be used in qualifying an interpreter in a criminal case for appellate review. Williams' failure to preserve the issue of the proper statute for the qualification of an interpreter in a criminal case constitutes deficient representation.

B. Defense Chinese interpreter

On cross-examination at the December 13, 2018 hearing, Williams acknowledged that he knew as of the May 17, 2010 hearing that the government's Chinese interpreter would not be certified by South Carolina Court Administration. During the same cross-examination, he also admitted that the Chinese nationals were critical witnesses because only their testimony could establish the corpus delicti of the alleged crimes.

Williams also testified that an organization known as Foreign Translations with an office in Greenville, SC could have provided defense translation services and that Williams could have had access to South Carolina Commission on Indigent Defense funding for those services. Williams' failure to hire a defense Chinese interpreter was deficient representation when he knew that the government's interpreter would be uncertified and that the testimony of the Chinese nationals was critical to the case.

C. Calling Young as a witness

In presenting Young's testimony, Williams succeeded only in providing an additional connection between Phillips and the alleged crime when the only other connection, Alvin Phillips' testimony, had been weakened by cross-examination and by the introduction in evidence of Alvin Phillips' statement that Phillips and Langford had not participated in the alleged crime. The wound was entirely self-inflicted. The government could not have used Young's testimony about the statement of the informant, Stevens, because testimony by Young on that point would have been double hearsay. Young's testimony about Stevens' statement was allowed in evidence only because Williams' offered it.

At the December 13, 2017 hearing, Williams claimed that he called Young to testify about Stevens' statement as part of his trial strategy. Williams testified that he called Young to show that the early focus on Alvin Phillips originated in an ongoing informant and law enforcement relationship between Stevens and Young. This is not what Young testified to. Williams admitted that he did not interview Young about the circumstances of Stevens' statement before putting Young on the stand. Williams testified that he was acquainted with Young and that he could have spoken with Young before putting him on the stand. Williams' failure to speak with Young before putting him on the stand to testify about the double hearsay statements of the informant, Stevens, constitutes deficient performance.

III. Prejudice

A. The interpreter statute

There is a critical difference in the interpreter statutes. S.C. Code § 15-27-155 permits an interpreter that is an “instructors in a foreign language” or has a sufficient level of fluency in a particular foreign language “to interpret the foreign language of another person.” On the other hand, S.C. Code § 17-1-50 requires that an interpreter be “readily able to interpret simultaneously and consecutively ... from English into the language of the non-English speaking person, or from the language of that person into spoken English.” Because Williams failed to object to the qualification of the Chinese interpreter, there is a reasonable probability that the result of the proceedings against Phillips would have been different in that the interpreter qualified would have been demonstrably more qualified.

Durant testified at the December 13, 2017 hearing that she did not raise the interpreter statute issue in Phillips’ appeal because the issue was undoubtedly not preserved for appellate review because of an insufficient objection. Durant further testified at that hearing that if the interpreter statute issue had been preserved for appellate review, she would have prominently placed it in her appellate brief as the first and most substantial issue on appeal. If Williams had made a sufficient objection on the interpreter statute issue, there is a reasonable probability that the result would have been different in that there is a reasonable probability that Phillips’ convictions and sentences would have been reversed on appeal.

B. Defense Chinese interpreter

During the cross-examinations by defense counsel of the Chinese nationals who testified at trial, the government’s Chinese interpreter engaged in conversations in Chinese with the testifying Chinese nationals that were not restricted to the questions and answers. (Tr. pp. 188, 209, and 214-215) In fact, the trial judge had to warn the government’s Chinese interpreter three times to

confine his statements to the questions and answers. (Tr. pp. 188, 209, and 214-215)

To this day, only the government's Chinese interpreter and the Chinese nationals know for certain what the government's Chinese interpreter said to the testifying Chinese nationals in these extraneous comments. A defense Chinese interpreter would have ensured that the trial judge and all parties to the trial knew what the government's Chinese interpreter said to the testifying Chinese nationals in these comments. Phillips was prejudiced by Williams' failure to hire a defense Chinese interpreter. If Williams had hired such an interpreter, there is a reasonable probability that the result of the trial would have been different.

C. Calling Young as a witness

Young's testimony about his interaction with the informant, Stevens, was, without doubt, adverse to Phillips' case at trial. By calling Young as a witness and questioning him about these matters, Williams did harm to Phillips' case. Because of the double hearsay nature of Young's testimony about what Steven's told Young, the harm done to Phillips' case by Williams' calling and examination of Young was harm done by Williams to Phillips' case that could not have been done by the government alone. Young testified to the effect that Stevens was acting as a good citizen. This testimony and Young's testimony about Stevens' statement figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490) But for Williams' deficient representation in calling and examining Young, there is a reasonable probability that the result of Phillips' trial would have been different.

