

The State of South Carolina

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OCT 19 2023

In The Supreme Court

SC Court of Appeals

Emonte Brooks

Petitioner

Pro Se Petition For

vs.

Writ of Certiorari

State of South Carolina

# 2022-DDD605

Respondent

Emonte Brooks #364670

Lee Correction Institution

990 Wisacky Highway/72B-1263

Bishopville, South Carolina 29010

## Factual Analysis

On July 16th, 2018, Applicant filed for Post-conviction relief. Subsequently thereafter, on November 13th, 2018 the state made its return

An evidentiary hearing was held before the Honorable R. Lawton McIntosh on December 13th, 2021. Ashley McMahon represented Petitioner; Lillian Meadows appeared on behalf of state. Petitioner and Pisa counsel testified at hearing

### A) Probable Cause to arrest

Petitioner contends, that the Police had no Probable cause to arrest based on arrest warrants (App. PG 91 thru 98) (App. PG 104 thru 108) None of the documents contain adequate information supporting "Attempt Murder" or "Attempt Armed Robbery"

Addressing the "attempt murder" warrants read as follows:

"Emonte Brooks did with malice aforethought and with intent to kill, shoot into the victim, Doris Sholle's residence as he was attempting to commit a robbery and while residence was occupied by the victim."

App. PG 105

All arrest warrant affidavits read exactly the same, with only exception of victims (App. PG 105-108) but none of these warrants show any injuries victims suffered as a result of this.

At the hearing, Petitioner testified that counsel failed to challenge my arrest warrants (App. PG 141; PENCS L-15) and the court order is not supported by facts at hearing (App. PG 200) *Twethree, Law v. South Carolina Department of Corrections, 368 S.C. 424 (2006)* is misplaced and the proper analysis is whether under *Beck v. Ohio, 379 U.S. 89 (1964)* these warrants allege facts to support issuance of

of warrants. Despite Per court attempts to outline facts about how applicant was arrested. Fails to establish attempt murder (App. PG 201), clearly the court has not considered relevant testimony (App. PG 142, lines 12-17)

Plea counsel testified at hearing as follows:

A: I've set case law on attempted murders. So I'm very familiar with what the elements are

Q: Okay

A: I know that you don't have to cause injury, but you have to have the present ability to do so.

App. PG 162, line 21-25

Thus, counsel is mistaken about the applicable law, because one can not attempt to kill another with implied malice because there is no such criminal offense as an attempt to achieve an unintended result.

### B) Closely Connected Offenses

At the hearing applicant testified as follows:

Q: Okay. And what's the issue with her failing to inform you that all of these charges are really one incident?

A: Well, I learned that afterwards too. Basically, I have three. My crime was -- the crime that I'm accused of is committed in the same place, same time, same date, and I have three sentences: attempted murder, attempted armed robbery, and discharging a firearm. But it states that I am supposed to have one charge and one sentence, but I have three.

App. PG 143, lines 15-22

Per court misconstrues this issue in order (App. PG 209-210) as Double Jeopardy. This is error. Applicant contends, that these offenses which took place at

same time, date, and Place constitutes as one offense for sentencing.

As court told applicant that:

"... You have laid a lot of Groundwork for Potential life without Parole sentence"

App. PG 57, line 24-25; PG 58, line 1

Since all these offenses are closely connected, in time, date, and Place they will not trigger life sentence currently or in the future and counsel offered no testimony refuting my testimony (App. PG 84-85)

### 3) Armed Robbery Parole Eligibility

Applicant contends that he was entitled to Parole after seven (7) Years, and both Parties as well as court informed applicant he was being sentenced to non-paroleable offenses.

Under South Carolina Code Ann. Sec. 16-11-330 (a) the statute reads in Pertinent Part as follows:

"A person convicted under this section is not eligible for Parole until the Person has served at least seven Years of the sentence"

Sec. 16-11-330(a)

The statutory language clearly indicates, that legislature has not abolished Parole for this offense. The court told applicant this was a non-Paroleable offense (App. PG 57, lines 21-25)

Still further, the evidence presented in warrants only outlines the mere thought and no actual proof this act was carried out. Ince also, the court and counsel misadvice about non-Paroleable offenses is not supported by recorded during collateral proceedings.

