

IN THE SOUTH CAROLINA SUPREME COURT

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Certiorari to Spartanburg County
Honorable Frank R. Addy, Circuit Court Judge

S.C. SUPREME COURT

Jody Thompson,

Petitioner,

V.

State of South Carolina,

Respondent.

APPELLATE CASE NO. 2023-001217

Pro-Se Appeal Brief From PCR

By: Jody Thompson, #346145
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

STATE OF THE CASE

This matter is being respectfully brought to the attention of the South Carolina Supreme Court, pursuant to a Johnson petition filed by counsel on or about January 15, 2023, to which permitted Petitioner to file a memorandum in order to cite issues he feels were not adequately addressed within counsel's brief on appeal.

Within 10-days after the PCR Court denied relief, the Applicant filed a motion to alter and amend judgment alleging the PCR Court failed to make specific "findings of facts and conclusion of laws" pursuant to §17-27-80, and 52(a), of South Carolina Rules of Civil Procedure. See Appendix pages 646 through 653.

On pages 4 and 5 of the PCR Order. It correctly cites the grounds Applicant relied on for relief. (Appx. 647 and 648) However, as pointed out within the 59 (e), the Applicant alluded to pages 10 of 17, within the Order. Where his allegations involved "the ineffectiveness of trial counsel's preparation", for which the PCR Court omitted from its Order by failing to specifically address each individual ground raised, and instead ushered a "blanket disposal of those issues", that went to the very heart of whether counsel was ineffective.

ARGUMENT IN SUPPORT OF THE MEMORANDUM

In support, Petitioner contends that Reese v. State, 425 S.C. 108, 820 S. E.2d 376 (S.C. 2018), sets the standards of review concerning PCR claims which were not specifically addressed within the final order by the courts. In Reese,

Here, Petitioner 's claims were that "he was actually, factually innocent, either by being entitled to protect himself from someone 'first' shooting at him during a night club disturbance". Or, counsel "failed to hire an 'expert ballistic person'", which could prove or at least put the government's expert witness to a meaningful adversarial test.

Especially where here, "the State's expert failed to conclusively show it was Petitioner's weapon that fired the shots that wonded the victim". (See Tr. tr. pgs. 351-lines 23-25) .

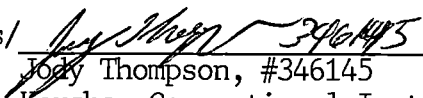
Moreover, Petitioner was charged after the enactment of §16-11-450's protect person of property act, the Act has one less element to prove than the normal requirement for self defense. And had counsel moved under the statute, there is a probability the outcome of the proceeding could have bee different. In that; Peti- could have possibly received immunity from prosecution altogether. See State v. Ford-(S.C. App. 2023). And Strickland v. Washington, 466 U.S. 687 (1984).

Next, Petitioner also claimed a Fourth Amendment violation where the State illegally acuiired his clothing from the hospital in order to criminally investigate the circumstances surrounding the incident. Officer Jawan Emerson, collected Petitioner's clothing to administer DNA testing without an official search warrant authorizing such aearch. This violated Petitioner's rights under the Fourth Amendment, where evidence illegally seized "must be excluded" in trial. See State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (S.C. 2005).

Thus, counsel was ineffective for his failure to move to suppress the illegally obtained evidence that tainted the jury's consideration of guilt and innocence.

Based on the above reasons, the PCR court's failure to specifically address these issues, setting forth the specific findings of facts and conclusions of law, requires the identical relief this Court administered in Reese v. State, and as such, Petitioner respectfully moves this Honorable Court, to reverse the Order by which the PCR court denied relief. And any further relief this Court deems just and proper.

Respectfully, Submitted,

/s/  346145
Jody Thompson, #346145
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, S.C. 29067

cc: filed
2/12/2024

Mr. Jody Thompson, #346145
Kershaw Correctional Institution HA
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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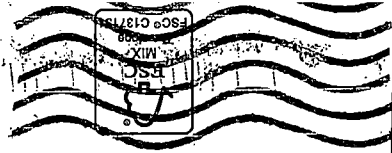
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