

STATE OF SOUTH CAROLINA

County of _____

SEARCH WARRANT

Date _____

Officer _____

MOTION TO REINSTATE PAGE 1

STATE OF SOUTH CAROLINA

County of _____

SEARCH WARRANT

Date _____

Officer _____

MOTION TO REINSTATE PAGE 2

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG SC

AFFIDAVIT

Personally appeared before me, one JEREMY D. HUFF
no, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY HAND GUN AND AMMUNITION, RODRICK SCOTT DOB 01-09-76 F/M,
THOMAS WILLIAMS DOB 10-7-78 A/M ANY EVIDENCE RELATING TO THE CRIME.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

120 OWENS ST. SPARTANBURG, SC LOCATED WITHIN THE CITY LIMIT OF
SPARTANBURG, SC. THIS IS A DUPLEX APARTMENT, BEIGE IN COLOR WITH RED
SHUTTERS AND 120 IS VISIBLE ON THE FRONT DOOR

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

ON 11-23-97, CHRISTOPHER OGLESBY WAS SHOT IN THE FACE BY A BLACK
MALE WITH A HAND GUN. DURING FURTHER INVESTIGATION VICTIM STATED THAT SUSPECTS
ADMITTED TO SHOOTING HIM AND STATED THAT THEY WERE SURE. SUSPECTS ARE KNOWN
TO BE LIVING AT 120 OWENS STREET IN SPARTANBURG. SUSPECTS WERE IN CLOSE PROXIMITY
WITH THE VICTIM AND WERE WITH ^{QA} VICTIM JUST MINUTES BEFORE THE SHOOTING.

Sworn to and Subscribed before me
this 28th day of November, 19 97
Jeremy D. Huff (L.S.)
Signature of Judge

Jeremy D. Huff
Affiant

Address _____

Phone: _____

COUNTY OF Spartanburg, SC

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-140
March 13, 1973

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

OF Spartanburg, SC

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

120 ORANGE ST. SPTRG SC. LOCATED WITHIN THE CITY LIMITS OF SPTRG, SC
THIS IS A DUPLEX APARTMENT, BEIGE IN COLOR WITH RED SHUTTERS AND 120
IS VISIBLE ON FRONT OF DRIVE

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY HAND GUNS AND AMMUNITION, RODERICK SCOTT DOB 01-09-76 #11,
THOMAS WILLIAMS DOB 7-78 #11

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

THE SPARTANBURG MAGISTRATE COURT

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

S.C.

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(L.S.)

Signature of Judge

Joyce Lynn Huff - Direct examination
by Solicitor Bulsa

1 No. 13 for identification purposes only at this time.)

2 Q. I show you what's been marked for identification as
3 State's Exhibit No. 13.

4 Inside this bag is a pair of black and white tennis
5 shoes.

6 Isn't that what you recovered?

7 A. Yes, sir.

8 Q. Okay. And this is where it had the substance on it?

9 A. Yes, sir.

10 SOLICITOR BULSA: Your Honor, we move these into
11 evidence.

12 MR. BOGGS: Without objection. ^{my attorney suppose to find}
_{object}

13 (Whereupon, State's Exhibit No. 13 was received into
14 evidence at this time.)

15 Q. What else did you do, detective?

16 A. After recovering evidence from the residence, I took
17 it back and placed it into evidence.

18 Q. Did you bring, bring charges?

19 A. Yes, sir.

20 Q. Did you consider Chris Oglesby an accomplice in this
21 case?

22 A. No, sir.

23 Q. Were you aware that he had had a .22 pistol?

24 A. Yes, sir.

25 Q. Did you consider charging him with that?

STATE OF SOUTH CAROLINA

County of Spartanburg

Thomas Jerome Williams, 255549

Full name and prison number (if any) of Applicant.

vs.

The State of South Carolina

Name of Respondent.

In the Court of Common Pleas

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAR - 8 AM 9:38
FRANK HAMMOND

APPLICATION FOR
POST-CONVICTION RELIEF

2002-CP-42 875

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Kershaw Correctional Institution, 484B Goldmine Hwy.
Kershaw, SC 29067
2. Name and location of Court which imposed sentence Spartanburg County Clerk of Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 98-GS-42-6479 (Attempted Burglary, First Degree)
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 19, 1999 (25 Years Violent)
 - (b) _____
 - (c) _____

(183)

5. Check whether a finding of guilty was made

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Denied
- ii. _____
- iii. _____

(c) the date of each such result:

- i. April 10, 2001
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results: :

- i. N/A
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) (See Attachment)
- (b) _____
- (c) _____

FILED
 CLERK OF COURT
 ANDERSON COUNTY
 2001 MAR - 8 AM 9:38
 MARK WAINWRIGHT

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 2

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
 - (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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 CLERK OF COURT
 HANCOCK COUNTY
 2002 MAR -8 AM 9:38
 HANCOCK COUNTY

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STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, Thomas Jerome Williams, 255549 being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Thomas Williams

SWORN to and subscribed before me this 4th day of March 19 2002
Penny I. West (L.S.)
Notary Public

My Commission Expires: 12-27-10

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2002 MAR -8 AM 9:38
MARK HAMMOND

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Thomas Jerome Williams, 255549, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Thomas Williams
Applicant

SWORN or affirmed to and subscribed before me this 4th day of March 19 2002
Penny I. West
Notary Public

My Commission Expires 12-27-10

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Thomas Jerome Williams, #255549,)
Applicant,)

CIVIL ACTION NO.: 2002-CP-42-0875

vs.)

MOTION TO ALTER, OR AMEND PCR APPLICATION

The State of South Carolina,)
Respondent.)

AMENDED PCR APPLICATION

Comes Now, Thomas Jerome Williams, #255549, by and through his appointed Counsel undersigned, and I would show unto this Honorable Court of Common Pleas respectfully the following:

(PREAMBLE)

This is an [a]mended PCR application forthwith to this Honorable Court under [r]ule 71.1(d), SCRPC...

This amendment is [n]ot intended to erase nor diminish any claims already set forth by the applicant, and hence this Amendment amplifies his prior claims, and New Factual predicates are presented herein...

AMENDMENT

To Amend Section [9] of the Applicant's PCR Application, I would forthwith aver the following Language In Haec Verba;

- [9](a). I would aver the Applicant received Ineffective Assistance of Trial Counsel, thus, violating his rights provided by S.C. Const. Art. I, §§3, and 14, guaranteed by the 6th and 14th Amendments to the United States Constitutions.
- [9](b). I would aver the Applicant received Ineffective Assistance of Appellate Counsel, thus, violating his rights provided by S.C. Const. Art. I, §§3, and 14, guaranteed by the 6th and 14th Amendments to the United States Constitutions.
- [9](c). I would aver that the Circuit Court of Spartanburg County lacked Jurisdiction to entertain the Applicant's case, and sentence him, thus, violating his rights provided by S.C. Const. Art. I, §3, guaranteed by the 14th Amendment to the U.S. Constitution.
- [9](d). I would aver that the S.C. Court of Appeals lacked Subject Matter Jurisdiction to entertain, and adjudicate the Applicant's [A]ppeal, thus, violating his rights provided by S.C. Const. Art. I, §3, and S.C. Const. Art. IV, §2, guaranteed by the 14th Amendment to the United States Constitution.

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10 (a) Attachment;

- 1.) My defense attorney failed to challenge the Attempted Burglary in the First Degree charge, knowing investigating officers could not place applicant on the scene of the crime.
- 2.) My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
- 3.) My defense attorney neglected the necessary investigations and the preparations of my case including, but not limited to, inadequate factual investigations and less than thorough legal research.
- 4.) My defense attorney never properly ascertained whether or not actually understood or comprehended all of the issues that were involved in my case.
- 5.) My defense attorney failed to challenge the inconsistent statements and testimonies giving at trial.
- 6.) My defense attorney failed to move for a "New Trial" after jury charged not guilty on Assault and Battery with Intent to Kill and Possession of a Fire Arm, when Indictment on Attempted Burglary in the First Degree stated; while possessing a fire arm, when this was the aggravated circumstances used in the indictment of First Degree Burglary.
- 7.) My defense attorney never discussed with the applicant the nature and extent of the evidence which the state had against him.
- 8.) My defense attorney never discussed with the applicant the testimony that any of the state's witnesses could offer.
- 9.) My defense attorney failed to interview all relevant witnesses.

