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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable L. Casey Manning, Circuit Court Judge

MARCUS CODELL MCFADDEN.....Petitioner,

V.

STATE OF SOUTH CAROLINA.....Respondent.

APPELLATE CASE No. 2022-000543

PRO SE PETITION FOR WRIT OF CERTIORARI

Petitioner, Marcus C. McFadden seeks to file this Pro Se Petition for Writ for Certiorari via Chief-Appellate Defender-Robert M. Dudek filing of his JOHNSON-BRIEF within this Honorable Court on the 14th of December, 2022.

MARCUS C. MCFADDEN PRO SE:

PERRY CORRECTIONAL INSTITUTION
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STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Petitioner Marcus C. McFadden was arrested in Sumter, South Carolina on April 10th 2016, charged with crimes associated with the alleged unlawful entry and assault[s] at 515 Charlotte Avenue in Sumter rented/leased to Tiffany Calvin, at approximately "Midnight", on April 9th in 2016. The Sumter County grand jury term on September 8th in 2016 indicted Petitioner of "burglary in the first degree" and "Assault by MOB in the third degree". The allegations set forth was Latique K. Bracey on April 9th sought to speak to Tiffany Calvin at her Charlotte Avenue residence and upon arrival to it, he noticed an unknown vehicle in her drive and thereof sought to investigate and speak to Calvin so thereof kicked and knocked at the residence's door, wherefore Artemis Bryant answered the residence's door upon authority/orders by Calvin to complete so, and Bracey's entry was amiss and conclusions that Calvin, his on-and-off girlfriend, was sleeping with someone else, and fears that he may be assaulted by the individual[s] sleeping with Calvin...upon the door being ajarred and exposure[s] of Bryant in the residence he bolted into the opening and ajarred door. And, Petitioner and Dominique A Ross was out in the residence-drive standing external of Bracey's vehicle awaiting for him to return, when Petitioner heard loud arguments and saw the illuminations of scuffling and/or wrestling and therefore, fiercely and spiritedly came to their friend's downfall if any. And thereof Petitioner within his

travels noticed Bryant about to assault Bracey from behind when Bracey was arguing with Calvin at front-interior of the Calvin's residence, and Petitioner sought to intervene the blow and impact punch to his friend by Bryant from behind and unknown to Bracey it is coming...so upon getting into enough distance to institute a counteract, Petitioner counteracted with a counteract-punch and force to stop Bryant's behind-assault on Bracey and thereof the situation escalated into a quarrel between Petitioner who is approximately 110-pounds and 5'7" height and Bryant, who is approximately 300-pounds. So hereof Ross bought to lower the odds and to de-escalate the situation tried to stop the quarrels or intervene...thereof a large scuffle was initiated whereof Petitioner and Ross scuffled and quarreled for several moments. Eventually, the situation de-escalated and Petitioner, Ross, and Bracey left the residence of Calvin [etc.].

Thereof, Petitioner, Bracey, and Ross were arrested on April 10th 2016, via a traffic stop by Sumter Police. Petitioner and Bracey were tried jointly by jury in the Sumter County General-Sessions Court starting on September 20 and ending on September 21 2016, Honorable Presiding Judge William Jeffrey Young and the jury convicted Petitioner of burglary 1st-degree and assault by MOB 3rd-degree, as indicted. Petitioner was represented by retained counsel at trial, Michael M. Jordan, Esq. and Solicitor for the State was John P. Meadors, Esq. [Bracey was represented by Jason E. Bridges, Esq.] in indictment no. 2016-GS-43-0880.

