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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Edgefield County
Court of Common Pleas
Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2021–0001426

K.C. LANGFORD,

Petitioner,

vs.

THE STATE,

Respondent.

SUPPLEMENTAL APPENDIX

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INDEX

State of South Carolina
County of Edgefield

KC Langford # 294500

vs.

State of South Carolina,

Respondent

2014 JAN -3 AM 10:41

In the Court of Common Pleas
Case No: 2014-CP-19-002

Memorandum of Law in Support of Application for Post Conviction Relief.

The Applicant presents the memorandum of Law in Support of the application for Post Conviction Relief and would show the following unto the court.

I. Statement of Facts

The state arrested KC Langford on October 3, 2008. Edgefield County grand jury direct indicted Langford for criminal conspiracy on December 2008 term of General Sessions Court. Langford moved for a speedy trial on June 29, 2009. Edgefield county grand jury then direct indicted Langford for armed robbery, Kidnapping, and burglary 1st degree on May 5, 2010. The applicant had a joint jury trial with codefendant Bryan Phillips, represented by Randall williams. The Applicant was represented by Mark Calhoun. The case was initially noticed for trial on May 17, 2010, but the solicitor, Ervin Maye continued the trial because the third codefendant Alvin Phillips (state's Key witness) asserted his right to the 5th Amendment and refused to testify against applicant. (see May trial transcript in support of facts) on May 20, 2010, the Honorable william Keesley denied Langford's motion to dismiss for his right to a speedy trial. (see Judge's order*) on May 25, 2010 Langford again moved for the charges to be dismissed for his right to a speedy trial. However, on September 7th-9th 2010, applicant went to trial before the Honorable william Keesley, Judge, and jury. The jury found the Applicant guilty of all charges. Judge Keesley sented the applicant to (30) twenty years for armed robbery, burglary 1st, Kidnapping, and (5) five years for criminal conspiracy. All charges were run concurrently. An appeal was filed on Applicants behalf.

On Appeal; Applicant was represented by Elizabeth Franklin Best and Breen Stevens from the Division of Appellate Defense. Mrs. Franklin Best filed for leave to have applicant's case certified in the South Carolina Supreme Court and the petition was granted and certified on November 3, 2011. The Applicant was denied relief sought in the South Carolina Supreme Court in opinion No: 27195 on November 21, 2012. The Applicant filed for a rehearing and it was denied also. Mrs. Franklin Best petitioned the United States Supreme Court on behalf of Applicant, but that petition was denied also on October 7, 2013. Applicant now presents this court with the following:

II. The applicant alleges and can prove that he was denied effective assistance of trial counsel and appellate counsel. The applicant submits that the extensive records (transcripts) speaks for itself as for the competency of counsel. Trial counsel was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorney's in criminal matters and did not perform within the wide range of the reasonable professional assistance. Applicant alleges that the deficient performance prejudiced the defense so as to deprive the applicant of a fair trial. The Applicant can prove that counsel's conduct so undermined the proper functioning of the Adversial Process that the trial could not have been relied upon as having a just result. Trial Counsel performance prejudice the applicant to the point where there's a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different. Counsel did not investigate some critical evidence when he was preparing for the applicant's defense, neither did counsel consult with the applicant on important decisions. Applicant contends and can show that his conviction and sentence was in violation of the United States Constitution, South Carolina Constitution and the laws of this state. The Applicant is asserting a 6th and 14th Amendment violation. The applicant grounds are constitutional demensions. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demand of fair procedure. The following acts and omissions by trial counsel constituted ineffective assistance of trial counsel.

1. The Applicant was denied effective Assistance of trial counsel by counsel's failure to object to the composition of the jury.

i. However During the selection of the jury, the trial Judge made the following comments: (Transcript pgs 39 L. 22-24, 42 L. 18-24)

THE COURT: The jury panel is qualified. How many people do I have?

THE CLERK: Thirty-two.

THE COURT: obviously, if all of the strikes are exercised, I've got to have 42 people at a minimum to have a 12 person jury, which is what required in the United States for criminal court -- or in South Carolina for Criminal Court and I don't have 42 people, but I don't know how many strikes will be exercised. So we're going to go through this, bear with us.

Trial counsel's failure to object allowed the trial Judge to abuse his discretion, Counsel should have objected to preserve the issue for Appellate Review. See State v. Johnson, 396 S.C. 424, 721 SE2d 786. Also see Section 22-2-90(6) of the South Carolina Code. The legislature provided that a specific number of jurors are required to be present in court.

Q. So they asked you to sign those statements there telling you no one would get in trouble?

A. Yes, sir.

Q. Are those true, the ones that you signed here? who was with you when you did the robbery?

A. Bryan Phillips and KC Langford.

Q. Is what you've told the jury up here under oath today testifying live before them is that true? Are these two gentlemen that were with you when you did the robbery?