FILED
 CLERK OF COURT
 2017 MAR 28 AM 11:38
 HARRIS COUNTY
 TEXAS

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The threshold matter in this case to amplify that Trial Counsel was [i]neffective for failing to effectively argue the New Trial motion is the Applicant was acquitted of AEWIK, and Possession of a firearm during the commission of a violent crime, and it is "the same thing as [N]ot being proved, and [N]ot to "exist" (Idem Est Non Probari Et Non Esse), and logic dictates that it was [i]ncumbent upon Trial Counsel to litigate this matter with earnestness, and vigor because with the acquittal of these two charges, there was [N]o evidence in which to base a verdict on the charge of Attempted Burglary, or Burglary and this information was not conveyed to the Trial Court, and the Applicant was [p]rejudiced by Trial Counsel's ineptitude, and ineffectiveness.

[HOW I WAS PREJUDICED]

There is a reasonable probability that if my Trial Counsel would have effectively argued the New Trial motion, and informed the Court that there was no evidence in which to base a Verdict, I could have received a New Trial. State v. Clardy, 73 S.C. 340, 53 S.E. 493; State v. Howard, 64 S.C. 344, 42 S.E. 173; and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome. Strickland, Supra.

(10-A-3)

[Cause For Counsel Being Ineffective]

It is my proposition that Trial Counsel was inept, and Constitutionally Ineffective for Multiple Failures to object at Trial. The [R]ecord in this case, speaks for itself, and it dictates with clarity, and particularity the failures to object by Trial Counsel in the following particulars to wit:

[A]. Trial Counsel did [N]ot object to the Circuit Courts lacking [J]urisdiction to entertain Applicant's indictment for Burglary, because it was [N]ot "[F]iled with the Clerk of Court of General Sessions." In United States v. Hill, 210 F.3d, at 881 (2000), the Court was unequivocal when it stated [V]erbatim;

"The filing of a valid Indictment is a prerequisite to the Courts [J]urisdiction."

It is Universally recognized that the acts of a court without [J]urisdiction are [V]oid, (Actus Judiciarius Coram "Non Justice" Irritus Habetur).

[B]. Trial Counsel did [N]ot object to the shoes being admitted against the Applicant at his trial into evidence. (Tr., pg. 115, ln. 10-14.).

- * First, Trial Counsel should have [o]bjected to the shoes being admitted into evidence where they were a fruit of an illegal search, and seizure, because the search warrant was [N]ot signed by a Judicial Officer, and the proper objection was "Improperly seized or obtained in [v]iolation of the 4th Amendment (objection No. "42");"
- * [S]econd, it was injected to the jury that the shoes had [B]lood on them, allegedly from the victim when he was shot. However, Trial Counsel did [N]ot object to "No chain of custody (objection No. "45");" and,
- * [T]hird, the witness for the State testified that the shoes he allegedly saw was [B]lue and [W]hite. (Tr., pg. 33, ln. 24-25.). However, it must be amplified that the shoes being admitted into evidence were [B]lack and [W]hite, and Trial Counsel should have [o]bjected to misleading or confusing (objection No. "40"), because the specification of one thing is an [E]xclusion of the other, (Enumeratio Unius Est Exclusio Alteris). Furthermore, Trial Counsel erred for failure to move for an acquittal based on the fact that his shoes which were submitted tended to exclude the Applicant as the perpetrator of the crime where the State witness specifically saw [B]lue and [W]hite shoes and Applicant's were [B]lack and [W]hite.

from the Search Warrant, is "[t]at amount to no Search Warrant at all, and Trial Counsel should have investigated, researched, and prepared a defense to [S]uppress the shoes illegally seized from the Trial..."

[HOW I WAS PREJUDICED]

There is a reasonable probability that if my Trial Counsel would have investigated, researched, and prepared me a defense for an illegal search of the home, of which, I lived, and illegal seizure of my shoes for the Search Warrant [N]ot being Constitutionally valid under the 4th Amendment because no Judicial Officer [s]igned it, the shoes which allegedly implicated me in the crime could have been [s]uppressed if Trial Counsel conveyed this information to the Trial Court, thus, where he failed to do so he caused the Applicant to be convicted in violation of S.C. Const. Art. I, §10 and S.C. Code Ann. § 17-13-140. Wong Sun v. United States, 371 U.S. 471, 63 S.Ct. 407 (1963), and a reasonable probability is a probability [S]ufficient to undermine the confidence of the outcome. Strickland v. Washington, 466 U.S., at 694, 104 S.Ct., at 2068 (1984).

(10-A-2)

[Cause For Counsel Being Ineffective]

It is my position that Trial Counsel was inept, and constitutionally ineffective for failing to "effectively" argue the motion for a [N]ew [T]rial, for the Court to recognize the "fact the Applicant was acquitted for the offense of ABWIK, and [P]ossession of a firearm during the commission of a violent crime," whether by the [E]lements for attempted Burglary, or Burglary could [N]ot be met based on the fact there was [N]o [E]vidence that the Applicant was [A]rmed, or in possession of a firearm during the commission of a violent crime, because he was [a]cquitted of this offense. Moreover, there was [n]o identification by the complaining witness for the burglary charge that the Applicant committed the offense. Furthermore, there was [n]o evidence to even place the Applicant at the crime scene when he was acquitted of ABWIK, likewise, the "Corpus Delicti" for the offense of Attempted Burglary, or Burglary could [n]ot be met in this particular case...

It is [a]xiomatic that, Trial Counsel should have been "Unequivocal when arguing the New Trial Motion, effectively conveying these essential points of facts and law to the Court..."

(Law/Analysis)

The [L]aw arises from "facts, (Ex Facto Jus Oribur), and its a undeniable [F]act in this case Sub Judge that the States "Lynch Pin" evidence to place the Applicant at the crime scene for the offense of Attempted Burglary or Burglary was that the [A]pplicant allegedly shot the complaining State witness Christopher Oglesby, attempting to enter the home of Ken Booker..."

The [P]rosecutor's Language in the closing argument amplifies this proposition when the prosecutor stated In Haec Verba:

"Now, Mr. Oglesby or Mr. Booker [c]ouldn't identify Mr. Williams, cause the man had a mask, But Mr. Williams, Mr. Oglesby put him right there [outside] the apartment at the time of the shooting."
(Emphasis added). [Tr., pg. 143, ln. 11-14.]

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It is my proposition that Trial Counsel was inept, and Constitutionally ineffective for failing to investigate, research, and prepare me a defense to suppress the shoes admitted during my criminal trial to incriminate me in a crime, where the shoes were (f)ruits of an illegal search, and seizure, by Law Enforcement giving the Judicial Officer (i)ntentionally (F)alse information to obtain the (S)earch (W)arrant....

The Ratio Legis (underlying principle) for this proposition is the (a)ffiant (Officer) in the (a)ffidavit to obtain the (S)earch (W)arrant in relevant part stated In Haec Verba;

"During Further Investigation (V)ictim State's That (S)uspects admitted to shooting him, and stated they were sorry." [SEE SEARCH WARRANT AFFIDAVIT].

The (Key) to this matter is this information was conveyed to the Judicial Officer of (R)ecord on NOVEMBER 28, 1997. However, it is an (u)ndisputable, (u)ndefutable (F)act in this particular case SUB JUDICE that the (c)omplaining (W)itness did (N)ot provide Law Enforcement with this information under oath until DECEMBER 02, 1997. (SEE STATEMENT OF CHRISTOPHER OGLESBY DATED 12-02-97.).