Within Judge Rulings on petitioner and his sentence he cited "McFadden was least culpable within the incident, and setenced him to 20-years for first-degree burglary and 1-year for third-degree assault by Mob". On direct-appeal the Motion for new-trial and - the Motion for reconsideration was brought on appeal and that the presiding [Young] judge didnot rule on these motions and therefore appellate-court remanded and sent remittitur initially on August 8th in 2017. Thereof, as Judge Young failed to rule on those motions and "retired" prior to due-processing a "ruling", the Solicitor's Office notified and seeked Honorable Judge George M. McFadden to preside over the motion[s] and to thereof rule upon them. And, as Judge cited "It is virtually impossible for me to reach back and stand in [Judge Young's] his shoes when I didn't hear those motions , nor was I present then. Young had been on the bench, I would assume then for a good number of years in general sessions. I find it would be simply improper for me to go back now, not even practical, to go back and address those motions 'so I will respectfully "deny" your motions, but at the same time, clear this matter to proceed to appeal". Stated Judge McFadden on the matter and as his ruling. On appeal, his conviction was affirmed by a divided panel of the Court of Appeals, in State v. McFadden, 2020-UP-188 [Ct.App. Filed June 17, 2020], thereof petitioner filed a Post-Conviction Application for Relief on May 27, 2017 alleging "Subject Matter Jurisdiction & Ineffectiveness of Trial Counsel ak sixth Amendment right to effective assistance of counsel [etc]". And-eventually petitioner was appointed PCR-Counsel, Timothy L. Griffith, Esquire, and the - State filed Motion for more definite answer/statement on PCR.

Thereof, Counsel on PCR, Griffith filed an "Amened Application", to the court, except abandon the original-application issue/s. In his amendment to application he only litigated and addressed "Miranda Rights & Warnings" [etc], but failed to litigate or/and bring on PCR issues/arguments with merit and most likely to win. The PCR-Trial was presided over by the Honorable-Judge L. Casey Manning and he simply ruled by [Proposed Order[, citing " Each side file a "proposed-order" to him and the most convincing will win ". Judge Manning sided and Signed with the State and sigh the State's Proposed Order on April 18, 2022.

± Petitioner seeked thereof a "Petition for Writ for Certiorari" from the Honorable Supreme Court, And Chief Appellate Defender Robert M. Dudek, Esquire appointed himself, and thereof litigated an "**JOHNSON** PETITION FOR WRIT OF CERTIORARI", within this Honorable Court signed/dated on December 14th of 2022.

2. **evidence presented at trial**

The altercation[s] that occured at the 515 Charlotte Avenue Sumter South Carolina, abruptly occured/begin as Bracey located the residence of Tiffany Calvin, whom held an "On and Off" relationship with Calvin on the ordinary basis, and upon arrival seen a unknown and uncommon vehicle in Calvin's drive-way, so thereof he sought to investigate ..so he knock on door and begin to kick upon no-answer to his knock [App. 78 l. 11 - 791.16], Therof, Calvin made the decision to open the residence's front-door [App. 80 l. 18-22] and thereof under Calvin's order and decision her vistor Artimes - Bryant complied to Calvin's order/s and ajared/opened her residen-

ce's front-door [App. 81 l. 6]. As Petitioner was unable to take the stand and explain/express his testimony to the impaneled jury via Micheal M. Jordan's argument,deferment, and presentiment[s] to petitioner "DoNot take the witness stand, it will hurt you", he was unable to present side of the inicdent and assualt on Bryant and that he never entered Calvin's residence unlawfully or/and - criminally, nor did he hold an/y criminal-intent[s] [etc], - [App. 331 l. 16-21]. Petitioner was simply interving and assisting his child-friend Latique Bracey from being attacked from behind - and not knowing that he was about to be sucker-punched from behind. He held the personal knowledge that Calvin & Bracey was usually in a "on and off relationship", it was on basis that they have sexual and frienly relationships, and sometimes they are in very close - relationships and other times they are in distant relationships, so therefore, petitioner held no-knowledge that Bracey & Calvin was in a foul-relationship or/and that there was incident between Calvin and Bracey. And-if he known that there was any aggression between them he would have not allowed Bracey to carry him to the residence of Calvin, and has Bracey, McFadden, and Ross was traveling around Sumter in Bracey's [new] car, when Bracey simply stated they was going to check on Tiffany [Calvin] at her residence, and at the - time arrival Bracey simply went to the residence's front-door and petitioner and Ross sat within the vehicle, and then eventually got out of the vehicle and stood beside it, when petitioner and Ross noticed commotion at the front interior and held a in the moment situtiun, he bolted to the enterance of Calvin's residence and to - ensure that his friend and Clavin was O.K., and to ensure there was