A. Yes, sir.

Q. Then those statements they asked you to sign they're false, aren't they?

A. yes, sir.

Q. Did you sign them to please them? were they pressuring you to sign these?

A. No, sir.

In rule 613(b), there is not a ruling determing the signature portion of a statement. Therefore a proffer should have been done to determine what testimony was to be presented to the jury by applicant's codefendant. There should have been a ruling to determine the admissibility or inadmissibility. The record shows were the codefendant admitted rehearsing his testimony with the solicitor. (Transcript pg 276 L. 11-19)

Q. Okay. Now, have you rehearsed your testimony?

A. (No response)

Q. Look at me. Have you rehearsed your testimony?

A. Yes, sir.

Q. All right. who did you rehearse it with?

A. (witness indicating)

Q. The Solicitor?

A. Yes, sir.

Q. All right. That's what I thought.

A prosecutor may not use staged testimony to attempt to introduce inadmissible or admissible evidence. The prosecutor knew trial lawyers were going to enter statements into evidence, therefore he staged his testimony with the codefendant. Trial counsel's limited questioning about the signature prejudice Applicant because counsel knew applicant wasn't going to testify to rebut the allegations that were made against him. Therefore, the only way to prove the matter which was asserted against applicant, was false, was to get an handwriting expert ~~which~~ Langford requested, but counsel refused to do so or even entertain. So Applicant's last sole protection of his rights which was governed by Rule 613 SCRE was the trial judge. And trial counsel, trial judge, and the solicitor postponed the proffer until a later time, which worked in the State's favor and caused harm to applicant. A proffer is to offer for immediate acceptance.

10.(a) - 11.(a)

2. The Applicant was denied effective Assistance of trial counsel by counsel failing to ask for a continuance to obtain a certified interpreter.

i. The following VOIR DIRE was presented: (Transcript pgs 120 L.23 - 123 L. 1-6)

VOIR DIRE By TRIAL COUNSEL

Q. So have you ever applied for certification through any court administrations in any states of the United States?

A. No.

Q. Okay. And you're not certified in the state of South Carolina in any foreign language?

A. No, because no such program available for certification.

Trial counsel should have objected and asked for a continuance to get a certified interpreter. The interpreter was not certified to interpret in any State in the United States or in South Carolina. See South Carolina Court of Administrations - list of certified interpreters.
Trial Counsel allowed the trial judge to abuse his discretion by going off the interpreters "verbal convincing" testimony, which was not supported by any documentation, only a resume that has no merit or proof of actual degrees or qualifications to interpret. See Melton v. Olenick 379 S.C. 45, 664 SE 2d 487

3. The Applicant was denied effective assistance of trial counsel by counsel allowing the state to do a proffer, with the states key witness (Alvin Phillips) on the witness stand, listening to the argument pertaining to the proffer.

i. Trial counsel asked the trial judge to do the proffer before the witness testified on direct examination, but the request was not granted. (Transcript pgs 181L.21 - 183L.1-6)

MR. CALHOUN: Judge, we wanted to bring this to your attention before you do send them to lunch. We would like to do a proffer of Alvin Phillips' testimony, so may be you can take that into consideration when you tell them what time to get back. I don't know what order they're going to be calling their witnesses, but before Mr. Phillips testifies, we would like to do that.

MR. WILLIAMS: On the basis of statements that he made, that we believe he made prior to actually offering testimony against our clients at his plea.

MR. MAYE: I've got three Chinese witnesses before he testifies we can go on and do our Chinese witnesses and we're done with our interpreter at that point in time as far as I know.

THE COURT: Let's do that after that. I can send the jury home early if I need to or something. I really don't understand what it is you all are going to ask me to do. If he gave inconsistent statements, that's a jury issue - it's not really anything for me.

MR. WILLIAMS: I guess the issue is is I just want to make sure that he doesn't allege that he didn't write it is what I'm concerned about.

THE COURT: He did not write a written statement that you have?

MR WILLIAMS: Yes, Your Honor.

MR. MAYE: Your Honor, I think the issue is the defendant's -- the allegation is the defendants got him to sign a statement and I think they're wanting to get involved into some hearsay from that, but I think we can do that. It will be a while before they testify. By the time we get direct and through cross, we're going to be into this afternoon before we ever get to that point.

Trial Counsel allowed the trial court to abuse its discretion by going forward without the proffer done. That denied applicant the fundamental fairness due to the rule provided in rule (SCRE) South Carolina Rules of Evidence Rule 613. Prior Statements of witnesses, Extrinsic Evidence.

The following testimony and discussion was presented to the Court while the witness Alvin Phillips was on the witness stand. (pgs 248L1-253L11)

THE COURT: Mr. Calhoun, are you ready for the jury?