It is beyond dispute, or debate that the Judicial Officer was provided with (F)alse information for the Search Warrant to be issued as a matter of (LAW)... Furthermore, a Search Warrant could not issued where the Judicial Officer had no way of (C)orroborating information given to him and no information is shown to show the information was (C)orroborated before the Search Warrant issued....

(Law/Analysis)

The United States Supreme Court (s)pecifically, and (u)nequivocally, with (c)larity, and (p)articularity stated (V)erbatim:

"We (H)old that, where the defendant makes a substantial preliminary showing that a (F)alse (S)tatement "knowingly, and Intentionally or with (R)eckless (D)isregard for the "truth was included by the (a)ffiant in the warrant (a)ffidavit, and if the alleged false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be (H)eld at the defendant's request. In the event that at that hearing the allegation of (P)erjury or reckless disregard is established by the defendant by a preponderance of the evidence, and with the affidavit False material set to one side, the affidavits remaining content is insufficient to establish probable cause, the Search Warrant must be (V)oided, and the Fruits of the search excluded to the same extent as if probable cause was Lacking on the face of the Affidavit."

Franks v. Delaware, 438 U.S., at 155-156, 98 S.Ct. at 2676 (1978).

Thus, Trial Counsel's ineptitude of failing to investigate, research, and prepare a defense in this matter was prejudicial to the Applicant.

[HOW HE WAS PREJUDICED]

There is a reasonable probability that if Trial Counsel would have investigated, re-searched, and prepared me a defense in this matter, the shoes that were illegally seized could

Counsel Inept, and constitutionally Ineffective was for Multiple Failures to [O]bject at Trial. Inasmuch, Trial Counsel failing to object to a [K]ey Jury instruction is ineffective assistance of Counsel. Arrowood v. Clusen, 732 F.2d 1364 (1984).

[How I Was Prejudiced]

There is a reasonable probability that If, my Trial Counsel would have made the proper [O]bjections at Trial, the outcome of my Trial, and Appeal could have been [d]ifferent, and a reasonable probability is a probability [S]ufficient to undermine confidence in the Outcome. Strickland v. Washington, *Supra*...

(10-A-4)

[Cause For Counsel Being Ineffective]

It is my proposition that Trial Counsel was inept, and constitutionally Ineffective for failing to request a "Jury Instruction" that if the Applicant was [a]cquitted for ABWIK and the offense of possession of a firearm during the commission of a violent crime, then he could not be Convicted of Attempted Burglary or Burglary in the First Degree.

(Law/Analysis)

Hence, In Lucienburg v. Smith, 79 F.3d 388 (4th Cir. 1996), the Fourth Circuit Court of Appeals [H]eld that Trial Counsel was inept, and Constitutionally Ineffective for failing to request a "jury instruction" that the [d]efendant could [n]ot be convicted of using a hand gun during a crime, if the jury did not convict him on the predicate crime...

The [s]ame principle, concept, and precept of [L]aw applies in this case, and when the reason is the same, the "Law is the [s]ame, (Eadem Est Ratio, Eadem Est Lex)." Therefore, it is beyond dispute, and debate, that if the Applicant was found [N]ot guilty of ABWIK, and Possession of a firearm during the commission of a violent crime, then the [E]lements for the offense of Attempted Burglary, or Burglary could [N]ot be met in this case Sub Judice, and the Applicant was prejudiced by Trial Counsel's ineptitude, and ineffectiveness of not requesting a jury instruction in this matter, which is quite [o]bvious...

[How I Was Prejudiced]

There is a reasonable probability that if Trial Counsel would have requested the jury instruction the Court would have charged it and conveyed it to the jury, and it must be assumed as a matter of [L]aw that if the instruction was given to the jury, they would have followed, and complied, and the outcome of this case could be [d]ifferent, and a reasonable probability is a probability [S]ufficient to undermine Confidence in the outcome. Strickland v. Washington, *Supra*.

(10-A-5)

[Cause For Counsel Being Ineffective]

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have been suppressed from my Trial, and the outcome could have been [d]ifferent, and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome. Strickland v. Washington, Supra.

(10-A-6)

[Cause For Counsel Being Ineffective]

I would aver that Trial Counsel was inept, and Constitutionally ineffective for failing to file a Speedy Trial Motion in this case.

(Law/Analysis)

The Law is written, (Ita Lex Scripta Est), to wit:

"[T]his Constitution, and the [L]aw's of the United State's which shall be made in pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the [S]upreme [L]aw of the Land; and the Judges in [E]very [S]tate shall be bound thereby, any thing in the Constitution or Laws of any State to the [C]ontray [N]otwithstanding." (SEE UNITED STATES CONST. ART. VI, §2.).

In-as-much, The United States Code "is the Law of the United States, making it the [S]upreme [L]aw [O]f [T]he [L]and IPSO JURE..." Likewise, Title 18 U.S.C. § 3161(b) in relevant part states In Haec Verba:

"Any information or Indictment charging an individual with the Commission of an offense shall be "[F]iled within [t]hirty-days from the date on which such individual was arrested or served with a [s]ummon's in [c]onnection with such charge..."

The [L]aw arises from [F]acts, (Ex Facto Criter Jus), and it is a fact that the Applicant was "[D]irectly Indicted" for the offense of Burglary on November 24, 1998, and the Applicant was served the indictment. It is beyond debate that in the State of South Carolina, the [I]ndictment is the [c]harging [I]nstrument in which the defendant is taken to [T]rial. Likewise, the [C]rux of this argument is Trial Counsel did [N]ot investigate, research, and prepare a defense for the charging Instrument [N]ot being [F]iled with in the [C]riminal [R]ules of [p]rocedure for the Court of General Sessions. [SEE S.C. CODE ANN. § 22-5-540 AND SCRCRIMP RULE 3(a), (b) and (c).]. This legal research would have, thus, informed Trial Counsel the Warrant and all information of it was never transmitted by the Judicial Officer of [R]ecord before the Applicant's or Prosecutor's initial appearances in the Court of General Sessions and [F]iled with the Clerk's Office ten days, respectively which is jurisdictional. S.C. Const. Art.V, Section 26 mandates "[T]he General Assembly shall [p]rovide ... [the magistrate's] ... criminal jurisdiction." This is mandatory and has been provided by the Legislature by the enactment of S.C. Code Ann. § 22-3-540 (Supp. 1983). Accordingly, in order for the magistrate to surrender his [exclusive jurisdiction] he must transmit the criminal jurisdiction pursuant to § 22-5-540 and SCRCRIMP Rule 3 to vest jurisdiction of the subject matter with the Court of General Sessions.

Hence, Title 18 U.S.C. §3162(a)(1) provides "that if no indictment or information is filed within the time limit provided by Section 3161(b), such charge against that individ-

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...ual shall be [D]ismissed or otherwise [D]ropped. See United States v. Falgouta, 31 F.3d 1456 (9th Cir. 1994). Thus, Trial Counsel has a [d]uty to investigate the Applicant's case factually, and legally. Sneed v. Smith, 670 F.2d 1348 (4th Cir. 1982). And Counsel's ineptitude, and his Ineffectiveness of failing to investigate, research, and prepare a defense for A Speedy Trial [v]iolation in this particular case is incomprehensible, and the Applicant was prejudiced due to this omission....

[How He Was Prejudiced]

There is a reasonable probability that if Trial Counsel would have investigated, researched, and prepared the Applicant a defense for A Speedy Trial violation under the (SIA) and conveyed the defense to the Trial Court, and argued further, a Judicial Abuse of Discretion where the Warrant, nor any matters of it, were transmitted to the Court of General Sessions by the inferior Court, which issued Applicant's warrant, within the jurisdiction of the Court of General Sessions ten days, respectively before the Applicant's or prosecutors appearances in the Trial Court as required by Statute § 22-5-540 and South Carolina Rules of Criminal procedures Rule 3(a), the outcome of this case could have been [d]ifferent because the waiver of S.C. Code Ann. § 22-5-540 cannot confer jurisdiction upon the Court, and a reasonable probability is a probability sufficient to undermine Confidence in the outcome. Strickland, Supra...