not violence occuring and to stop any violence from occuring at the residence of Calvin, via his childhood friend was within, and he caculated Ms Calvin as a distant-friend, wish for peace within the occurence/incident unfolding abruptly and upon him getting in at the residence's frontage, he seen then that Bryant was about to "sucker punch" his friend behind and has Bryant is over three-pounds in weight, Petitioner lunged at Bryant with full force to stop the "behind sucker punch", and thereof they begin to scuffle and qurell together ..and at the weight and size deficicent between the two Ross assisted petitioner and trying to take hold of the attack on Bracey from behind, petitioner evening within the quarrel asked -Bryant "Who are you"? and Bryant refused to answer [etc.]. -- [App. 81 l. 10-12], and upon Bracey pointing a gun at Bryant, the petitioner eased and asked Ross to easedand petitioner exited the residence of Calvin. Bryant eventually come outside to the location of petitioner and stated to him "Tiffany wants this guy [out-of-house] "going", watch back I going to have him leave and he is big". So, thereof, petitioner went to repel Bryant from Calvin's House at - assistance/assisting Bryant in this matter and sitution. And-they entered the residence and found Bryant in the residence's bathroom whereof, petitioner and Bryant imformed and told Bryant to remove himself from Ms Calvin's residence, by "get the fuck out" and- "get the fuck out and leave, man" [App. 81 l. 20-21], at this instant Bryant abruptly lunged and with hostile words tryed to hit petitioner and roughly made conduct with petitioner head area at his temple and ear and upon tension with Bryant petitioner fended and quarreled ——

with Bryant, until [again] Bracey held a gun at Bryant, and allowed him to leave from Clavin's residence. Upon, Bryant leaving petitioner requested to leave through Bracey, and Bracey stay with me for a little and lets ride around [sumter] for awhile and make sure he doesnot come back , so petitioner agreed under the circumstance/s that Bracey would ride him after awhile. And-Bracey, Ross, and - petitioner rode around Sumter for awhile and then rode back to the residence of Tiffany Calvin ,whereof Bracey spoke to an individual to petitioner at Calvin's briefly, and Bracey, Ross, and petitioner was arrested at an traffic-stop by Sumter Police [App. 200 1. 21 - 206 1. 16]. At trial the State indicted that the person Bracey spoke to Mr Johnny Kinlaw identified as Tiffany Clavin's Father. [App. 177 1. 12] and [App. 181 1. 19 - 182 1. 23]. The Witnesses that testified within the trial presented sharply the same asaid aka Petitioner's Testimony that was absent within/at trial via his trial counsel provoked him to not take the "witness stand" and say to the jury his testimony and relinquish the aforesaid within his trial and to the paneled jury, and his counsel's refereeing him, to not take the stand regulate his testimony and side of the incident -and reiterate aforesaid.

3. <u>guilty plea offer</u>

Petitioner was offered an plea deal of nine-years and upon the refereeing of his counsel, whom stated and argued to petitioner "that was not an offer that was acceptable, and go to trial". -- [App. 341 1. 12-14], evening knowing that petitioner was facing a "life setence" and was offered nine-years, and petitioner wanted to

accept the plead under the circumstance/s and take any responsible that he may have caused within the unknown to him actions of his friend Latique K. Bracey. And take the opportunity to do so, and to ensure that he was not convicted or/and sentenced by the action/s of Bracey [etc]. Petitioner also held thought/s that the overall effect would be problematic to him, and he would likely not get a fair and fundamental trial, especially joint with Bracey [etc].