CONCLUSION

Phillips has demonstrated that Williams gave him deficient representation and that each of the three instances of deficient representation prejudiced Phillips in the sense that there is a probability sufficient to undermine confidence in the outcome of Phillips' trial that, absent the deficient representation, the jury would have had a reasonable doubt respecting Phillips' guilt. For

these reasons this Court GRANTS Phillips' PCR Application and VACATES Phillips' convictions and sentences.

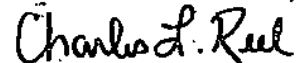
AND IT IS SO ORDERED!



J. Cordell Maddox, Jr.
Presiding Circuit Court Judge

Anderson, SC
May 25, 2018

THE ABOVE IS A TRUE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF COURT OF EDGEFIELD COUNTY, SC



CHARLES L. REEL, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.

5.31.18
DATED

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
2018 JUN 19 PM 2:19

CLERK OF COURT
CHARLES L. REEL

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

2013-CP-19-0386

BRYAN JORDAN PHILLIPS, #318212,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRP, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
2231 Devine Street, Ste. 201
Columbia, SC 29205

DATED this 15th day of June, 2018.



Donna D'Alessio
Legal Assistant to Alphonso Simon, Jr.
Senior Assistant Attorney General

EDGEFIELD COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
IN THE COURT OF COMMON PLEAS)
ELEVENTH JUDICIAL CIRCUIT)

2019 NOV 25 AM 11:29

C.A. No. 2013-CP-19-00386

Bryan Jordan Phillips,
SCDC# 318212

ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND

Applicant,

v.

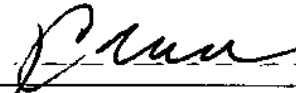
State of South Carolina,

Respondent.

This matter came before the Court through the Respondent's Motion to Alter or Amend. After careful consideration and review, the Court finds that Respondent's Motion to Alter or Amend should be denied.

It is hereby ordered that Respondent's Motion to Alter or Amend is denied.

IT IS SO ORDERED.



The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

November 18, 2019

2020 APR -8 AM 9:19

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Trial Court Judge
The Honorable J. Cordell Maddox, Jr., PCR Court Judge

Case No. 2013-CP-19-386

Bryan J. Phillips, #318212,Respondent,

v.

State of South Carolina, Petitioner.

NOTICE OF APPEAL

Respondent, the State of South Carolina, appeals the order of the Honorable J. Cordell Maddox, Jr., dated May 25, 2018, and filed May 31, 2018, granting post-conviction relief to Petitioner Bryan J. Phillips, #318212. Respondent received notice of entry of the order granting relief on June 5, 2018. Respondent filed a motion to alter or amend the judgment in accordance with Rule 59(e), SCRCF, on June 19, 2018, and served Mr. Phillips therewith on June 15, 2018. Thereafter, Judge Maddox denied Respondent's motion by an order issued on November 18, 2019, and filed on November 25, 2019. However, Respondent was not served with a copy of the order and did not receive notice of entry of the order until March 20, 2020, when this Court

forwarded Respondent a copy of Mr. Phillips' pro se letter the Court that referenced the issuance of the order denying Respondent's motion. Copies of the both orders on appeal are attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
S.C. Bar # 103282

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:


Attorneys for the Petitioner

Columbia, South Carolina

April 3, 2020

Other counsel of record:

Arthur Kerr Aiken, Esquire
PO Box 90707
Columbia, SC 29290

EDGEFIELD COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

NOV 25 AM 11:29

C.A. No. 2013-CP-19-00386

Bryan Jordan Phillips,
SCDC# 318212

ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND

Applicant,

v.


State of South Carolina,

Respondent.

This matter came before the Court through the Respondent's Motion to Alter or Amend. After careful consideration and review, the Court finds that Respondent's Motion to Alter or Amend should be denied.

It is hereby ordered that Respondent's Motion to Alter or Amend is denied.

IT IS SO ORDERED.



The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

November 18, 2019

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Bryan J. Phillips,

CA No.: 2013-CP-19-386

Plaintiff,

vs.