MR. CALHOUN: Yes, your Honor.

MR. MAYE: May it please the Court, your Honor. I'm informed, I just wanted to take up prior to us getting this, that they have a statement that was purported, I don't know that it was authored by him or they're purporting that it was signed by him or authored by him. I wanted to take up any impeachment or admissibility based on that statement.

THE COURT: Do you know what he's talking about?

MR. CALHOUN: Yes, your Honor.

MR. MAYE: I have copies that I'll hand up.

THE COURT: All right. what's this about?

MR. CALHOUN: Your Honor, that's the statement that Mr. Phillips provided to my client while they were in jail. And actually, Judge, I object to a proffer being done now because I think Mr. Maye is doing it "now" so he can "coach" his client as to what to say about this statement. Mr. Maye has known about this statement for a long period of time and if he wanted to do a proffer, which we suggested to the Court that we do before Mr. Phillips testify, then "we should have done so". I think any testimony now is going to be done in preparation of Mr. Phillips so I would request that -- I object to us doing this proffer now in the presence of Mr. Phillips right before he testifies

about something he's going to be cressed on.

THE COURT: Well, do you know if he admits or denies making the statement?

MR. CALHOUN: Well, I was told that he admits that he signed it.

MR. MAYE: Your Honor, and I'm not -- we need to ask him. I don't know -- it'd be hearsay and if he didn't sign it, I can't unring the bell in front of the jury. And it would certainly be improper to put up a statement and plant the seed to the jury that he made a statement that -- I don't know if he wrote it, I don't know if he signed it, but they're apparently going to attempt to -- these -- their clients, I don't know how, they either extracted it or they got this statement, they purport that it is, I don't know if he made it or not or what the circumstances were and I want to take that up outside the presence of the jury because if it's not admissible --

MR. CALHOUN: Your Honor --

MR. MAYE: -- I can't unring the bell.

MR. CALHOUN: -- this isn't a suprise document. He's already talked to his client about this. He knows exactly what his client is going to say. And the fact that Mr. Maye knows that we're going to possibly have it entered into evidence or cross him on it, now he wants to do a proffer in the presence of his client to prepare his testimony. There's no other explanation for this being done right now.

MR. WILLIAMS: Your Honor, I join Mr. Calhoon in his assertion. And I would further suggest to the Court that if we simply limit it to, is this your signature, if that is significant, then I than we can limit -- limit it to that. And if Mr. Maye needs to expound upon it in recross, then he can do that.

MR. MAYE: Your Honor, prior to today, I did not know if they were going to attempt to use this statement. We were informed, law enforcement was informed these two individuals down in the jail were pressuring him to sign a statement. He was moved to Saluda at that time. I don't know whether they were actually going to attempt to utilize it or not because this was not the two lawyers that were

this.' The two [redacted] defendant's in this case were involved in either extracting this statement. I don't know whether or not it's admissible or not, but I wanted to ~~take~~ it up outside the presence of the jury. And like I said, because this was certainly done outside the attorneys -- I don't know if they were going to attempt to use it or not.

THE COURT: Why is this piece of paper -- what's cutoff of this?

MR. WILLIAMS: Your Honor, this was how it was given to me quite honestly.

THE COURT: Look and see if the copy I have has everything on it that you have.

(Pause)

MR. WILLIAMS: It doesn't seem to have the signature portion, which was this corner.

THE COURT: Somebody make me a copy that has everything on it, that piece of paper.

(pause)

(Defendant Phillips Exhibit Numbers 1 and 2, statements marked for identification)

THE COURT: I'm looking at Rule 613 and I'm struggling to find any reason to have an in camera hearing on this. Motion is denied.

Bring the jury in.

MR. MAYE: Your Honor, the only thing I wanted to make sure is I know these statements will elicit responses that They were all incarcerated together and they-- and statements that they made while they were all incarcerated together and I would anticipate that that's the way he's going to answer those. And so I just wanted to make sure we didn't step on any land mines in regard to that, but where they were made, what was said, all of that is going to be fair game, I would say, if they ask him about those or the authorship of them. And I just wanted to make sure that we brought that out prior to the jury coming out.

THE COURT: I don't know how I can rule. I mean, it depends on exactly how things develop as to whether you get into any extrinsic evidence at all.

MR. CALHOUN: Mr. Maye doesn't know what I'm going to ask him, Judge. I just think I'm being precised right now. I mean, he doesn't even know if I'm going to ask him

any questions about this statement. I mean, if this was done, it should have been done before he testified on direct.

THE COURT: Well [redacted], he was saying that it may be elicited that these two defendant's are incarcerated. I've got no way of knowing that. And I don't think that would come as any shock to the jury with the charges that are lodged against them, but I'll deal with what comes up as it comes up. If I've got to do what it's, you know, we'll be here next December going through this.