Thereof, wished to Plead to the nine-year offer/deal with/-from the State with that recommendation to the court, and was - perjudiced by his trial counsel.

[Under unprovoked circumstance and decision he would have plead].

4. **decision of the Court of Appeals**

A divided panel of the Court of Appeals affirmed in State v. McFadden,2020-UP-188 [Ct.App. Filed June 17, 2020]. The majority held that petitioner was intitled to bring the issues persented on appeal as they was unpreserved for review, since his sentence or sentencing was not briefed or argued by counsel Kathrine H. Hudgins, Appellate-Defender. -[2020 WL 3264607]-

II. PETITIONER WAS ENTITLED TO PLEAD TO THE OFFER BY THE STATE AND NOT BE PROVOKED BY TRIAL COUNSEL TO NOT ACCEPT PLEA DEAL AND TO GO TO TRIAL AND STAND TRIAL WITH INTENT TO PLEAD GUILTY UNDER CIRCUMSTANCE.

Wherefore, Petitioner argues that as offered a plea deal by the State, and he wholly wished to accept this plea deal from the State and State recommended to the Court the [a] Nine-Year Recommendation for all alleged crime's, against him.

Within this occurrence the counsel of Petitioner did provoke the Petitioner in not taking the plea offer, as he conveyed to him that it was "not acceptable" [App. 341 l. 12-14].

The Plea was favorable and should not have been rejected by the defense, under the circumstance/s that it was logically in a significant range, and petitioner insisted on pleaing to nine-years.

In the guilty plea context, while the performance prong of the STRICKLAND test remains the same, to establish prejudice the petitioner must show that there is a reasonable probability that, but counsel's error, he/she would not have plead guilty and would have insisted on going to trial. Hill v. Lockhart, 106 S.Ct. 366, 474 U.S. 52, 58-59. Similarly, Where counsel gives erroneous advise that results in the petitioner going to trial, the issues is whether there is a reasonable - probability that the petitioner would have plead guilty. Lafler v. Cooper, 132 S.Ct. 1376, 566 U.S. 156. See Also Hill at U.S. , 168. If a plea bargain has been offered, a defendant has the right to effective assistance of counsel inconsidering whether-

to accept it. If that is denied, prejudice can be shown --if loss of plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe - setence. Hill, U.S. at 170, -It is insufficient to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. [i.e. guilty plea bargains].

At a professional analysis of the facts, laws, and evidence --assembled or/and convened within the accusation by the State's Prosecution/s aka the case of [1st degree] burglary, and [3rd degreee] assault by Mob as in the facts, evidence, and laws, if properly analyzed [by counsel] would have likely rendered the petitioner would be found "guilty" on charges.

In analysis, The United States Supreme Court has held that "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145, 132 S.Ct. 1399. And State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 [Stating "[u]ndoubtly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial [or] offer a plea bargain"].

As in United States v. Graham, 51 F.4th 67 which held- " Sixth Amendment entitles defendant to relief when counsel's deficient performance has prejudiced defenseby leading to -- conviction at trial [or] to ill advised plea." And-"Defendant satisfies performance prong of ineffective assistance claim by proving that counsel failed to provide reasonably ---

effective assistance in executing defense." Trial Counsel cannot relay that he informed petitioner to got to trial because he would likely found non-guilty, nor say he was likely going to obtain a lesser sentence. The Facts in this case was petitioner was facing a "life-sentence" and-wish to accept the plea-bargain and touching on the critical factors the petitioner within - consideration/s weighed his personal decision/s and he weighed the facts, and-including the minimum sentence [and] maximum setence, the evidence likely to be indicated during/at trial, to include the terms of the plea, and the strength of the case against him [etc].

The trial counsel surely failed to even informed the petitioner to weigh these crucial factors, more less, provide petitioner with professional advise on the crucial decision on wether to plead guilty.

