

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Debra R. McCaslin, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2021-001426

K.C. Langford.....Petitioner,

v.

State of South Carolina,.....Respondent.

Reply to State's Return to Petition for Writ of Certiorari

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SUPPLEMENT TO STATEMENT OF CASE

The Statement of the Case contained in K.C. Langford's petition for writ of certiorari summarized the procedural history of co-defendant Bryan Phillips post-conviction relief ("PCR") proceedings in *Phillips v. State*, Case No. 2013-CP-19-00386, granting Mr. Phillips a new trial based on two issues that are identical to issues raised by Mr. Langford in his PCR application but abandoned on appeal by his court appointed appellate counsel. At the time of Mr. Langford's petition for a writ of certiorari, the State's petition for a writ of certiorari in Mr. Phillips' case was still pending in the Court of Appeals of South Carolina. *Phillips v. State*, Appellate Case No. 2020-000568.

On October 7, 2022, the Court of Appeals denied the State's Petition for a writ of certiorari. On October 25, 2022, the Court of Appeals issued the Remittitur. On October 27, 2022, the Clerk of Court for Edgefield County filed the Remittitur.

ARGUMENT IN REPLY

Did the PCR court err when it concluded that K.C. Langford's appellate counsel during the appeal of the denial of his first PCR action did not have a conflict of interest because of the attorney's representation of his co-defendant, Bryan Phillips, during the direct appeal of the underlying conviction?

The Court of Appeals denying the State's appeal of the order granting Bryan Phillips post-conviction relief establishes *Strickland*¹ deficient performance and prejudice resulting from appellate counsel's failure to brief two meritorious issues during the appeal of the dismissal of K.C. Langford's PCR application. *See, e.g., Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) (granting post-conviction relief for ineffective assistance of appellate counsel). *See also, Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016)

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

(applying *Strickland* standard to performance of statutorily non-qualified counsel in capital PCR case).

This Court must address whether a remedy is available to Mr. Langford to correct his prior counsel's constitutionally deficient representation. Mr. Langford contends his appellate counsel had a conflict of interest when she represented Mr. Langford in the appeal of the order dismissing his PCR application. In his petition for a writ of certiorari, Mr. Langford relies on *Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987) and *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). He requests a belated appeal of the dismissal of his PCR application pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

The State does not contest the essential facts, but rather argues the Rules of Professional conduct do not apply to this analysis. In doing so, the State minimizes Mr. Langford's reliance on *Lomax*, *Carter*, and *Austin*. *Lomax* provides guidance for when counsel's conflict of interest prejudices a criminal defendant. *Carter* and *Austin*, when read together, establish a remedy when counsel operated under a conflict of interest. As this Court pointed out in *Aice v. State*:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice.

305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). *See also Washington v. State*, 324 S.C. 232, 478 S.E.2d 833 (1996) (petitioner was not procedurally barred from receiving new trial, even though postconviction relief application may have been successive, given many procedural irregularities that occurred during course of petitioner's judicial process that deprived him of due process).

CONCLUSION

For the reasons set forth in Mr. Langford's petition for a writ of certiorari and this reply, this Court should grant the petition and consider the issues. Under the facts and circumstances of this case, it would be a gross miscarriage of justice for K.C. Langford not to receive a new trial based on the same PCR grounds for which Bryan Phillips received a new trial.

Respectfully Submitted,

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