[Ineffective Assistance Of Appellate Court Counsel]

(10-8-1)

(Cause For Ineffective Assistance Of Appellate Court Counsel)

It is my proposition that Appellate Counsel was inept, and Constitutionally Ineffective for [F]ailing to investigate, research, and prepare me a defense for the South Carolina Court of Appeals [L]acking "Subject Matter Jurisdiction" to entertain and adjudicate my [a]ppeal, where there was [N]o [W]ritten "Court Order" from the Circuit Court granting or denying my [P]ost-[T]rial motion for a "New Trial." (See Tr., pg. 179, Ln. 05-11.).

(Law/Analysis)

The United States Supreme Court has made it clear that the proper standard for assessing the effectiveness of Appellate Court Counsel is the [S]ame standard enunciated in Strickland v. Washington, Supra; see Smith v. Robbins, 120 S.Ct. 746 (2000), and Roe v. Flores-Ortega, 528 U.S. 470 (2000)...

In this case Sub Judge, the Applicant's Appellate Court Counsel did [N]ot investigate, research, and prepare a defense for Lack of Subject Matter Jurisdiction by the South Carolina Court of Appeals, which is a threshold matter... Thus, the Ratio Legis for the premise that Appellate Counsel should have investigated, researched, and prepared a defense in this matter is [R]ule 29, SCORIMP, which [S]tates on its face... "[T]hat the [t]ime for [a]ppeal for all parties is [S]tayed, and the [J]urisdiction of the case [R]emains with the Circuit Court, until there is [W]ritten [N]otice disposing of the (post) Trial motion..."

It is axiomatic that Appellate Counsel should have investigated, researched, and prepared me a defense in this matter because there is [N]o written Court Order, or [N]otice adjudicating the [P]ost-[T]rial motions.

In Orazio v. Dugger, 876 F.2d 1508 (1989) The Court "Held" that Appellate Court Counsel's failure to [a]dequately [i]nvestigate [a]ll grounds for [a]ppeal was deficient performance. It must be amplified that Subject Matter Jurisdiction is a requisite of the U.S. Constitution Art.III, §2., cl. 1 in [a]ll cases in [L]aw, and in equity. It is a Courts Statutory or Constitutional Power for a Court to hear a case. United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). Likewise, in essence, Appellate Court Counsel did not investigate, research, and prepare me a defense for the Court of Appeals Lacking Judicial Power to hear my case, which has given birth to a Fundamental miscarriage of Justice, due to a [J]urisdictional. [D]efect.

[How I Was Prejudiced]

There is a reasonable probability that if my Appellate Counsel would have properly investigated, researched, and prepared me a [d]efense for Lack of Subject Matter Jurisdiction on Appeal for the Written Court Order, or Notice being In Absentia in this case, contrary to Rule 29, SCRCrimP, and this information was conveyed to the Court, there is a reasonable probability that the outcome of my case would have been different, and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome. Strickland, Supra...

(10-B-2)

(Cause For Ineffective Assistance Of Appellate Counsel)

It is my proposition that Appellate Counsel was inept, and Constitutionally Ineffective for failing to investigate, research, and prepare me a defense, for Lack of [J]urisdiction by the Circuit Court to entertain, and adjudicate his criminal case, because his Indictment for Burglary was [N]ot [F]iled with the Clerk of Court...

(Law/Analysis)

It is an [E]lementary, [B]edrock, [C]ardinal rule of criminal procedure in the State of South Carolina, that [I]ndictments must be filed with the Clerk of Court of General Sessions, before the charging instrument is taken to the [G]rand [J]ury. (SEE Rule 3(c), SCRCrimP).

In United States v. Hill, 210 F.3d at 884 (8th Cir. 2000), the Court made it clear that the filing of a valid indictment is a [p]rerequisite to the Courts Jurisdiction... Thus, it should be [E]lementary, with no need for citation of [A]uthority, that an [I]ndictment which has been "[T]rue-[B]illed" before it is filed with a Court, would tend to [S]uggest that the Criminal Jurisdiction of the Court, is [c]o-extensive to the [C]riminal [J]urisdiction of the [G]rand [J]ury, which [r]eturned the "[T]rue-[B]ill" which is contrary to State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972)...

Accordingly, it was incumbent upon Appellate Counsel to investigate, research, and prepare a defense on Appeal for Lack of Jurisdiction for the Indictment [N]ot being [F]iled, as the [F]iling of an appropriate charge in a criminal case with the Court is a prerequisite to the

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Courts Jurisdiction of the Subject Matter, even in South Carolina. (SEE CRIMINAL LAW-KEY-38, 105).

It must be reiterated that the [F]ailure of Appellate Counsel to [a]dequately know or investigate [a]ll grounds for Appeal is deficient performance.

(How I Was Prejudiced)

There is a reasonable probability that if my Appellate Counsel would have investigated, researched, and prepared me a defense for Lack of Jurisdiction, the outcome of my appeal could have been [d]ifferent, and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome. Strickland, Supra...

(10-B-3)

(Cause For Ineffective Assistance of Appellate Counsel)

It is my proposition that Appellate Counsel was inept, and Constitutionally Ineffective for failing to argue the denial of the Motion for a [N]ew [T]rial. (See Tr., pg. 179, Ln. 05-09). This issue was preserved for [a]ppeal by the motion being [d]enied...

It is beyond debate, and dispute that when the Applicant was [a]cquitted of ABWIK, and Possession of a firearm during the Commission of a violent crime, there was [N]o evidence in which to base a verdict for Burglary, because there was [N]o [P]roof that the Applicant was armed, [N]o [P]roof he injured anyone, moreover, [N]o [P]roof that he was at the crime scene, and on that "IPSO FACTO" the Applicant is being held in custody in violation of the 14th Amendment to the U.S. Constitution, and Appellate Counsel should have raised this issue on Appeal.

(Law/Analysis)

Hence, when ignored issues on appeal are "[c]learly stronger than those presented to the Court on Appeal by Counsel, will the presumption of effectiveness be overcome. Gray v. Green, 800 F.2d 644 (7th Cir. 1986); Kurina v. Thieret, 853 F.2d 1409 (1988); Bartles v. Chapman, 506 S.E.2d 838 (1998). This issue is [c]learly stronger than the issue raised by my Appellate Counsel, and the Applicant was prejudiced by Appellate Counsel's [F]ailure to raise this issue..

(How I Was Prejudiced)

There is a reasonable probability that if my Appellate Counsel would have raised this issue on appeal the outcome of my [D]irect [A]ppeal could have been different, and a reasonable probability is a probability sufficient to undermine Confidence in the outcome. Strickland, Supra...

(10-B-4)

It is my proposition that my Appellate Counsel was inept, and Constitutionally Ineffective for failing to come and visit me to have an informed evaluation from me on my case, and have a meaningful discussion with me about my potential defenses on appeal...

(Law/Analysis)

The United States Supreme Court Specifically, and Unequivocally, with clarity, and particularity has State In Haec Verba:

"The denial of opportunity for appointed Counsel to [C]onfer, to [C]onsult with the accused, and prepare his defense, could convert the appointment of Counsel into a [S]ham, and nothing

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Thomas Jerome Williams, S.C.D.C.)
No. 255549,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEA
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2002-CP-42-875

RETURN

In response to the post-conviction relief application filed March 8, 2002, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 18, 1999 term of the Spartanburg County Grand Jury for attempted burglary, first degree (98-GS-42-6479). A jury trial was held on January 18, 1999, at the conclusion of which, the Applicant was found guilty as charged. He was sentenced by the Honorable Judge Henry F. Floyd to 25 years for attempted burglary, first degree (98-GS-42-6479). The Applicant filed a direct appeal to the South Carolina Court of Appeals. On April 18, 2000, the Court of Appeals affirmed the conviction (2000-UP-291). The Applicant filed a Petition of Certiorari to the South Carolina Supreme Court. On April 10, 2001 the South Carolina Supreme Court denied certiorari.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

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more than a formal compliance with the Constitutions requirement that an accused be given the assistance of [C]ounsel."