The State Solicitor's Office held in the interest of justice, that a plea-bargain was legit on this matter, felt a nine-year setence was legit, and thereof felt justice would have been served upon petitioner imprisoned and incarcerated for nine years.

The petitioner held in his own personal interest, he was partaker in the crime, but felt he was not guilty of particularly crimes wholly, except he felt his participation or/and presence at the crime was enough for him personally to prompt his pronouced "guilt". He held no protest to his guilt individually and wish to accept the plea bargain/offer from the State.

The trial counsel provoked the petitioner of his fundamental-right/s to accept the plea-bargain offered by the State, and did so by provoking and intimidation/s over the petitioner when he abruptly/aggressively indicated to petitioner "Do Not Accept the Plea-Offer, it is not acceptable", Even a layperson could consider[ed] that police-reports cited petitioner as a partaker and participant, and the State was going to call the alleged victim[s] to trial as witness[s] and they would likely would testify at trial and against petitioner and an/y defense pronouced by defense-counsel. Thereof, even a layperson could see if petitioner would proceed to trial, he was [1]-taking extreme chance of be convicted, [2]-going to be setence to - at least 20-years if convicted and up to a life-sentence term, and-considering those facts with the overwhemling evidence against L. Bracey ..his co-defendant he was logically going to be convicted and sentence under the theory of "the hand of one is the hand of all". [etc].

Whereof, Petitioner shows that he recieved a "favorable plea offer" from the State Solicitor's Office and his trial-counsel provoked and intimidated him until he "rejected" the plea-bargain offer of nine-years, that he wholly wished to take and accept the plea [of nine-years], and was under provocation and professional intimidation to reject a favorable and legit plea offer for a recommedation of nine-years imprisonment.

As in Lafler v. Cooper, the Supreme Court pronouced within "[even if the trial is free from constitutional flaws, the defendant who based on the deficient performance of counsel-

goes to trial instead of taking a more favorable plea may be prejudiced, as element of ineffective assistance of counsel, from either a conviction on more serious counts [or] the imposition of a severe sentence." The twenty-one year sentence that petitioner recieved as a result of trial counsel provoking him until he rejested the plea-offer, was a severe sentence, especially as petitioner as a loving-family and young children that is perjudice by his incarceration, and await his return for love and support.

If a plea-offer/bargain has been offered, a defendant has a right to effective assistance of counsel in considering it ,a person would wishing to plead shall not be provoked by counsel to "reject" an/y favorable plea, and if counsel's actions caused an/y defendant to lose or relinquish an fundamental-right, that that defendant didnot voluntarily, consciously, and knowing-waive shown perjudice, and ineffective assistance of counsel under Strickland v. Washington Standard/s.

The U.S. Supreme Court pronouced 'that certain constitutional rights are so fundamental that they are deemed personal to a criminal defendant, and he/she alone and only may decide whether these rights will be exercised or waived. And that a defendant's decision to do so may be unwise from a "tactical-standpoint" within may be said in defendant's decision to take plea [or] proceed to trial, take the witness-stand own his/her own behalf, etc. But the decision is the defendants' choice. As in ABA-Standards for Criminal-Justice, The Defense Function, § 4-5.2 [1980].

Sixth Amendment remedies should be "tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." United States v. Morrison, 101 S.Ct. 665, 449 U.S. 361, 364. Thus, a remedy must "neutralize the taint" of the constitutional violation,- Id., at 365, 101 S.Ct. 665.

In this sitution [aforesaid] to fully redress this constitutional violation, this Honorable Supreme Court shall redress by vacating the current setence, and-seek the State to offer and petitioner recieve the offered plea of nine-years.

The court shall recognize and take account that petitioner surely seeked to plead to alleged crimes, and trial-counsel surely implemented to petitioner to not take the plea, and he as expressed willingness and expressed willingness to plea and accept responsibilty for his action.