ORDER

State.,

Defendant.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2018 MAY 31 PM 12:07

INTRODUCTION

This is a postconviction relief action brought by the Applicant, Bryan Phillips (Phillips), who is currently incarcerated in the South Carolina Department of Corrections under Orders of Commitment issuing from Edgefield County, South Carolina. The State produced for this Court all records concerning Phillips' convictions and sentences as well as a complete Transcript of Phillips' trial. On December 13, 2017, this Court held a hearing in this case at which both Phillips and the State were represented by counsel. Phillips, Phillips' appellate counsel, Lanelle C. Durant (Durant), and Phillips' trial counsel, Randall D. Williams (Williams), testified at the December 13, 2017 hearing.

This Court has reviewed all the records concerning Phillips' convictions and sentences as well as the Transcript of Phillips' trial and has considered all the testimony presented at the December 13, 2017 hearing. This review and consideration convinces this Court that Phillips convictions and sentences violate the Sixth Amendment to the U.S. Constitution because Williams gave Phillips such deficient representation at Phillips' trial that Phillips suffered prejudice. As explained more fully in the following sections of this Order, this Court grants Phillips' Application for postconviction relief and vacates Phillips' convictions and sentences.

FACTS

I. Investigation of the alleged crimes

Four Chinese nationals, Ji Queng Chen, Li Ai Meng, Guang Xing Li, Guan Xin, Selina Li, and Winson Li, who spoke only Mandarin Chinese, reported that they were robbed in Johnston, South Carolina on August 14, 2008. These witnesses alleged that there were three individuals involved in the robbery, but they could not identify the alleged robbers.

An informant, Patrick Stevens (Stevens), reported to Investigator Roosevelt O. Young, III (Young) of the Edgefield County Sheriff's Department (ECSD) that Alvin Phillips, Phillips, and K.C. Langford (Langford) robbed the four Chinese nationals. Johnston Police Department (JPD) personnel detained Alvin Phillips and interrogated him, and Alvin Phillips gave a statement in which he implicated himself, Phillips, and Langford in the robbery of the Chinese nationals.

JPD personnel secured Arrest Warrants charging Phillips with criminal conspiracy, armed robbery, burglary in the first degree, and kidnapping. The Edgefield County Grand Jury true billed Indictments against Phillips that allege criminal conspiracy (2008-GS-19-718), armed robbery (2008-GS-19-723), burglary in the first degree (2010-GS-274), and kidnapping (2010-GS-19-277).

II. Pretrial

The government put Phillips and Langford on trial together. On May 17, 2010, the Court held a pretrial hearing to take up Motions to Dismiss on speedy trial grounds that had been filed by Phillips and Langford. The government presented several justifications for the delay in putting Phillips and Langford on trial. As its principal justification for the delay, the government argued the difficulty that it was having in securing a Chinese language interpreter. The government represented to the Court that South Carolina Court Administration had no certified Chinese interpreters.

On the first day of the trial of Phillips and Langford, September 7, 2010, the trial court entertained additional pretrial matters. Most importantly, the trial judge took up the issue of the qualifications of the Chinese interpreter. The Chinese interpreter engaged by the government was not certified by South Carolina Court Administration. After hearing testimony and explaining the proper role of the interpreter, the trial court qualified the Chinese interpreter under S.C. Code § 15-27-55. (Tr. pp. 140-142)¹ Williams made only a general objection to the interpreter's qualifications. (Tr. p. 138)

III. Trial and Appeal

The Chinese nationals were vitally important witnesses; only their testimony could establish the corpus delicti of the alleged offenses. At several points during cross-examination by defense counsel of the three Chinese nationals that testified at trial, Ji Quing Chen, Li Guan Xin, and Li Ai Ming, the Chinese interpreter engaged in conversations in Chinese with the witnesses that were not confined to the attorney's questions and the witnesses' answers to those questions. (Tr. pp. 188, 209, and 214-215) These extraneous conversations were so obvious that the trial judge admonished the Chinese interpreter three times that his translations had to be verbatim the questions and answers. (Tr. pp. 188, 209, and 214-215) Williams did not retain a defense Chinese interpreter to participate in the trial of Phillips and Langford.