Avery v. Alabama, 308 U.S. 444 (1940).

It is settled beyond question that under both the [F]ederal, and [S]tate Constitutions, the [R]ight to the Assistance of Counsel includes the [R]ight to "COMMUNICATE" [e]ffectively with Counsel in the preparation of one's defense. Washington v. Meschum, 680 A.2d 262 (1996).

It must be amplified that informed evaluations of potential defenses to Criminal charges, [a]nd a meaningful discussion with ones [C]lient of the realities of his case, are the [c]orner [S]tones of Effective Assistance of Counsel. See Stevens v. Johnson, 575 F.Supp. at 885 (1983) (citing Gaines v. Hopper, 575 F.2d 1147.).

In this case at bar the Applicant has [N]ever seen his Appellate Court Counsel, and it must be amplified and reiterated, that the same Standard enunciated in Strickland v. Washington, Supra., applies to Appellate Court Counsel. Smith v. Robbins, Supra.

Under the Strickland Doctrine, it is undisputed that if Trial Counsel never visited his client, and took his client to Trial and [L]ost, he would be found Ineffective by any Court, the same principles applies to Appellate Court Counsel.

(How I Was Prejudiced)

There is a reasonable probability that if my Appellate Court Counsel would have come to visit me, and would have discussed my potential defenses with me, I could have effectively in person informed Counsel of my most meritorious defenses for Appeal, as Stated (infra), and the outcome of my case could have been [d]ifferent on Appeal, and a reasonable probability is a probability [S]ufficient to undermine confidence in the outcome...Strickland, Supra......

[Lack of Jurisdiction]

(10-C-1)

It is my proposition that the Circuit Court Lacked [J]urisdiction to entertain my case, and sentence me because my charging Instrument (Indictment for Burglary) was not FILED with the Clerk of Court of General Sessions. United States v. Hill, Supra....

[Lack of Subject Matter Jurisdiction]
By The Court of Appeals

(10-D-1)

It is my proposition that the S.C. Court of Appeals Lacked Subject Matter Jurisdiction to entertain my Direct Appeal because there was [N]o written Court Order or Notice adjudicating the Post-Trial Motion for a New Trial which a matter, which is a requisite of Rule 29, SCR CrimP, for the S.C. Court of Appeals to acquire Subject Matter Jurisdiction to entertain my Appeal. Thus, the acts of a court without Subject Matter Jurisdiction are [V]oid...

DATE

(APPLICANT)

DATE

(COUNSEL)

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Thomas Williams
Direct examination by Mr. Richey

1 Q And you think there should have been a suppression
2 motion because the affidavit was insufficient.

3 A Yes, sir.

4 MR. RICHEY: We would like to have these marked, Your
5 Honor, if we could. I've shown Mr. Leadbitter.

6 MR. LEADBITTER: No objection.

7 (Witness interview form, affidavit, search warrant and
8 return marked Applicant's Exhibit Number One.)

9 Q Okay. You have other grounds that you have raised in
10 your amended application. And one of the things you talked
11 about is that you do not believe there was a reasonable
12 investigation done in your case.

13 A Yes, sir.

14 Q Okay. And can you explain that to me? (2)

15 A My case wasn't, is my proposition that trial counsel
16 was inadequate and constitutional ineffective for failing to
17 investigate and research and prepare me a defense for a
18 constitutional invalid search of my home because the search
19 warrant was not signed by a detective neutral --

20 Q Mr. Williams, you are going to have to just tell me,
21 because you have to speak up.

22 A Yes, sir.

23 Q Just tell me. You have gone over this plenty of times.
24 Just explain it to me where we can go through it.

25 A Yes, sir.

Thomas Williams
Direct examination by Mr. Richey

1 Q . Go ahead.

2 A . I said my own attorney was negligent in preparing my
3 case and going through the, you know what I'm saying, the,
4 you know what I'm saying, the research, all of the
5 researches that he should have went through.

6 Q At the time of trial did you know what sentence you
7 were facing? (3)

8 A No, sir. I didn't have no idea. On the assault and
9 battery with intent to kill, I knew the time, you know what
10 I'm saying, that it was. But, like I say, with the
11 attempted burglary, I was charged with attempted burglary
12 right before I went to court. I never knew, you know what
13 I'm saying, the sentence that it carried.

14 Q And when you talk about investigating your case, was
15 one of the issues of investigating your case is that
16 reviewing these search warrants and stuff would have shown
17 the error you just pointed out? Is that your part of your
18 investigation in this case too?

19 A Yes, sir.

20 Q Also in this case it was alleged that you fired a gun
21 by some fellows.

22 A Yes, sir.

23 Q Okay.

24 A The victim stated that I apologized to the shooter.

25 Q Okay. And did you and your lawyer talk about any

12

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274888

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Thomas Williams,)
S.C.D.C. No. 255549)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No. 2002-CP-42-875

ORDER OF DISMISSAL
WITH PREJUDICE

2004 MAR 12 PM 3:19
MARC KITCHENS
CLERK OF COURT

Rodney Richey, Esq. appearing for the Applicant.

Douglas E. Leadbitter, Esq., Assistant Attorney General appearing for the Respondent.

This is a post-conviction relief (PCR) matter. The Applicant alleges in his PCR application filed March 8, 2002 that he is being held in custody unlawfully due to the ineffective assistance of trial counsel. An evidentiary hearing was convened at the Spartanburg County Courthouse on January 13, 2004.

I. PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 18, 1999 term of the Spartanburg County Grand Jury for attempted burglary, first degree and assault and battery with intent to kill (98-GS-42-6479). The Applicant was represented by Thomas A.M. Boggs, Esq. A jury trial was held on January 18, 1999, at the

conclusion of which, the Applicant was found guilty of attempted burglary, but was acquitted on the ABWIK charge. He was sentenced by the Honorable Judge Henry F. Floyd to 25 years for attempted burglary, first degree (98-GS-42-6479). The Applicant filed a direct appeal to the South Carolina Court of Appeals. On April 18, 2000, the Court of Appeals affirmed the conviction (2000-UP-291). The Applicant filed a Petition of Certiorari to the South Carolina Supreme Court. On April 10, 2001 the South Carolina Supreme Court denied certiorari.

II. APPLICABLE LAW

a. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler v. State.

The proper measure of performance is whether the attorney provided representations within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry v. State, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

b. Ineffective assistance of appellate counsel

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Eyitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

Allegation of ineffective assistance of counsel for failing to move to suppress the shoes seized during the execution of the search warrant.

The allegation that trial counsel was ineffective for failing to move to suppress the shoes seized during the execution of the search warrant is without merit. The Applicant alleged that the search warrant affidavit that established probable cause to allow law enforcement to obtain the search warrant was actually taken after the search warrant was executed. The Applicant claims that the written statement taken from Oglesby was the sole basis that established probable cause to obtain the search warrant. This Court has reviewed the transcript and finds that the Applicant's assertion that the search warrant was based solely on the statement taken from Oglesby is unsupported by the record. The testimony from the trial showed that law enforcement was in the process of investigating the case immediately after the shooting occurred and had interviewed witnesses at the scene, including Booker. The record clearly demonstrates that law enforcement gathered evidence the night of the incident that lead them to believe that the Applicant was involved. The Applicant's assertion that the search warrant was not based on

probable cause because Oglesby's written statement was obtained after the search warrant was executed is unsupported by the record. Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney for failing to move to suppress the shoes seized on this basis. Strickland v. Washington; Cherry v. State. Moreover, the Applicant also failed to carry his burden of proof to show a reasonable probability that the outcome of the trial would have been different but for trial counsel's alleged deficient representation. Johnson v. State. This Court finds that the Applicant did not carry his burden to show a reasonable probability that the outcome of the trial would have been different had trial counsel moved to suppress the shoes on the basis asserted. Therefore, the Applicant also failed to carry his burden to show prejudice. Accordingly, this allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to research and prepare a defense.

