

Marcellous O. Knuckles # 318624  
386 Redemption way  
McCormick, S.C. 29829

date \_\_\_\_\_ 20

Dear Honorable Daniel E Sheeause:

Please find for filing within your clerk  
of court for south Carolina Supreme Court  
A true copy of pro-se petition for writ  
of certiorari and certificate of service  
Request a clocked ~~date~~ stamped copy:

Respectfully Submitted

Marcellous Knuckles

C.C. M. O. K.

C.C. R. M. P.

C.C. D. E. S.

C.C. S.H.W. E

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHEROKEE COUNTY  
WILLIAM H. SEALS, JR., CIRCUIT COURT JUDGE

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Marcellous O. Knuckles,

Petitioner,

v

STATE OF SOUTH CAROLINA,

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Respondent

Pro-Se Petition For Writ of CERTIORARI

Marcellous O. Knuckles

Pro-se: 318624

386 Redemption way

McCormick, S.C., 29899

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## ISSUE Presented

Whether defense counsel was ineffective in failing to Request Defense of actual innocence where there was no evidence linking the defendant at the scene of the armed Robbery; and the defendant was at his employment at the time of the armed Robbery?

## STATEMENT

Petitioner was convicted of armed robbery after a jury trial held before the Hon. J. MARK HAYES, III on November 6, 2006, in Cherokee County. A fifteen (15) year sentence was imposed.

William G Rhoden, Esq; was trial counsel.

Petitioner filed an application for Post-conviction relief on January 9, 2009. An Evidentiary hearing was held on November 3, 2009, before the Hon. William H. Seals, Jr. Petitioner was present and was represented by Shawn Campbell, Esq. Respondent was represented by Mary S. Williams, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing.

on December 29, 2009, Judge Seals issued an order denying and dismissing petitioner's application for Post-conviction relief.

This petition follows,

## Argument

Defense counsel was ineffective in failing  
to Request Defense of actual innocence  
where there was NO evidence linking the  
defendant at the scene of the named  
Robbery; And the defendant was at his  
employment at the time of the Armed  
Robbery:

Applicant's is actual innocence of the  
crime of Armed Robbery of a convenience  
store which there is no physical Evid-  
ence linking the defendant to this crime  
of Armed Robbery on January 18, 2006;

(APP. P.177, lines 20-25 App: P176, lines  
8-13), when pressed on cross-examination  
by the solicitor as to how he was not in  
the store, Applicant said, "Because, ma'am,  
I was employed at Evergreen at the time  
in Blacksburg, a landscape company and I  
didn't get off until 7:00" (APP. P178 lines 1-23)

During closing argument defense counsel argued:

"I was working in landscaping and I didn't get off until around 7:00 because we were on the job doing fencing."

Therefore Petitioner must prove (2) two part of the claim standard of actual innocence, which would be "cause" and "Prejudice"

(1) Cause: In the applicant's case all evidence use by the state of South Carolina submitted to the grand Jury is disfavored and false evidence and the state failed to prove the guilt of the defendant; at trial;

2) Prejudice: The defendant's was deprived of his liberty to a fair trial by the state of South Carolina; use false evidence get a conviction;

In the applicant's case state could not prove that the defendant's was presence at the scene of the crime at the time it was committed is obviously an essential element of the state's case, and the burden rests upon the state to prove his presence.

There is no burden upon the defendant to prove he was at another place:

State v Floyd 174 S.C 288, 177 S.E. 375

(1934) State v. Mayfield 235 S.C, 11, 109 S.E.2d 716 (1959).

The evidence, viewed as a whole, creates the inference that defendant submitting to the court that he was elsewhere at the time of named robbery. Accordingly, his first exception must be sustained and a new trial ordered. The granting of a new-

trial makes treatment of the other issues unnecessary; cite at State v Robbins.

"In a trio of 1986 decisions, we elaborated on the miscarriage of justice, or actual innocence, exception, cite at Id., 477 U.S. At 448-106 S.Ct. At 2624, also cite, at Sawyer v. Whitley 112 S.Ct. 2514).

"Actual innocence" might be defined  
the strictest definition would be to limit  
any showing to the elements of the  
which the state has made a capital  
offense.

Applicant's must demonstrate that "in light of all the evidence," it is more likely than not that no reasonable juror would have convicted him, cite at Schlup v. Delo 513 U.S.

298 372-328, 115 S.C.T. 851 867 868,  
130 LE.2d 808 (1995),

During Post-conviction Relief hearing  
Defense counsel testified, case was very  
close:

There was no physical evidence linking  
petitioner to the crime, no physical  
evidence of fingerprints, there was video  
but the suspects in this crime wore  
masks, victim could not identify the  
petitioner as the suspect in the robbery;  
and without any physical evidence the  
petitioner is "Actual innocence of the  
crime of Armed Robbery."

counsel failing to request charge on  
Defense of actual innocence counsel would  
be ineffectiveness. Strickland v Washington  
466 U.S. 668 104, S.C.T. 2052 80 LE.2d 674  
(1984);

conclusion

Pro-se Petitioner's writ should be granted  
And vacate his conviction and sentence.

Respectfully submitted  
Marcellous Knuckles  
Pro-se Petitioner

This December 3 2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Cherokee County  
William H. Seals, Jr Circuit Court Judge

MARCELLOUS O. KNUCKLES,

RECEIVED

DEC - 7 2012

S.C. Supreme Court  
PETITIONER,

Y

STATE OF SOUTH CAROLINA . . . . . Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of the Pro-se  
Petition for writ of Certiorari and a copy  
of the Appendix in this case have been served  
on Suzanne H. White, Esquire, at Rembert  
Dennis Building, 1000 Assembly Street Room 519,  
Columbia, S.C. 29201, and Robert M. Rachok Appellate  
Defender P.O. Box 11589 Columbia S.C. 29211-1589.

Sworn to before me this 3 day  
of December 2012  
Notary: Sage L Young

My Commission Expires 10/1/2021