In its case-in-chief, the government presented only the testimony of Alvin Phillips to show that Phillips and Langford participated in the alleged crimes. Defense counsel thoroughly and persuasively cross-examined Alvin Phillips. Defense counsel even presented in evidence a written statement signed by Alvin Phillips in which he stated that Phillips and Langford had no participation in the alleged crime. In the defense case, Williams called Young to testify. During his direct examination of Young, Williams elicited testimony about the double hearsay statement

¹ TR references are to the Transcript of the jury trial of Phillips and Langford.
Page 3 of 9

of the informant Stevens that Alvin Phillips, Phillips, and Langford participated in the robbery of the four Chinese nationals. (Tr. pp. 368-393) The testimony of Young figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490)

The jury convicted Phillips on all counts. The trial judge sentenced Phillips to twenty years for kidnapping, twenty years for armed robbery, twenty years for burglary in the first degree and five years for criminal conspiracy with all sentences to run concurrently. Williams timely filed a Notice of Appeal, and Durant of the Appellate Division of the South Carolina Office of Indigent defense perfected the appeal. The South Carolina Supreme Court issued an unpublished opinion affirming Phillips' convictions and sentences. In footnote one of that opinion the Supreme Court observed that that S.C. Code § 15-27-155(B) "is the statute for interpreters in a civil case, not a criminal one." State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1.

LAW

I. The test for ineffective assistance of counsel

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the

result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698).

II. Instances of deficient representation

A. The interpreter statute

As the Supreme Court observed in its memorandum opinion affirming Phillips' convictions and sentences, the trial court erroneously qualified the interpreter under the interpreter statute for civil cases, S.C. Code § 15-27-155, instead of the proper interpreter statute for criminal cases, S.C. Code § 17-1-50. State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1. Evidence was presented at the December 13, 2017 hearing that Williams had a copy of S.C. Code § 17-1-50 that he was referring to during Phillips' trial.

When the trial court announced its ruling qualifying the Chinese interpreter under the wrong statute, Williams made only a general objection as to qualifications. Durant testified at the December 13, 2017 hearing that this objection was much too general to preserve the issue of the proper statute to be used in qualifying an interpreter in a criminal case for appellate review. Williams' failure to preserve the issue of the proper statute for the qualification of an interpreter in a criminal case constitutes deficient representation.

B. Defense Chinese interpreter

On cross-examination at the December 13, 2018 hearing, Williams acknowledged that he knew as of the May 17, 2010 hearing that the government's Chinese interpreter would not be certified by South Carolina Court Administration. During the same cross-examination, he also admitted that the Chinese nationals were critical witnesses because only their testimony could establish the corpus delicti of the alleged crimes.

Williams also testified that an organization known as Foreign Translations with an office in Greenville, SC could have provided defense translation services and that Williams could have had access to South Carolina Commission on Indigent Defense funding for those services. Williams' failure to hire a defense Chinese interpreter was deficient representation when he knew that the government's interpreter would be uncertified and that the testimony of the Chinese nationals was critical to the case.

C. Calling Young as a witness

In presenting Young's testimony, Williams succeeded only in providing an additional connection between Phillips and the alleged crime when the only other connection, Alvin Phillips' testimony, had been weakened by cross-examination and by the introduction in evidence of Alvin Phillips' statement that Phillips and Langford had not participated in the alleged crime. The wound was entirely self-inflicted. The government could not have used Young's testimony about the statement of the informant, Stevens, because testimony by Young on that point would have been double hearsay. Young's testimony about Stevens' statement was allowed in evidence only because Williams' offered it.

At the December 13, 2017 hearing, Williams claimed that he called Young to testify about Stevens' statement as part of his trial strategy. Williams testified that he called Young to show that the early focus on Alvin Phillips originated in an ongoing informant and law enforcement relationship between Stevens and Young. This is not what Young testified to. Williams admitted that he did not interview Young about the circumstances of Stevens' statement before putting Young on the stand. Williams testified that he was acquainted with Young and that he could have spoken with Young before putting him on the stand. Williams' failure to speak with Young before putting him on the stand to testify about the double hearsay statements of the informant, Stevens, constitutes deficient performance.

III. Prejudice

A. The interpreter statute

There is a critical difference in the interpreter statutes. S.C. Code § 15-27-155 permits an interpreter that is an “instructors in a foreign language” or has a sufficient level of fluency in a particular foreign language “to interpret the foreign language of another person.” On the other hand, S.C. Code § 17-1-50 requires that an interpreter be “readily able to interpret simultaneously and consecutively ... from English into the language of the non-English speaking person, or from the language of that person into spoken English.” Because Williams failed to object to the qualification of the Chinese interpreter, there is a reasonable probability that the result of the proceedings against Phillips would have been different in that the interpreter qualified would have been demonstrably more qualified.