As aboved the Petitioner as indicated and setforth that trial-counsel impeded on his fundamental right and thereof has satisfied the Strickland's Standard/Prong on "Performance", as he admitted within questioning at the PCR-Trial/Hearing by answering "I conveyed to Mr McFadden, that was not an offer acceptable." [App. 341 l. 12-13].

As to the "Prejudice" Prong/Standard in Strickland, Petitioner has shown that but for counsel's deficient performance ..Petitioner would have plead to the nine-year plea-offer by the State. In addition, as a result of not accepting the plea and being convicted at trial, petitoner recieved 21-years over double and greater than he would have recieved under the plea. Therfore, Strickland Standards/Prongs as been satisfied.

II. PETITIONER WAS ENTITLED TO TAKE THE WITNESS STAND AND SUBMIT HIS TESTIMONY TO EMPANELED JURY AND NOT BE PROVOKED AND REFEREED BY HIS COUNSEL PRIOR TO AND AT JURY-TRIAL.

The Trial Counsel [Micheal M. Jordan,Esq.] was constitutional Ineffective under the sixth-amendment, and manifestly erroneous, at his provoked and refereeing to defendant/petitioner to "not take - the witness-stand" and submit his testimony and statement [s] to the empaneled-jury at and during trial. To warrant such dictatorship and diction towaeds petitioner counsel shall not dictate and provoke an defendant into relinquishing his safeguarded and constitutional right, as the right to testify is deemed a fundamental right required by the fourteenth-amendment of the United States Constitution at the due-process to achieve fairness in State Criminal - Proceedings. This analysis reflects the traditional approachunderlying the selective incorporation of fundamental rights from/within the Bill of Rig hts into the due-process clause of the fourteenth amendment for application to the States. In Wainwright v. Sykes, 97 S.Ct. 2497, 2510 n.1, 433 U.S. 72, 93 n.1, the Supreme Court of the United States deemed and pronounced that certain constitutional - rights are so fundamental that are deemed personal to the criminal defendant, and he/she must alone decide whether these rig hts will be exercised or waived. And Rock v. Arkansas, 107 S.Ct. 2704, 2708, 483 U.S. 44 pronounced that the exercise of certain constitutional rights, such as defendant's sixth-amendment right to present evid--

ence and witnesses on his behalf are subject to the control and-discretion of trial-counsel. However, the Supreme Court indicated it does not believe "whether the defendant will testify falls in or within this category. And-in Wright v. Estelle,572 F.2d 1071, 1077 Cited " [t]he Supreme court pronounced that a defendant's personal right to forego the assistance of counsel and conduct his or her defense, recognized in FARETTA, also encompasses his/her personal right to testify in his/her own behalf, as part of their defense. And, that a defendant's decision to do so may be unwise from a "tactical standpoint" also may be said of a defendant's - decision to proceed to trial or to invoke his right to trial by - Jury, but the wisdom /or/ unwisdom of the defendant's choice does not dimish his right to make it. Id. In Rock v. Arkansas, Supra. The Supreme Court pronounced the corolly right to criminal defendant to testify at trial, citing "the right to testify is deprived from the sixth-amendment right to compulsory process to present - favorable witnesses[and evidence], to include one's self, and the right to present defensive evidence under the confrontation clause. The fifth-amendment privilege against self-crimination clause and-the fourteenth-amendment due process safeguards also bear upon the right to testify , as a "fundamental"; essential to due-process of law in a fair adversary process, and thereof futher personal, thus waivable "only by the defendant". Faretta v. California, 95 S.Ct. 2525, 422 U.S. 806, 819 n.15 .