The allegation that trial counsel was ineffective for failing to research and prepare a defense is without merit. The Applicant claimed that trial counsel did not know what the charges were because he was indicted close to the time of trial. Trial counsel testified that he was aware of the charges and was prepared for trial. This Court finds trial counsel's testimony credible and the Applicant's testimony not credible. Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. Moreover, the Applicant also failed to carry his burden of proof to show a reasonable probability that the outcome of the trial would have been different but for trial counsel's alleged deficient representation. Johnson v. State. This Court finds that the Applicant failed to show

how the alleged failure to prepare hurt his defense. Therefore, the Applicant also failed to carry his burden to show prejudice. Accordingly, this allegation of ineffective assistance of counsel is denied.

Allegation of ineffective assistance of counsel for failing to failure to move for new trial and lack of subject matter jurisdiction.

The allegation that trial counsel was ineffective for failing to move for new trial is without merit. The Applicant asserts that since he was acquitted of the ABWIK charge, trial counsel should have moved for a new trial on the attempted burglary charge because the ABWIK allegations put him at the scene. The Applicant also argued that the acquittal on the ABWIK deprived the trial court of subject matter jurisdiction on the attempted burglary. The Applicant's argument is *non sequitur* and the allegation is contrary to the law of this State. This Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard.

Strickland v. Washington; Cherry v. State. Moreover, the Applicant also failed to carry his burden of proof to show a reasonable probability that the outcome of the trial would have been different but for trial counsel's alleged deficient representation. Johnson v. State. Therefore, the Applicant also failed to carry his burden to show prejudice. Accordingly, this allegation of ineffective assistance of counsel is denied:

Allegation of ineffective assistance of appellate counsel for failing to raise a lack of subject matter jurisdiction in the appellate court because post trial motions had not been ruled upon.

The allegation that appellate counsel was ineffective for failing to raise the issue that the appellate court did not have subject matter jurisdiction because post trial motions had not been

ruled upon is without merit. The record shows that the trial court ruled upon the post trial motions that were made. The record contains no unresolved post trial motions. Therefore, this Court finds that the Applicant failed to carry his burden to show that appellate counsel's representation fell below the standard of professional reasonableness in this regard. Southerland v. State. Moreover, the Applicant also failed to carry his burden of proof to show a reasonable probability that the outcome of the appeal would have been different but for the alleged deficient appellate representation. Id. Therefore, the Applicant also failed to carry his burden to show prejudice. Accordingly, this allegation of ineffective assistance of appellate counsel is denied.

Allegation of ineffective assistance of appellate counsel for filing an Anders brief.

The allegation that appellate counsel was ineffective for filing an Anders brief is without merit. The Applicant offered no proof of any issue which was overlooked by appellate counsel or the appellate courts. The Anders procedure necessarily requires the appellate court to review and pass upon the merit of each preserved issue relating to trial court error during the trial. Appellate counsel and the Court of Appeals in this case applied the Anders procedure and the case was dismissed. Anders requires the appellate court to do an independent evaluation of the trial record to determine if there are any meritorious issues for appeal. If the appellate Court believes there are issues that require additional briefing, it orders counsel for the parties to do so. In this case, there has been a ruling from a higher Court that there are no meritorious issues. Therefore, this Court finds that the Applicant failed to carry his burden to show that appellate counsel's representation fell below the standard of professional reasonableness for failing to adequately argue on appeal. Southerland v. State. Moreover, this Court cannot find that the Applicant was prejudiced by appellate counsel's failure to brief an issue when the Court of

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JAMES M. BROWN
CLERK OF COURT

Appeals has already ordered that appellate counsel need not further brief any issue. Therefore, there is no prejudice. Southerland v. State. Accordingly, this allegation of ineffective assistance of appellate counsel is denied.

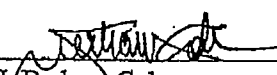
CONCLUSION

This Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

As to any and all allegations which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

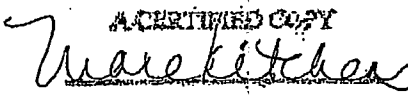
1. The post-conviction relief application is **DENIED**.
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.



J. Derham Cole
Presiding Judge, Seventh Judicial Circuit

_____, South Carolina

March 12, 2004

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A CERTIFIED COPY


CLERK OF COURT
SPARTANBURG COUNTY
S.C.
DATED 3/12/04

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No: 2002-CP-42-0875

THOMAS JEROME WILLIAMS, 255549

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

JOHNSON PETITION FOR WRIT OF CERTIORARI

Rodney W. Richey
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ISSUE PRESENTED

The lower court erred in dismissing petitioner's application because counsel was ineffective for failing to adequately investigate, research and prepare a defense for a constitutional invalid search of petitioner's home.

STATEMENT

Petitioner, Thomas Jerome Williams, was indicted for attempted burglary in the first degree, assault and battery with intent to kill, and possession of firearm or knife during the commission of or attempt to commit a violent crime. He was convicted of attempted burglary in the first degree. Williams was sentenced to twenty-five years. Williams appealed his conviction and the Court of Appeals affirmed his conviction. (2000-UP-291).

On March 8, 2004, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. pp. 183-197. The respondent filed a return dated December 9, 2002, requesting that the PCR application be denied and dismissed. App. pp. 198-202

A hearing was convened on January 13, 2004 at the Spartanburg County Courthouse before the Honorable J. Derham Cole. On March 12, 2004, Judge Cole dismissed the action per order on the grounds that the counsel was not ineffective for failing to suppress the evidence seized during the execution of a search warrant of his home. Further, counsel was not ineffective for not properly preparing petitioner's case. App. pp. 236-243

Petitioner appealed this petition follows.

investigate the search warrant issues.

CONCLUSION

The lower court erred in dismissing petitioner's application because trial counsel was ineffective for failing to adequately failing to investigate and research and prepare and prepare a defense for a constitutional invalid search of petitioner's home.


RICHEY & RICHEY, P.A.

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Attorney for Petitioner

November 7, 2004
Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT . . .

CERTIORARI TO SPARTANBURG COUNTY

J. DERHAM COLE, CIRCUIT COURT JUDGE

2002-CP-42-0875

THOMAS JEROME WILLIAMS

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

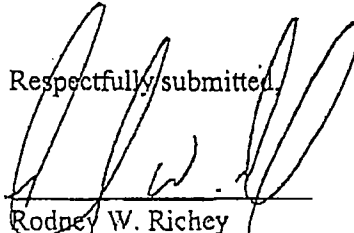
JOHNSON PETITION FOR WRIT OF CERTIORARI

Counsel for Thomas Jerome Williams states:

1. He is private counsel and was appointed to represent petitioner;
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on March 8, 2004. In his opinion seeking certiorari from the order of dismissal is without merit;
3. He has pursuant to Johnson vs. State 294 S.C. 310, 364 S.E.2d 201 (1988), brief the one arguable issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Thomas Jerome Williams.

Respectfully submitted,



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November 7, 2004
Greenville, South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No: 2002-CP-42-0875

THOMAS JEROME WILLIAMS, 255549

PETITIONER,

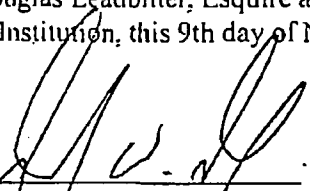
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Douglas Leadbitter, Esquire and Thomas Jerome Williams, 255549, McCormick Correctional Institution, this 9th day of November 2004



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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Answered _____

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

J. DERHAM COLE, CIRCUIT COURT JUDGE

CASE No.: 2002-CP-42-0875

THOMAS JEROME WILLIAMS, 255549)
Petitioner/Appellant,)
)
Vs.)
)
STATE OF SOUTH CAROLINA)
Respondent,)

PRO-SE, BRIEF ON APPEAL, Pursuant to
Johnson Vs. State

Thomas Jerome Williams #255549
Pro-Se Petitioner/Appellant
McC.I. [F-2-B-212B]
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QUESTIONS PRESENTED

- I. Did Appellant's Trial counsel deprive Appellant of 6th and 14th Amendment right to Effective Assistance of Trial Counsel for failing to object to admission into evidence of shoes seized as a result of search warrant when shoes were not tested to determine by conclusive report whether spots/stains on shoes were blood?