Trial counsel's objection was too late, therefore the testimony that was presented in front of codefendant by both trial counsels, solicitor, and the judge rendered the applicant's trial unfair. Applicant was denied the fairness and the protection that comes along with RULE 613 SCRE. Trial counsel's failure to have the proffer done before codefendant Phillips' testified on direct examination by the prosecutor allowed evidence to go before the jury that could have and should have been "ruled inadmissible." See rule 613(b) Extrinsic Evidence of Prior Inconsistent Statement of witness..." If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement extrinsic that the prior statement was made is inadmissible. (see statements, transcript pgs 266 L.18 - 267 L.23)

No proper foundation was laid for the judge to make an accurate ruling, because of the way the Solicitor prepped applicant's codefendant to answer questions, by listening to the questions pertaining to the proffer.

(Redirect Examination By MR. MAYE pgs 279 L. 25 - 282 L.4)

Q. Who wrote out that statement that -- these two right here that the defense gave you saying they didn't do this, who wrote these out?

A. I don't know.

Q. Where did you get them from? What were the circumstances of the statements being generated? Did you write them?

A. No, sir.

Q. These are not your words at all, are they?

A. No, sir.

Q. Someone else wrote this. Where were you and what were the circumstances about that?

A. I was in Edgefield County.

Q. Okay.

A. In my room.

Q. And how did those get presented to you?

A. KC Langford.

Q. KC Langford brought those to you?

A. Yes, sir.

Q. Why did he want you to sign those?

A. Keep him and Bryan Phillips from getting in trouble.

Q. Keep them from getting in trouble?

A. Yes, sir.

Q. Okay. What did he tell you would happen if you signed those statements?

A. That nobody will be in trouble.

Q. That no one would be in trouble?

A. Yes, sir.

Q. Alvin, at the time that this happened in August, were these two men your friend?

A. Yes, sir.

Q. You never wanted anybody to get in trouble with this, did you, especially not your friends, did you?

A. No, sir.

4 The Applicant was denied effective assistance of trial counsel by not securing the defense Key witness (Joseph Patrick Stevens). Applicant was denied the right to confront his accuser.

i. The following acts and omissions by counsel caused ineffective assistance of trial counsel. (transcript pgs 359L.7-360L.11, 360L.19-361L.1-4)

MR. WILLIAMS: I'm having a problem gaining access to a witness that I intended to call, which is Joseph Patrick Stevens. He was supposed to-- well, his supervisor was spoken to, I believe, by Investigator Duran in Orangeburg and he told him that he needed to be here. I received a note from my office at 9:21 in which Mr. Stevens called my office and indicated that he was in Fresno, California and wouldn't be back until Monday. I have a hard time reconciling Orangeburg and Fresno unless somehow that was -- he flown from orangeburg to Fresno, but I believe he's in Orangeburg and should be on his way here. I do have an alternative remedy, your Honor, which was to call instead investigator Roosevelt Young whom I concede that I did not place under subpoena because he appeared on the State's witness list and I quite frankly expected that he would be here, "but I should have done my own job" "and not trusted that the state would call him".

MR. MAYE: was Mr. Stevens under subpoena because we might be able to--

MR. WILLIAMS: He is.

MR. MAYE: He was served?

MR. WILLIAMS: yes

THE COURT: See what you can find out. And, Sheriff, help him locate this person, please. And if I need to have him picked up, you can make a

motion for me to have him picked up and brought here.

THE COURT: All right. My understanding is that I'm going to let the jury go to lunch until 1:00 and then we'll see where we are at that point. I think Investigator Young is on his way up here and I think that might be sufficient from what Mr. Williams is telling me. They're still tracking down that other man.

MR. WILLIAMS: They are, Your Honor.

THE COURT: I think now there's something about him being in Tennessee. So he must have a Private Jet.

Trial Counsel did not have a strategic reason for failing to call the Key witness (one who stated the case for the state) to trial. Counsel's failure to wait until Joseph Patrick Stevens' arrived, which he never did, caused a prejudicial ripple effect in Applicant's case. That led to Police officer Roosevelt Young vouching for Joseph P. Stevens testimony. Applicant was denied the opportunity to evaluate and cross examine the witness. see Crawford v. Washington 124 S.Ct. 1354. Counsel was unable to secure the witness, due to the lack of adequate preparation that was unreasonable, in light of the fact that counsel had almost two years to effectively prepare and do a thorough and independent investigation of that particular witness. see Lounds v. State 380 S.C. 454, 670 SE 2d 646. Trial Counsel did not consult with Applicant concerning the alternative remedy. Applicant had no idea as to how his defense was to be prepared. If the jury would not have heard of Joseph Stevens the outcome of my trial would have been different. There was no testimony to corroborate Applicant's codefendant testimony, only the police officer which was highly harmful. Joseph Stevens statement shows either him (Joseph P. Stevens) or Applicant's codefendant is lying. See attached statement made by Joseph P. Stevens. Therefore, the failure to secure Joseph Stevens as a witness for the defense was very critical. The was a numerous of assessments

that the jury could have based their verdict off of had Stevens would have been present to testify. State v. Nance 393 S.C. 289, 712 SE 2d 466 (2011) states: "the accuser has the right to confrontation, insures the witness will give his statement under oath, forces the witness to submit cross-examination; and permits the jury that is to decide the defendant's fate to observe the demeanor of the witness.