## Argument

Did Per court error in failing to apply cumulative analysis to rebut Presumption of reliability for effective assistance, and if not, should this court adopt cumulative analysis for first Prongs of Strickland claims?

In South Carolina, the issue of whether cumulative Prejudice analysis applies to multiple Strickland v. Washington, 466 U.S. 668 (1984) claims of ineffective assistance counsel in Per appeals remains an unsettled question. See, Walker v. State, 397 S.C. 226, 243 n. 5 ( Ct. App. 2012) Lorenzen v. State, 376 S.C. 521 n. 3 (2008) South Carolina Supreme Court and South Carolina Court Of Appeals have both mentioned cumulative Prejudice analysis on several occasions, however, and some circuit Judges have in Per cases recognized the analysis in granting relief for ineffective counsel before being reversed by either Court Of Appeals or South Carolina Supreme Court. Lorenzen, id, at 535.

### A) Cumulative analysis and the United States Supreme Court

State courts have diverged in their interpretations of the two-Pronged Strickland test for ineffective counsel claims in the thirty years following seminal cases cited herein. See, Schofield v. Holsey, 642 S.E.2d 56, 60 n. 1 (GA. 2007), Teleaux v. Warden of Sussex I State Prison, 688 S.E.2d 865, 879 (VA. 2010) A small minority of states has explicitly held that courts must apply the Strickland test on each claim of ineffective counsel individually. See, Echols v. State, 127 S.W.3d 486, 500 (Ark. 2003) Robertson v. State, 367 S.W.2d 538, 542 (Ark. 2010)

Thus, in these Jurisdictions, courts conclude that defense counsel provided

constitutionally inadequate assistance only when at least one claim of counsel error satisfies the two-pronged test on its own. *Robertson, id.*, at 542. Conversely, courts in a majority of states have either recognized or plainly adopted some form of cumulative analysis for reviewing ineffective counsel claims. See, *Brooks v. State*, 929 So. 2d 491, 514 (Ala. Crim. App. 2005); *State v. Savo*, 108 P. 3d 303, 916 (Alaska Ct. App. 2005); *In Re Jones*, 917 P. 2d 1175, 1196 (Cal. 1996); *Barnes v. State*, 76 A. 3d 780, 790-91 (Del. 2013).

Although some slight variations exist among these states' court cumulative analysis, generally entails the consideration of multiple claims of trial counsel errors through either the deficient performance or prejudice prong of the Strickland test. See, *Harris v. Wood*, 647 F. 3d 1432, 1438-39 (9th Cir. 1995); *Bowers v. State*, 578 A. 2d 734, 744 (Md. 1990). Some courts have concluded that, while specific types of error by counsel may not amount to deficiencies under Strickland, the "fundamental lack of formulation and direction in presenting a coherent defense" can establish deficient performance under the first prong. See, *Stouffer v. Reynolds*, 168 F. 3d 1155, 1162-65 (10th Cir. 1999); *Nyer v. Crisp*, 613 F. 3d 275, 278 (10th Cir. 1980); *United States v. Haddock*, 12 F. 3d 950, 955 (10th Cir. 1993). Many courts have questioned whether multiple counsel deficiencies, each failing individually under the prejudice prong of the Strickland test, nonetheless violated the defendant's right to a fair trial when viewed in the cumulative manner. See, *State v. Savo*, 180 P. 3d 903, 916 (Alaska Ct. App. 2005).

## B) Strickland language Supports Cumulative Review

The language of the Strickland opinion suggests that the Supreme Court anticipated that appeals would involve multiple claims of deficiency by counsel and that courts should review the resulting prejudice cumulatively. *Strickland, id.*

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SC Court of Appeals

October , 2023

Honorable Patricia A. Howard, Chief Clerk

Supreme Court of South Carolina

Post Office Box 11330

Columbia, South Carolina 29211

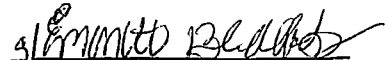
Re: E. Brooks v. State, 2022-000605

Subject: Pro Se Brief

Honorable Chief Clerk

Please find enclosed my original Pro Se brief to be filed in  
this court, and a copy is being served on respondent.

With kind regards



E. BROOKS/Pro Se

cc: file

S.C. Attorney General

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