- II. Did Post-Conviction Relief hearing Judge err in failing to set forth specific findings of fact in Order dismissing PCR action with prejudice on Appellant's claims Ineffective Assistance of Trial and Appellate Counsel, and also claims challenging Subject Matter Jurisdiction?

STATEMENT OF THE CASE

Appellant was indicted for attempted burglary, 1st degree, assault and battery with intent to kill, and possession of a firearm or knife during commission of a violent crime. Acquitted of assault and battery, and possession of weapon charges, Appellant was convicted of attempted burglary, 1st degree, and sentenced to a term of twenty-five (25) years. Upon timely Appealing the conviction, the S.C. Court of Appeals affirmed the conviction. See No.: 2000-UP-291.

On March 8, 2002, Appellant filed a PCR application with the Spartanburg County Clerk of Court, raising claims at Appendix (App.) Pg. 183-197; Respondent's thereafter filed their return requesting denial of Appellant's PCR Application on December 9, 2002. See App., Pg. 198-202.

After a PCR hearing was held by the Honorable J. Derham Cole at the Spartanburg County Courthouse on January 13, 2004, Judge Cole dismissed Appellant's PCR action with Prejudice on March 12, 2004. See App., Pg. 236-243.

On or about November 16, 2004, Appellant's counsel filed a Petition to be relieved as counsel pursuant to Johnson Vs. State, 294 S.C. 310, 364 S.E.2d 201 (1988); The State Supreme Court, thereafter, gave Appellant notice of Appellant's counsel's action, and gave Appellant the opportunity to "raise and argue any issues" Appellant believes the Court should consider, which, Appellant undertakes with the instant PRO-SE Brief on Appeal.

ARGUMENT I.

Appellant was deprived of his 6th and 14th Amendment right(s) to Effective Assistance of Trial Counsel due to Counsel's failure to object to the State's admission of shoes that were seized, as a result of execution of search warrant, without any conclusive report(s) that spots/stains on shoes were blood.

Appellant had the 6th Amendment right to the assistance of counsel in his state trial through the due process provision(s) of the 14th Amendment; the U.S. Supreme Court elucidated the principle or "... the right to counsel is the right to the effective assistance of counsel." , " —See Strickland Vs. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.E.2d 674 (1984). (emphasis added) —and that" "[c]ounsel, ... can...deprive a defendant of the right to effective assistance, simply by failing to render "adequate legal assistance," " , " —Id, at 686, 104 S.Ct. 2063-2064.

Hence, Appellant's position is that when the state offered shoes that were found in a residence alleged to be Appellant's, as the result of executing a search warrant —See Appendix, Pg. 114, Ln. 1-13; Ln. 24 through Pg. 115, Ln. 1-14 —, because the officers were told that shoes belong to Appellant, and said shoes had what "appeared to be" blood. —App. 114, Ln. 9-10 —stains on them, the state was supposed to offer evidence to show that the stains on the shoes were, in fact, human Deoxyribonucleic Acid (DNA) only to substantiate their relevance to the Appellant's trial.

Under the S.C. Rules of Evidence, 'relevant evidence' is evidence having a tendency to make a fact asserted, for the outcome of a proceeding, more probable "than it would be without the evidence" —Rule 401, SCRE —and the State is required to authorize their evidence with "evidence sufficient to support a finding that the matter in question is what its proponent claims;" Rule 901(a), SCRE. Absent evidence of authentication, a question of probative value verses prejudice —to party against whom evidence is offered— arises, which, if the danger of unfair prejudice to such party is potential, then the evidence, although relevant, may be excluded from the proceeding(s) —Rule 403, SCRE.

Here, the shoes with what appeared to be blood on them was entered into evidence by the State, to substantiate their position of Appellant being at the scene of the crime during its commission; the State clarified that the shoes confirm that Appellant was there and participated --App., Pg. 145, Ln. 18-22 --and this, without more evidence to prove that the red substance was in fact blood, deprived Appellant of a fair trial.

Turning to the crux of this argument of Trial Counsel ineffective for failing to object to the State's admission into evidence of the shoes, it is upon Appellant to submit evidence of Counsel's ineffectiveness. This burden has two (2) components, as delineated in Strickland, *Supra*.

First, Appellant must show that Trial Counsel's performance was deficient --which requires Appellant to show that Counsel "made errors so serious that Counsel was not functioning as the "Counsel" guaranteed the defendant by the Sixth Amendment" --Strickland, at U.S. 687, 104 S.Ct. at 2064.

Second, Appellant "must show that the deficient performance prejudiced the defense," --*Id.* --which is a showing of Appellant being deprived of a fair trial as a result of the seriousness of counsel's erroneous act(s).

Counsel's failure to object, to the State's admission into evidence of shoes with stains on them, when the stains were not proven to be blood, was deficient performance because Counsel allowed the State to argue that Appellant was at the scene of the crime and participated in the crime because of what appeared to be blood on the shoes from the victim Chris Oglesby when the State should've followed the state's rules of evidence and get the shoes tested for human DNA. Counsel, not acting as the "Counsel" guaranteed by the 6th Amendment, deprived and allowed Appellant to be deprived of a fair trial.

The Counsel's deficient performance prejudiced Appellant's defense and deprived Appellant of a fair trial when there exists a reasonable probability that had Trial Counsel objected to the admission into evidence of shoes that contained a substance appearing to be blood on its surface, without any authentication/conclusive report(s) of substance being blood, that the Trial

Judge would've excluded the shoes from State's evidence, and, thus, the Jury would've probably acquitted Appellant when no evidence would have been showing a possibility of Appellant being at the scene of the Attempted Burglary.

A reasonable probability is a probability sufficient to undermine confidence in the outcome" --Strickland, at 649, 104 S.Ct. 2052 --and is sufficient to warrant Appellant relief on his Attempted Burglary conviction due to ineffective assistance of counsel.

ARGUMENT II.

Appellant was deprived of his 6th and 14th Amendment right to effective assistance of Trial Counsel where Trial Counsel failed to effectively argue that since Appellant was acquitted of the Assault and Battery with Intent to Kill, coupled with the possession of a firearm during the commission of a violent crime, that the requisite element of Attempted 1st Degree Burglary --

Appellant having to be armed with a firearm (deadly weapon (§16-11-311(A)(1)(a), S.C. Code of Laws) --could not be established due to acquittal on (ABIK) and possession of weapon during violent crime charges.

As noted in the State Appendix, Appellant raised the substance of the above-submitted ineffective assistance of trial counsel claim with citation from trial court transcript to substantiate the case law in support of the necessary deficient performance and resulting prejudice therefrom --pursuant to Strickland, See Argument I., Supra --under Ground (10-A-2), Pg. 190 of Appendix.

The PCR Court's Order dismissing Appellant's PCR application with prejudice addresses this issue without any wording of consideration the Court took on Appellant's offering of evidence, in the form of recitation from Trial Transcript to show evidence of deficient performance and resulting prejudice for failing to effectively argue Appellant's entitlement to a Motion for a new Trial; This act of PCR Court is not in compliance with § 17-27-80, S.C. Code of Laws, because the failure to consider Appellant's offer of proof within the Amendment to his sworn PCR application was error. (See App., Pg. 241, Ln. 4-18).

--Due to the PCR Order failing to make specific findings of fact while stating its conclusions of Law upon the issues presented under Ground (10-A-2) of Amendment to PCR action --McCullough Vs. State, 464 S.E.2d 340, 341 (S.C.1995) --This Court should Order another PCR hearing for Appellant to have the PCR Court render a proper Order consistent with Pruitt Vs. State, 423 S.E.2d 127, at 128 (S.C.1992).

ARGUMENT III.

Appellant was deprived of his 6th and 14th Amendment right to Effective Assistance of Trial Counsel due to Counsel not moving to suppress shoes seized as a result of a search warrant issued off of insufficient affidavit.