5. Trial counsel was ineffective for helping assist the state in laying the foundation for their case.

i. Trial counsel was ineffective for "ever" mentioning the name Joseph Patrick Stevens. The prosecutor chose to bring this case to trial based on Applicant's codefendant Alvin Phillips' testimony alone. On direct examination by the prosecutor, the name Joseph P Stevens was never elicited during any of the witness (Alvin Phillips) testimony. Trial counsel chose to help aid and assist the state by opening the door for the prosecutor by the following cross-examination: (Transcript pg 264 L. 8-18)

CROSS By WILLIAMS: Q. Vanessa Phillips. Are you familiar with a Joseph Patrick Stevens?

A. No, Sir.

Q. Do you know a Patrick Stevens?

A. Yes, Sir.

Q. Okay. Who is Pat Stevens?

A. My cousin.

Q. He's your cousin?

A. That's my cousin baby daddy.

Q. He's your cousin's baby father?

A. Yes, Sir.

Counsel's actions allowed "foundational evidence", which is evidence that determines the admissibility of other evidence. which led to the testimony by Police officer, Roosevelt Young. Roosevelt Young was the only person to testify as to how this entire case was brought forth, which

was by the foundational evidence created by Counsel Williams making mention of Joseph P. Stevens. Trial counsel's unprofessional conduct aided the State's case by its only corroborating evidence or corroborating witness. The corroborating evidence was hearsay alone and prejudicial by Young. The corroborating witness was also Roosevelt Young, confirming or supporting someone else's testimony, Joseph Stevens. Had trial counsel never brought up Joseph Stevens' name, the state could not have brought this case to trial on codefendant's testimony alone. Trial counsel's strategy was plain error and intentional towards both defendant's in this case. Without any of this testimony elicited about Joseph P. Stevens, there's a reasonable probability that the outcome of this trial would have been different. see Strickland v. Washington 466 U.S. 668 (1984). See statement made by Joseph P. Stevens, which was given to the applicant the day of trial. Obviously there's inconsistencies as to what the codefendant (Phillips') testified to. Obviously, someone's lying. Still, the trial counsel's failed to strategize effectively to represent applicant after the prejudicial representation.

6. The Applicant was denied effective assistance of trial counsel by counsel's failure to object to officer Roosevelt young testifying to hearsay testimony.

i. On pages 369-390 of the applicants transcript, counsel should have objected to the testimony of officer Roosevelt young. Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. officer young is testifying about a telephone call/statement that led up to the applicants arrest, which was made by Joseph P. Stevens. Joseph stevens never testified in the Applicants trial. Rule against hearsay prohibits admission of testimony, or written evidence, of a statement made out of court, offered in court to prove the truth of the matter asserted unless an exception to the rule is applicable. It was obvious that the police officer's testimony of the crime was out "in court", but the declarants statement or phone call was made "out of court." the hearsay rules and the confrontation clause are generally designed to protect the same values. Therefore, by trial counsel's failure to secure the sole witness (which started case for State) Joseph Stevens (confrontation), trial counsel calling officer young to testify (hearsay) was prejudicial and unprofessional, causing unRepairable damage to the applicants defense. Hearsay testimony about an informants tip containing a specific charge of criminality can be extremely prejudicial because the jury may believe the testimony without any guarantee that it represents the truth. there is a strong possibility that the jury could have made improper use of the evidence introduced through the police officer's testimony as concrete proof that the defendant did indeed participate in the crimes. This hearsay testimony could give rise to an inference in the jurors mind that because a confidential informant identifies defendant or applicant

as one of the robbers, then it must be true. The police officer's testimony was the only testimony that corroborated codefendant Phillips' testimony. "Black Law Dictionary" states an accomplice witness is a witness who is an accomplice in the crime that the defendant is charged with. A codefendant "cannot" be convicted "solely" on the testimony of an accomplice. Therefore, trial counsel allowing officer Young to testify to inadmissible hearsay about Joseph P. Stevens phone call/statement was the only other evidence that supported the state's case, and it was prejudicial. (see Strickland v. Washington, 466 U.S. 668 (1984).