The Supreme Court in Johnson v. Zerbst, 58 S.Ct. 1019, 1023, 304 U.S. 458, 464 unequivocally ruled that the wavier to fundamental right, to be effective the wavier must be "an intentional relinquishment /or/ abandonment of a known right. Id. The waiver of the constitutional right rest upon the defendant's "free choice", in deciding whether to invoke certain trial rights and protections afforded by the U.S. Constitution. The assistance of counsel - guaranteed by the sixth-amendment is deprived from the legal - doctrine of agency, with the Client acting as Principle and the - counsel as his/her agent. In Wainwright v. Syke, Supra., the Supreme Court noted the American Bar Association Standards, stated "Such basic decision as to wether to plead guilty, waive a jury, or to testify on one's own behalf are ultimately for the acoused to make." under ABA STANDARDS FOR CRIMINAL JUSTICE, THE DEFENDENSE FUNCTIONS, §4-5.2[a] [1980]

Certain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for the defense counsel. The decisions which are to be made by the accused after full consultation with counsel are:

[i] what plea to enter,
[ii] whether to waive a jury trial,
[iii] whether to testify within one's own defense.

The trial court's charge to petitioner about his right[s] to testify in its colloquy sua sponte, failed to inquire into the - petitioner and his co-defendant ['s] failure to take the stand in trial present testimony on their own behalfs', and/or to inquire into if--it was "knowingly, voluntarily, and intelligently" waiver of their fundamental right[s] to testify own their own behalf, and-- to jury personal testimony and statements of innocence [etc].

The defendant who invokes his/her right to the assistance of counsel does not automically give up all control over their case. The criminal defendant as a client maintains his/her automy by virtue of the right to be "fully imformed and involved within the trial decisions --petitioner's desire to testify and imform jury his side of the incident aka his side of the story in a public forum is to be considered as great importance, and - overriding any techical strategy[s] the trial-counsel as implied has mandatory, and refused the petitioner from making the ultimate choice, aka fundamental-right/s ..the decision to testify on one's own behalf is soley upon that defendant to make. And-Counsel shall not impede or provoke against the defendant as he/she is deciding to testify /or/ invoke his fifth amendment right to remain silent [etc].

Trial Counsel failed to safeguard petitioner's constitutional and fundamental right[s], and-failed to advised [or/and] confer and consult to him his fundamental [and] constitutional rights and only impeded upon them, by his neglect/s in consulting with him and involving him any/all trial-strategies, to include the fundamentals of the case.

Petitioner meet with Esquire-Jordan approximately two-times and brief-vist/s, and then went to trial ..make three total meetings with counsel, these meeting never even came close to being adquate,i.e. allow counsel to advise petitioner of fundamentals of rights, procedures in criminal law [or] criminal trial [or] criminal rights, etc.

Petitioner argues that he was unconstitutional provoked and prevented from testifing before the court and impaneled-jury by the prevention, intimidation, and provocation by his trial counsel, this includes his choice [or/denial] to testify , and that fundamental right is to be waived or invoked only be the criminal defendant.

Petitioner's trial counsel implicated and forced on him that invoking his right-to-testify [and] to plead guilty would harm him, a direct violation of effective assistance of counsel, and a direct prejudice to petitioner [and-his right/s] thereof, an clear showing of the Standards/Prongs setforth by the Strickland Court.

Petitioner's trial counsel failed to implicate that these were fundamental-rights and by his Professional-Obligations and the Mandates of the Constitution obligate him to decide and only him to make the choice as to wether to plead-guilty [or] take the witness-stand at/during jury-trial[s] [etc].

Instead, Trial Counsel inappropriately, unduly, -and unconstitutional failed to exhibit to the petitioner that he held such fundamental right/s and regulated the fundamental and constitutional of petitioner by constinuously inserting that invoking these rights will harm/hurt the petitioner, and-contradicting the true right and true procedure/s setforth in/for criminal-law, criminal proceedings, and criminal-trials.

Directly violating petition's right to decision these rights ...and to be adequately imformed on such, as well as imform and involve the petitioner of criminal strategy[s].