Appellant Sufficiently argued the substance of this claim in his PCR hearing, and presented evidence, in the form of a Witness Identification form, the search warrant affidavit with search warrant --App., Pg. 212, Ln. 1 through Pg. 213, Ln. 8.

The PCR Court addressed the claim in its Order of dismissal --App., Pg. 239, Ln. 10 through Pg. 240, Ln. 11 --yet, the Order of dismissal does not reflect the Court specifically addressing the evidence presented, as required by §17-27-80; Appellant, therefore, should receive another PCR hearing for a proper Order to be rendered --Pruitt, Supra --So as to comply with McCullough, Supra..

ARGUMENT IV.

Appellant was deprived of his 6th and 14th Amendment right to Effective Assistance of Trial Counsel where Trial Counsel failed to conduct investigation, to search, and prepare a defense for the search of Appellant's Home in light of the search warrant Not reflecting the signature of a neutral and detached judicial officer.

Within the Clerk of Court's records, Appellant sufficiently argued that his Trial Counsel was ineffective for Not investigating an illegal search and seizure of shoes from his home when the search warrant lacked the signature of a Judicial Officer; Appellant supplemented his ineffective assistance of Counsel claim with relevant case law interpreting the requisites for a legal search under the 4th Amendment, and the duty of the Court when the 4th Amendment requisites are not met --See Amended PCR Application, Ground (10-A-1).

In the PCR Court's Order, the judge does not specifically address Ground (10-A-1) of Amendment, concerning the 4th Amendment violation of the police officers' use of a search warrant that ostensibly wasn't issued by a Neutral and Detached Judicial Officer, and the Order dismissing PCR must 'show' specific findings of fact --McCullough, Supra.

Since the Order denying PCR does not address this claim, another PCR should be Ordered so that the PCR Court could render a proper Order on this claim pursuant to Pruitt, Supra.

ARGUMENT V.

Appellant's Trial Counsel deprived Appellant of his 6th and 14th Amendment right to Effective Assistance of Trial Counsel for multiple failures to object---

Namely, "Failing to object due to the Circuit Court's lack of Jurisdiction to entertain Appellant's indictment for Burglary where indictment was not filed with Clerk of Court; 2) Failing to object to seized shoes being used against Appellant because, (a) - They were the fruits of an illegal search and seizure under the 4th Amendment, (b) - Trial Counsel didn't Motion for Sufficient Chain of Custody in compliance with Rule 6, SCRCrimP, (c) - State's witness testified that shoes alleged perpetrator had on were Blue and White while the color(s) of the shoes seized from Appellant were Black and White; (3) - Failing to object to prosecutor making references to witnesses were prejudicial to Appellant; 4) - Failing to object to Hearsay at Trial in reference to quoting alleged words of co-defendant when co-defendant could have been subpoenaed by State to the Court at Trial to testify; 5) - Failing to object to violation(s) of confrontation clause of 6th Amendment where witnesses testified about and questioned about during trial could have been subpoenaed to Court to testify; 6) - Failing to object to prosecutor commenting on Appellant's character when evidence was not admitted which sufficiently showed Appellant to be a dangerous man and the perpetrator of this crime of attempted burglary; 7) Failing to object to jury instruction on truthfulness of witness testimony when jury is not to consider known false testimony of witness under Miller Vs. Pate, 87 S.Ct. 788 (1967).

Appellant clearly outlined the above-submitted language in Amendment to PCR Application under Ground (10-A-3) with appropriate case citation(s) and evidence in citation(s) from the State Trial Record.

The PCR Court's Order dismissing Appellant's PCR does Not specifically address Ground (10-A-3) of the Appellant's PCR Amendment as mandated by McCullough, Supra., and another PCR hearing should be conducted so that the PCR Court can render a proper Order on this claim, under Pruitt, Supra..

ARGUMENT VI.

Appellant was deprived of his 6th and 14th Amendment right to Effective Assistance of Trial Counsel due to Counsel failing to file a Speedy Trial Motion.

As evidenced in the Court's record within Appendix, Appellant stated that his Trial Counsel's failure to file for a Motion for a Speedy Trial --
under the provisions of the U.S. Constitution Art. VI, § 2; 18 U.S.C.
§§ 3161(b), 3162(a)(1); --deprived Appellant of a formidable process
in the State Court ---See App., Pg. 193-194, under (10-A-6).

As a part of the record, to which PCR Judge stated that was considered in the dismissal with prejudice of Appellant's PCR action --App., Pg. 239, Ln. 4-9 --the PCR Judge's Order of dismissal does Not address this ineffective assistance of counsel claim under Ground (10-A-6) of Amendment in no shape and form, complying with McCullough, Supra, and Appellant's position is that another PCR hearing should be Ordered so that a proper Order of adjudication upon Appellant's PCR action can be forthwith pursuant to Pruitt, Supra.

ARGUMENT VII.

Appellant was deprived of his 6th and 14th Amendment rights to Effective Assistance of Counsel on Direct Appeal where Appellate Counsel failed to raise issue of Court of Appeals lacking jurisdiction to entertain the subject-matter of Appellant's Appeal in light of the Rule 29, SCRCrIMP, provision which states the time for appeal for all parties is stayed until Written Notice disposing the post trial motion is forthwith.

At the outset, it must be Noted that the correct standard for attorney performance on Direct Appeal runs congruent with that of counsel performance at Trial --See:

Smith Vs. Robbins, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000);
Smith Vs. Murray, 477 U.S. 527, 535-536, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986).

Appellant argued that the post-trial motions made after his trial was Not adjudicated upon a written Notice as required by Rule 29, SCRCrIMP; also, that since Appellate Counsel failed to raise the issue, Appellate Counsel is ineffective --See: App., Pg. 194-195 under Ground (10-B-1).

Appellant submitted language to satisfy the deficient performance and resulting prejudice requisite showing's under Smith, Supra, to prevail on the claim of ineffective assistance of counsel on appeal --Id.

The PCR judge's Order of dismissal makes mention of this Ground for relief in Appellant's PCR action -- See: App., Pg. 241, Ln. 19 through Pg. 242, Ln. 8 --but the Order does Not address Appellant's recitation of Trial Transcript Pg. 179, Ln. 5-11 where the Trial Attorney made a post-trial motion; and this was evidence Appellant submitted to support his claim that because a post-trial motion was made, it had to be disposed of by a written Notice under Rule 29 before the Appellate Court could legally receive jurisdiction to entertain the subject-matter of Appellant's direct appeal.

Because the PCR Judge's Order fails to comply with McCullough, Supra, the Appellant should receive another PCR hearing pursuant to Pruitt, Supra, for a formal Order to be rendered forthwith upon Ground (10-B-1) of PCR application Amendment.

ARGUMENT VIII.

Because the PCR Court Judge did Not render a formal Order addressing the allegations in Appellant's PCR action, Appellant is entitled to a New PCR hearing.

So as to prevent redundancy, and cause this brief to exceed the page limitations of Rule 227(d)(3), SCACR, Appellant submits that the PCR Judge's Order dismissing Appellant's PCR action does Not address any of the factual allegations on file within the depositions and other papers admitted as evidence during this action. The PCR Judge was suppose to consider the papers on file, as well any other evidence, to determine if Appellant met his burden of proof in his PCR action --§ 17-27-80, S.C. Code of Laws --as well as make specific findings of fact upon the claims presented; Appellant made this fact known by similar language in citing McCullough Vs. State, Supra.

Because the Order denying PCR is considered the final judgement --§ 17-27-80 --and it does Not specifically address the Grounds Appellant argued at-length in his Amendment to PCR Application, inter alia, a new PCR hearing should be granted Appellant.

COMMISSION

For the reasons above stated, Applicant asks this Court to grant this motion for a writ of Habeas Corpus and Reinstatement to the District Court for the hearing of the said matter.

Respectfully Submitted,

Thomas Jerome Williams

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Pro Se, Petitioner (Appellant)

This 27th day of *Dec*, 2004

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