Durant testified at the December 13, 2017 hearing that she did not raise the interpreter statute issue in Phillips’ appeal because the issue was undoubtedly not preserved for appellate review because of an insufficient objection. Durant further testified at that hearing that if the interpreter statute issue had been preserved for appellate review, she would have prominently placed it in her appellate brief as the first and most substantial issue on appeal. If Williams had made a sufficient objection on the interpreter statute issue, there is a reasonable probability that the result would have been different in that there is a reasonable probability that Phillips’ convictions and sentences would have been reversed on appeal.

B. Defense Chinese interpreter

During the cross-examinations by defense counsel of the Chinese nationals who testified at trial, the government’s Chinese interpreter engaged in conversations in Chinese with the testifying Chinese nationals that were not restricted to the questions and answers. (Tr. pp. 188, 209, and 214-215) In fact, the trial judge had to warn the government’s Chinese interpreter three times to

confine his statements to the questions and answers. (Tr. pp. 188, 209, and 214-215)

To this day, only the government's Chinese interpreter and the Chinese nationals know for certain what the government's Chinese interpreter said to the testifying Chinese nationals in these extraneous comments. A defense Chinese interpreter would have ensured that the trial judge and all parties to the trial knew what the government's Chinese interpreter said to the testifying Chinese nationals in these comments. Phillips was prejudiced by Williams' failure to hire a defense Chinese interpreter. If Williams had hired such an interpreter, there is a reasonable probability that the result of the trial would have been different.

C. Calling Young as a witness

Young's testimony about his interaction with the informant, Stevens, was, without doubt, adverse to Phillips' case at trial. By calling Young as a witness and questioning him about these matters, Williams did harm to Phillips' case. Because of the double hearsay nature of Young's testimony about what Steven's told Young, the harm done to Phillips' case by Williams' calling and examination of Young was harm done by Williams to Phillips' case that could not have been done by the government alone. Young testified to the effect that Stevens was acting as a good citizen. This testimony and Young's testimony about Stevens' statement figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490) But for Williams' deficient representation in calling and examining Young, there is a reasonable probability that the result of Phillips' trial would have been different.

CONCLUSION

Phillips has demonstrated that Williams gave him deficient representation and that each of the three instances of deficient representation prejudiced Phillips in the sense that there is a probability sufficient to undermine confidence in the outcome of Phillips' trial that, absent the deficient representation, the jury would have had a reasonable doubt respecting Phillips' guilt. For

these reasons this Court GRANTS Phillips' PCR Application and VACATES Phillips' convictions and sentences.

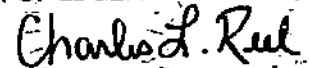
AND IT IS SO ORDERED!



J. Cordell Maddox, Jr.
Presiding Circuit Court Judge

Anderson, SC
May 25, 2018

THE ABOVE IS A TRUE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF COURT OF EDGEFIELD COUNTY, SC



CHARLES L. REEL, CLERK OF COURT OF GENERAL SESSIONS AND COMMON PLEAS, E.C.S.C.

5-31-18
DATED

Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Taylor Z. Smith</u>	Phone Number <u>803-734-3737</u>	Email Address <u>eleventhircuitpcr@scag.gov</u>	
Mailing Address <u>Post Office Box 11549</u>	City <u>Columbia</u>	State <u>SC</u>	Zip Code <u>29211</u>
Transcript Information			
Docket Number <u>2013-CP-19-00386</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Bryan J. Phillips v. State of South Carolina</u> <u>PCR Transcript</u>		
Date(s) of Proceeding <u>12/13/2017</u>	Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/>	County <u>Edgefield</u>	
Presiding Judge <u>J. Cordell Maddox, Jr.</u>	Expedited Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Court Reporter(s) <u>Stacy Johnson</u>	Opposing Counsel <u>Arthur K. Aiken</u>		

Requestor's Signature: Taylor Z. Smith
(Typed name will serve as signature)

Date: 4/3/2020

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	Date Received _____	Email Address _____	
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
Mailing Address for Payment _____	City _____	State _____	Zip Code _____

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Trial Court Judge
The Honorable J. Cordell Maddox, Jr., PCR Court Judge

Case No. 2013-CP-19-386

Bryan J. Phillips, #318212, Respondent,

v.


State of South Carolina, Petitioner.

PROOF OF SERVICE

I, Jennifer Jennison, legal assistant to Taylor Z. Smith, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Arthur Kerr Aiken, Esquire
PO Box 90707
Columbia, SC 29290

I further certify that all parties required by Rule to be served have been served this 3rd day of April, 2020.


Jennifer Jennison, Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737