Therefore, Strickland Standards/Prongs as been satisfied,

III. PETITIONER IS ENTITLED TO EFFECTIVE APPEAL AND EFFECTIVE ASSISTANCE OF APPELLATE & PCR COUNSEL.

The Petitioner was denied a effective appeal, and thereof by the ineffective assistance of appellate counsel, whom failed to bringforth to the appellate-court the issue/s and arguments upon this PRO SE PETITION FOR WRIT OF CERTIORARI to this Court, and JOHNSON PETITION FOR WRIT OF CERTIORARI/Filed by Robert M. Dudek, Chief Appellate-Defender. These issues and arguments was apparent from record/s and out-of-court testimony by - petitioner.

As in Davila v. Davis, 137 S.Ct. 2058, 267. "The Constitution, it guarantees effective assistance of counsel at both trial and during an initial appeal. And-Effective appellate counsel should not raise every nonfrivolous argument on appel, but rather only those arguments most likely to succeed. Id. S.Ct. at 2067.

S.C. Code Ann. §17-27-90, Grounds for Relief.

ALL GROUNDS FOR RELIEF AVAILABLE TO AN APPLICANT UNDER THIS CHAPTER MUST BE RAISED IN ..APPLICATION. ANY GROUNDS FINALLY ADJUDICATED OR NOT SO RAISED, OR KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVED IN THE PROCEEDING THAT RESULTED IN THE CONVICTION OR SENTENCE OR IN ANY OTHER PROCEEDING THE APPLICANT HAS TAKEN TO SECURE RELIEF, MAY NOT BE BASIS FOR SUBSEQUENT APPLICANTION ..ETC.

As in Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755. "All applicants are entitled to a 'full and fair opportunity to present claims in one PCR application. §17-27-90.

The PCR-Court was not briefed via application these critical issues of Trial-Counsel's erroneous and perjudice violation/s of Constitutional & Fundamental Rights via appellate-

counsel's deficiency and perjudice. The PCR-Counsel failed wholly via his failure to bring forth these arguments and issues on application and/or setforth these issues/arguments by adequate questioning and litigation.

Thereof, Absent effectiveness and constitutionality of the proceeding/s and litigation/s ..this court shall writ or grant the petition [certiorari] on this litigation before the court.

IV. PETITIONER IS ENTITLED TO ADEQUATE AND PROPER DUE PROCESS OF LAW AND PROCEDURE IN FILED MOTION AFTER TRIAL.

The Petitioner was denied [and] refused due-process of law when the presiding-judge [trial-judge] retired and failed [or/and] refused to "rule" on post-trial motion/s and he was the only judge that could rule adequately and efficiently as an/y other judge would be able to affectively and efficiently make a/ny ruling on them/those motions.

The judge that took up the motion/s agreed on this exact conclusion as he stated in the hearing on this matter.[App. 296 l. 1-9].

Petitioner is entitled to "equal-protection of the law/s", and-"equal due-process of law/s" and "to be treated fairly and-equal as other citizen have been treated or will be treated".

Petitioner was wholly refused efficient and adequate due-process[s] on these motion/s ,by the presiding-judge's action and acts that refused/denied a/ny adequate/efficient ruling.

The presiding shall have been mandated to adress any/all pending and un-complete issue/s and litigation/s that was mandated to/towards him/her prior to retirement.

The Constitution/s mandate[d] that these motions be effectively handled and completely litigated before and by the court.

Wherefore, This court shall address this issue on this matter and setforth a/n ruling that will indicate this abuse and violation does not occur [again] under this Court's Jurisdiction and This State's Authority/Power, Etc.

CONCLUSION

WHEREFORE, BY THE REASON OF THE FOREGOING ARGUMENT, PETITIONER'S PLEAD-OFFER/BARGAIN SHALL BE REINSTATED, AND THE CURRENT SENTENCE VACATED BY ORDER OF THIS COURT, REMANDED TO THE CIRCUIT COURT WITH THOSE ORDERS FROM THIS HONORABLE COURT.

This 28th day of January, 2023.

-Mr. Marcus Codell McFadden-

RULE 263, SCACR

MARCUS C. MCFADDEN

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