

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
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 MAURICE ANTHONY ODOM)
 (#199677),)
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 Petitioner,)
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 v.)
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 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

PETITIONER'S MOTION TO RECONSIDER

C/A No. 2016-CP-30-251

2021 AUG 12 AM 9:18
 K. MICHELLE SIMMONS
 LAURENS COUNTY
 CLERK OF COURT

The Petitioner Maurice Anthony Odom, by and through his attorney of record respectfully asks the Court to reconsider its Order of Dismissal dated August 2, 2021, wherein the Court dismissed the Applicant's PCR application. The Petitioner's attorney received a signed but not filed copy of the Order by first-class mail from the Office of the Attorney General on Monday, August 9, 2021.

The Petitioner's jury trial should have been a straightforward swearing contest case. At trial, this should have been the proverbial "he said, she said" case, in which the jury could have believed the testimony of the co-defendant, or else could have believed the Petitioner's testimony if the Petitioner had testified. However, because of trial counsel's deficiencies and the resulting prejudice, the Petitioner's right to a competent defense was torpedoed and the Petitioner never had a realistic opportunity to testify in his own defense. Remember, there was no physical evidence at the crime scene linking the Petitioner to the burglary, and the co-defendant was the only person who identified the Petitioner as the other person on the store video.

The Petitioner submits that the Court should reconsider its Order and thereafter amend its Order as follows:

1. Failure to object to trial judge's reference to God. The Court's Order compares the trial judge's God statement to "search for the truth" and "truth seeking" jury charges. However, this is comparing apples to oranges. In the "truth" cases, the "truth" language was charged to the jury immediately prior to deliberations, after all evidence had been presented to the jury. The "truth" language has the tendency to instruct the jury to play detective regarding the evidence presented at trial, instead of determining whether the state has proven guilty beyond a reasonable doubt. Here, at the call of the case and prior to jury selection, the trial judge authorized the jury panel to rely on outside evidence (i.e., the will of God) during the Petitioner's trial if selected for the trial jury, and not solely on the evidence introduced during the trial of the Petitioner's case. Here, the jury panel was instructed to pray, not to play detective. The trial judge's God statement changed the State's burden of proof from strictly beyond a reasonable doubt to include divine intervention. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

2. Failure to challenge indictment. The Court misconstrues the Petitioner's argument. The indictment alleges a crime. The Petitioner has never argued otherwise. Here, the conspiracy indictment included language that the Petitioner's co-conspirator was an unknown person. This is not true, as the co-defendant was arrested before the Petitioner and before the Petitioner was indicted, and the co-defendant implicated the Petitioner leading to the Petitioner's arrest. The State allowed an indictment to be presented to the grand jury that contained inaccurate language, and the trial judge read the same inaccurate language to the jury panel. Trial counsel should have objected to the indictment and moved to quash the indictment, so that



the grand jury could have received accurate information. Trial counsel presented no valid trial strategy as to why she failed to object to the indictment.

3. Failure to object to solicitor's "truth" statement. Trial counsel knew or should have known that the crux of every criminal prosecution is whether the State can prove the defendant's guilt beyond a reasonable doubt. The issue isn't whether the jury can determine the truth of what actually happened. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial. The jury's duty isn't to determine the truth. The jury isn't composed of detectives whose job is to solve crimes and determine what happened. The jury's sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor's statement lowered the State's burden of proof.

4. Failure to object to solicitor's alleged witness credibility statements. The solicitor vouched for the credibility and trustworthiness of the co-defendant in his opening statement when he told the jurors: "But I submit to you that he [co-defendant and witness Christopher Mixon] is before you with no promises, no rewards, no hope of anything like that. He is simply here to tell you the truth and I believe you will find him in spite of his criminal record to be a credible witness." (Page 73, lines 10-14.) The co-defendant was the only witness who testified about the Petitioner's involvement in the burglary. Moreover, the State presented no forensic evidence of the Petitioner's involvement, such as fingerprints, DNA, hair fibers, or footprints. No evidence of the crime was found during a search of the Petitioner's house and property.

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5. The solicitor vouched for the co-defendant's credibility and trustworthiness again in his closing argument. (Page 333, line 2 - page 334, line 23). Moreover, the solicitor commented on the Petitioner's failure to challenge evidence and the Petitioner's failure to present an alternative theory of the crime that didn't include the Petitioner. The solicitor shifted the burden to the Petitioner to establish his innocence. See also page 340, lines 1-3, where the solicitor refers to the co-defendant's testimony as "uncontradicted," which was a comment on the Petitioner's right to remain silent and his right not to present a defense.

6. The solicitor vouched for the credibility and trustworthiness of a police officer in his closing argument: "They do their best. And I submit to you that Tyrone Goggins is a good, experienced, capable police officer and investigator as his sixteen years would document[.]" (Page 338, line 25 - page 339, line 3.)