7. The Applicant was denied effective Assistance of trial counsel by counsel asking codefendant Alvin Phillips about the mandatory minimum of his charges.

i. Trial lawyer should have objected to the following: (Transcript pgs 273 L.3- 275 L. 10)

Q. I want to go through your indictments. You've been indicted for armed robbery, isn't that right?

A. Yes, sir.

Q. You talked to your lawyer about this charge?

A. Yes, sir.

Q. Okay. Do you know this charge could carry up to 30 years in the penitentiary?

A. Yes, Sir.

Q. This is the one you actually have entered a plea to, isn't it?

A. Yes, sir.

Q. You know it carries a mandatory minimum of ten years?

A. Yes, sir.

In State v. Gracely 399 S.C. 363, 731 SE2d 880 (2012), the court instructed the defense counsel that the State's witness could be questioned about the maximum punishment, but "not" the mandatory minimum punishment.

In State v. Mizzell, 349 S.C. 326, 563 SE2d 315, the jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence.

10-(b)-11(b)

1. Prosecutorial Misconduct: By the Solicitor denying that a deal exist between the Applicant's codefendant (Alvin Phillips)

i. In the opening argument the prosecutor made the following comment: (trial transcript pgs 161 L.24-25, 162 L.1; 289 L.22-25; 289 L.7-14 245 L.4-11; 254 L.17-24; 255 L.3-5)

PROSECUTOR: Alvin Phillips has already pleaded guilty at this time to armed robbery. He hadn't been sentenced yet.

PROSECUTOR: Q. You don't have any deal with the prosecution in this case, do you? Have you ever been promised anything?

A. No Sir.

In Washington v. State, 324 S.C. 232, 478 SE2d 833 (S.C. 1996) under the present facts, the State allowed false testimony to go on corrected about a deal with its witness. Riddle v. Ozmint, 369 S.C. 39, 631 SE2d 70, A prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible rudimentary demands of justice. The failure to correct false evidence is as reprehensible as its presentation. See Napue v. Illinois, 360 U.S. 264.

Throughout trial the solicitor denied that a deal existed. The prosecutor knowingly deceived the court by failing to inform the jury of the deal that existed. The jury is entitled to know of any sentences or deals that the cooperating codefendant received. The prosecutor intentionally misrepresented the facts in applicant's trial causing a due process violation and prejudice.

8. The Applicant was denied effective assistance of trial counsel by counsel failing to object to the kidnapping indictment.

i. In the body of the kidnapping indictment, there's six alleged victims, but throughout trial, testimony revealed that only two victims were supposedly kidnapped. The judge verbally amended the indictment, but damage was already done. In the beginning of trial, the entire jury pool applicant's kidnapping indictment (Transcript pgs 6-7 L. 1-7; 339-344) Had trial counsel investigated properly he could have moved to have the indictment amended at an earlier stage of applicant's adversarial process.

9. The Applicant was denied effective assistance of trial counsel by counsel arguing charges I wasn't on trial for.

i. In trial counsel's closing argument, counsel made the following comments: (Transcript pg 442 L. 13-16)

MR. CALHOON: "But this is all information, evidence that you should have to make a huge decision because that guy over there is charged with burglary first degree, kidnapping, assault and battery with intent to kill.

That testimony was a misrepresentation of the facts and known to be false, which could have prejudice the Applicant.

10. The Applicant was denied effective assistance of trial counsel by counsel commenting on applicant's silence.

i. In closing argument, trial counsel made the following comments: (Transcript 438 L. 16-20; 448 L. 24-25, 449 L. 1-6; 450 L. 19-20)

MR. CALHOUN: "And with credibility in mind and the reasonable doubt standard, let's go through the evidence that you've heard from Mr. Langford's perspective and let's look at what we have here when it comes to reasonable doubt.

MR. CALHOUN: The judge is going to tell you that Mr. Langford is not required to testify, that every person is presumed innocent as you know. There's nothing for Mr. Langford to address. There's no accusation that he has to respond to. And he's maintained his innocence on this case from the very beginning. From the very beginning, he's maintained his innocence for the last two years, okay.

MR. CALHOUN: the two most important people that didn't testify today are logic and common sense.

II. The Applicant was denied effective Assistance of trial Counsel by failing to object to the solicitor commenting on Applicant's silence.

i. The solicitor made the following comments in closing argument: (Transcript pgs 479L.10-14; 480L.24-25, 481L.1, 12-19; 488L.2-4, 490L.18-23

PROSECUTOR: They've got an absolute right to a jury trial. They're absolutely within their rights to put the state to proving it. They don't have to put up any evidence in this case. But Alvin, in this case, he told on himself. They don't have to do anything.

PROSECUTOR: you've heard the evidence in this case, you know who's got a reason to lie.