7. Trial counsel presented no valid trial strategy as to why she failed to object to these statements, failed to ask for curative instructions, failed to ask for the statements to be stricken from the record, or failed to ask for a mistrial. These statements weren't just summaries of facts to be presented to the jury or already presented to the jury. With these statements, the solicitor vouched for the credibility of the State's witnesses, and also said the co-defendant's testimony was "uncontradicted."

8. Failure to object to: "It looked all too familiar because it had just happened two weeks ago the same way." Here, trial counsel actually objected to testimony from witness Ramesh Patel, when he intimated that another burglary occurred at the store two (2) weeks prior. Trial counsel was correct to object, but then she proceeded to argue the objection in the presence of the jury when she should have requested a sidebar, thereby confirming to the jury that a prior

break-in had occurred, and allowing the jury to speculate whether the Petitioner was involved. The jury heard evidence of a prior break-in from the witness and trial counsel herself. Trial counsel presented no valid trial strategy as to why she failed to ask for a sidebar, failed to ask for a curative instruction, or failed to ask for a mistrial.

9. Failure to object to trial judge's statement regarding the DVD. The trial judge vouched for the credibility and trustworthiness of the solicitor when he said: "Well, if he knows that that DVD is what he -- he made a DVD according to his testimony and I would have to assume that Solicitor would not show him a DVD that was not made by him[.]" (Page 100, lines 3-6.) The trial judge vouching for the solicitor is more prejudicial than the solicitor vouching for the state's witnesses, as the jury looks to the trial judge for guidance and rightfully so. Trial counsel presented no valid trial strategy as to why she failed to object to this statement, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

10. Allegations regarding cell phone records. The cell phone order was issued in the Petitioner's Newberry case. Trial counsel knew about the Newberry case. (Trial counsel moved to be relieved as the Petitioner's lawyer on his remaining charges. (Page 402, line 18 - page 403, line 13.)) Trial counsel failed to inspect the Newberry case file. Trial counsel knew or should have known to inspect all pending case files, wherever located, regarding the Petitioner, as case files can provide valuable material. If trial counsel had inspected the Newberry file, she would have known about the cell phone order and could have followed up with the solicitor's office about whether these documents had been obtained. The Order was signed November 17, 2011. The Petitioner was tried in June 2014. It's common knowledge that cell phone records are kept for a finite period of time. Trial counsel's failure prevented these records from being obtained.

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Trial counsel presented no valid trial strategy as to why she failed to inspect the Newberry case file.

11. Allegation of ineffectiveness for asking witness if he belonged to a gang called "Boss." Why on Earth did trial counsel ask co-defendant Christopher Mixon if he was "a member of the gang called Boss"? (Page 181, lines 2-3.) Gang activity had absolutely nothing to do with this case. However, it opened the door to witness Tyrone Goggins testifying to Boss being the Petitioner's nickname. (Page 296, lines 11-18.) This could have led the jury to believe that the Petitioner was involved in gang activity, after trial counsel previously had equated "Boss" with a gang. Trial counsel presented no valid trial strategy as to why she asked the question in the first place, failed to object to Goggins' testimony, failed to ask for a curative instruction, failed to ask for the statement to be stricken from the record, or failed to ask for a mistrial.

12. Failure to introduce document indicating Christopher Mixon had a driver's license, failure to object to NCIC document indicating Applicant was the owner of the vehicle, and failure to object to Applicant's DMV records. The co-defendant testified that he didn't have a driver's license and couldn't drive. There was also testimony that the co-defendant and the Petitioner lived near each other, and that police located the co-defendant at the Petitioner's address in Barnwell. Trial counsel should have introduced a document produced by the State in discovery indicating that the co-defendant had a driver's license. (Page 174, line 23 - page 180, line 10.) Trial counsel said she was "confused" by the document. Trial counsel could have used the document to impeach the co-defendant's testimony, and suggest to the jury that the co-defendant drove himself to the burglary.

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13. Trial counsel failed to object, and then consented, to the introduction of the NCIC document which indicated that the Petitioner owned the vehicle located near the crime scene. (Page 264, line 2 - page 268, line 12.) This sunk the Petitioner's ship. It's one thing for the co-defendant to say the Petitioner owned the vehicle, but quite another for a government document to show the Petitioner owned the vehicle. It's irrelevant what the Petitioner told trial counsel in private about owning the car. Trial counsel had an obligation to object to inadmissible evidence. The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from North Carolina DMV to get this document into evidence. Furthermore, by not objecting, trial counsel waived her right to confront a North Carolina DMV witness about the information contained in this document. After this document was entered into evidence without objection, the State and its witnesses repeatedly referred to the Petitioner as the owner of the vehicle. This document strengthened the State's case against the Petitioner.