PROSECUTOR: The young man got up here on the stand and I asked him, Did anybody ask you to say anything other than the truth up here? No, that wasn't the same for everybody. whoever got him to sign this statement that didn't have the nerve to sign their name as a witness in this case, they didn't want him to tell the truth. They wanted him to lie for their benefit and to his detriment.

PROSECUTOR: This comment about don't snitch on anybody, don't tell anybody this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth.

In State v. Cockerham, 294 S.C. 380, 365 SE2d 22 (1988), prosecutor's direct or indirect reference to defendant's silence and indirect comments on defendant's exercise of his rights to counsel and jury trial violated applicant's due process. In Johnson v. State 325 S.C. 182, 480 SE2d 733 (1997), it is impermissible for the prosecution to comment directly or indirectly upon a defendant's failure to testify.

12. The applicant was denied effect assistance of trial counsel by failing to object to Police officer Roosevelt Young vouching for Joseph Stevens

i. on page 344 L. 12-14 the following statements were made:

WILLIAMS: would you consider Joseph Patrick Stevens a good citizen?

A. Yes, sir.

On pages 455 L. 18-22 williams is vouching for Roosevelt Young in closing argument.

WILLIAMS: My good friend, Mr. Roosevelt Young, he indicated to you that Mr. Stevens was just a good samaritan. He just wanted him to know. Ladies and gentleman, he is a very good witness and I couldn't really shake him on that.

13. The Applicant was denied effective assistance of trial Counsel by counsel quoting Bible scriptures during closing argument.

i. On pages 456 L. 10-18, 457 L. 3- the following statements were made.

WILLIAMS: Ladies and gentlemen, I ask that you would consider the New International version, I didn't get the King James version, but I would ask you to consider Deuteronomy 19. It says, one witness is not enough to convict a man accused of any crime or offense he may have committed. A matter must be established by the testimony of two or three witnesses. I ask you to also consider Deuteronomy 17- -

WILLIAMS: Deuteronomy 17 verse six says, on the testimony of two or three witnesses, a man shall be put to death, but no one shall be put to death on the testimony of only one witness.

In SCRE Rule 610 Religious Beliefs or Opinions: Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

2. PROSECUTORIAL MISCONDUCT: For using inflammatory and irrelevant testimony in closing argument.

i. In closing argument, the solicitor made the following improper comments: (Transcript pgs 467 L.1-7; 468 L.5-9; 481 L. 7-9)

PROSECUTOR: "his own house to get the money, his daddy laying there with them holding a gun on him, his wife, his child inside, his mama inside, And his only hope at that time is hope that all they'll do is just take the money and not Kill them all. That's what these people faced, people that live right here in Edgefield county."

PROSECUTOR: "How long do you think those minutes were as he was held, as he held his breath and hoped they didn't go in there and kill his wife, his baby and his mama as they went in that house, how long were those minutes?

PROSECUTOR: "It doesn't get any worse than this short of killing somebody."

PROSECUTOR: "And they got their billfold, they got their cigarette lighter, they took what they could get and they left. "Thank goodness that's all they did"!

The prosecutor's improper comments were forceful and graphic, arousing passion from the jury, causing them to divert their attention from the evidence presented, to convict off of highly emotion. There's no testimony presented in trial where any of the victims said they were afraid of being killed.

14. Trial counsel was ineffective for failing to object to the Solicitors' vouching and bolstering for the credibility of numerous of its witnesses in closing argument.

i. Trial transcript (pgs 470 L.9-11; 474 L. 16-18; 486 L. 5-8; 490 L. 13, 18-21; 465 L. 17-20 479 L. 20-22) the prosecutor made the following comments:

PROSECUTOR: And read that statement he gave, he tells all this in his statement He got up here under oath and told ya'll. - (vouching for codefendant)

PROSECUTOR: Lamar Robinson went and he told you, he got up here and he put his hand on the Bible under oath. (vouching for officer Lamar Robinson)

PROSECUTOR: But he told the truth to Roosevelt Young after being advised of his rights. He doesn't want to testify against them, he never did. He told on himself. He got up here under oath and he told you. (vouching for codefendant)

PROSECUTOR: This comment about don't snitch on anybody, don't tell anybody, this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth. (vouching for codefendant)

PROSECUTOR: Those statements have inherent truth because why in the world would he start lying and telling half truths at that point in time. (vouching for codefendant)

PROSECUTOR: And he told them as well as it matches up exactly with the information that Roosevelt got from Mr. Stevens. (bolstering and vouching for codefendant / officer Young)

PROSECUTOR: He told the truth up here. (vouching for codefendant)

See Vaughn v. State 362 S.C. 163, 607 SE2d 72 (2004), Matthew v. State 565 SE2d 766, it is inappropiate for the state to assure the jury of a witness' credibility because the jury is charged with assessing the credibility of witnesses based on evidence in the record. The solicitor's summation led the jury to believe that the state corroborated the witness' testimony before trial and found it to be true. Vouching for a witness based on outside material or opinion alone conveys the impression to the jury that the Solicitor has evidence not presented to the jury but known by the prosecution which supports conviction. Gilchrist v. State, 350 S.C. 5 [illegible]

15. The Applicant was denied effective Assistance of trial Counsel by trial counsel failing to object to premature deliberations by the jury.

i. Trial (transcript pgs 491 L. 22-25, 492 L. 1) was complete as far as closing arguments and the following comment was made by trial judge.