14. Trial counsel objected, on an improper basis, to the introduction of the Petitioner's South Carolina DMV record. (Page 288, line 14 - page 291, line 16.) This further sunk the Petitioner's ship. Trial counsel argued relevance. The information contained in this document was hearsay, and no hearsay exceptions apply. Trial counsel should have demanded that the State call a witness from South Carolina DMV to get this document into evidence. After this document was entered into evidence, the State and its witnesses repeatedly referred to the Petitioner's address as being the place where the Petitioner's vehicle was located. This document strengthened the State's case against the Petitioner.

15. Trial counsel presented no valid trial strategy as to why she failed to introduce the co-defendant's driver's license and failed to object or object properly to the NCIC documents

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and the Petitioner's DMV records. Sinking your client's case isn't a valid trial strategy, and basing evidentiary objections (or the lack thereof) on what your client told you confidentially isn't a valid trial strategy.

16. Allegations regarding applicant's decision not to testify. Trial counsel failed to properly preserve the record regarding which of the Petitioner's convictions could be used against him if he testified at trial. (Page 321, line 3 - page 322, line 6.) Trial counsel folded on this issue. At the PCR hearing, trial counsel acknowledged researching moral turpitude as it related to a CSC conviction. Trial counsel didn't inspect the Petitioner's certified convictions in the State's possession.

17. The Petitioner pled guilty to burglary third degree (Indictment No. 1992-GS-06-00070) on May 18, 1992, and received ten (10) months followed by probation for thirty (30) months.

18. The Petitioner pled guilty to burglary second degree x2 (Indictment Nos. 1993-GS-06-00196 & 00235) on November 1, 1993, and received a YOA sentence.

19. The Petitioner pled guilty to burglary second degree (Indictment No. 1992-GS-06-00035) on October 27, 1997, and received ten (10) years.

20. The Petitioner pled guilty to CSC with minor (Indictment No. 1997-GS-06-00365) on October 27, 1997, and received ten (10) years. This conviction was reversed on appeal. The Petitioner again pled guilty to CSC with minor (Indictment No. 1997-GS-06-00365) on August 12, 2002, and received five (5) years, with credit for time served since October 27, 1997 (which was almost five (5) years).

21. By the time the Petitioner's case came to trial on June 9, 2014, more than ten (10) years had elapsed since the Petitioner's release from confinement on all of these convictions.

The trial transcript doesn't indicate that the State gave trial counsel advance written notice of the State's intention to use convictions outside the ten (10) year threshold contained in SCRE 609(b).

22. The Petitioner wanted to testify. Trial counsel should have gotten a ruling from the trial judge about whether the prior convictions could be used at all to impeach the Petitioner. If the Court allowed the State to introduce any convictions, trial counsel should have asked the Court to forbid the State to mention the nature of the convictions (because of the prejudicial nature of sex crimes and/or the similarity of the burglary convictions to the current charge) and to only mention that it was a felony.

23. Trial counsel didn't challenge the use of the burglary convictions because the State intended to argue "common scheme or plan." That's not a permissible reason for the State to impeach with prior burglary convictions which happened years prior to the burglary that the Petitioner was on trial for. Trial counsel could have asked the Court, if the Court allowed the State to introduce the burglary convictions, to forbid the State to mention the nature of the convictions (because of their prejudicial and similar nature to the case at hand) and to only mention that they were felonies. Furthermore, the trial transcript doesn't indicate that the State intended to argue that the Petitioner's pending Newberry charges were part of a common scheme or plan with the Laurens charges. (Page 321, line 1 - page 322, line 6.)

24. The Court doesn't believe that the Petitioner would have testified if all his prior convictions had been ruled inadmissible, or if his prior convictions were allowed before the jury only in generic terms. The Petitioner isn't sure this ruling makes sense. The Petitioner has every incentive to tell his story to the jury if his prior record isn't admissible or is else presented in generic terms. And this Court has no reason to believe that the Petitioner would have confessed

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his guilt during his testimony. Furthermore, there's no evidence in the trial transcript that the State intended to argue common scheme or plan with the Newberry charges.

25. Cumulative error. All of the issues raised by the Petitioner, combined, demonstrate that trial counsel was ineffective, in over her head, and without a grasp of the rules of evidence. If trial counsel had been effective, there is a reasonable probability that the trial result would have been different. The Petitioner was especially prejudiced, cumulatively, by the State's vouching, the State's comment on his right to remain silent, the introduction of the NCIC record, the introduction of the Petitioner's DMV record, and the Petitioner's failure to testify because trial counsel didn't challenge the admissibility of his prior convictions.

RESPECTFULLY SUBMITTED.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Petitioner

By: s/Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 953-0011
Fax: (864) 229-8001



Greenwood, South Carolina

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