THE Court: And as I told you, the charge should take me 30 minutes to give it. All right, Follow the bailiff, please -

(The jury retires to the jury room)

see Gallman v. State, 414 SE 2d 789, 781, The jury should not begin discussing the case, nor deciding the issues, until all evidence has been introduced, the arguments of counsels complete, and the applicable law charged.

16. The Applicant was denied effective Assistance of Appellate counsel for counsel failing to file a reply brief concerning inadmissible testimony presented at applicants trial.

1. witness Gustav Sawvell was not allowed to testify before the jury at applicant's trial because his testimony consisted of too much hearsay. There was an in camera hearing to determine what Gustav Sawvell was to testify to, but after questioning, his testimony was ruled as inadmissible. (Transcript pgs 427 L.16-25, 428 L.1-25, 429 L.1-25, 430 L.1-3)

The trial judge ruled Gustav Sawvell testimony as inadmissible but the state chose to use this inadmissible evidence / testimony in the Respondent's brief to support their pressuring theory, which helped them deny me relief in my four prong test with my fast & speedy trial.

Appellate lawyer acts and omissions denied me the opportunity to defend myself against a hearsay theory that the state strategically and deliberately planned at trial to use against me on appeal.

By appellate counsel failing to do a reply brief, counsel conceded my guilt, which is contrary to what the trial transcript presents. (transcript pgs 387 L.2-4, 429 L.11-12)

Applicant's codefendant testified to no pressuring and the trial judge said that the codefendant admitted statements were made on his own free will.

17. The Applicant was denied the right to effective assistance of trial counsel due to counsel's comulative errors.

The comulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the sameextent as a single reversible error. Counsel errors in combination, effectively deprived the applicant of a meaningful defense. Due to the combined errors of counsel, applicant was unable to subject the prosecutions' case to "the crucible of meaningful adversarial testing" the essence of the right to effective assistance of counsel. The errors rendered the adversarial process and the resulting conviction unreliable. Blackburn v. Foltz, 828 F 2d 1177 (6th Circuit 1987 Us. v. RIVERA, 900 F 2d 1462 (10th Cir.)

Conclusion

Herein above, it has been shown, by presentation of facts and analysis of law, that Langford was tried, convicted, and sentenced by a deficient performance of trial counsels, which resulted in prejudice. Furthermore, Langfords' presentation of facts and law shows that his conviction was obtained by a "deliberate", a "willful" deception by the prosecutor which shows that this prosecutorial misconduct resulted in Langford's fundamental fairness being violated, which caused him a denial of due process of law. Ervin Maye's conduct caused Langford's trial to be deemed as "unfair" and it caused harm to Langford, but also his misconduct undermines public confidence in our state's judicial system; the proper functioning of which is a topic of great fundamental interest. "Every South Carolinian has a vital interest in the fair administration of justice.

Therefore, in the matter of Langford, it is his earnest prayer that in order that an order that justice be vindicated and restored, this Honorable Court, upon due consideration of facts and law presented, grant him the post-conviction relief he seeks by reversing the judgment of conviction/sentence and remand the criminal matter for new trial based upon these facts.

State of South Carolina

Court of Common Pleas

County of Edgefield

State of South Carolina,	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2020-CP-19-0091
	)	
K. C. Langford,	)	
	)	
Defendant.	)	

November 13, 2020
Lexington, South Carolina
(via remote platform)

B E F O R E:

The Honorable Debra McCaslin, Judge.

A P P E A R A N C E S:

Taylor Smith, Esquire
Attorney for the Plaintiff

Charles Grose, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

THE COURT: Mr. Langford, this is -- I'm reviewing, I guess, an order from Judge McLeod. And we're doing this by Webex. Your lawyer is here. Do you consent to go forward with this today by Webex?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Thank you. Matter of fact, let me tell y'all, I'm going to move my computer, because I went through all of y'all's paperwork and your motions, and I've got it in another room on a table. And it's just going to be easier for me, because I have some questions.

But, Mr. Grose, I know that you filed a motion, I guess Judge McLeod asked both of y'all to file, on his conditional order of dismissal. So let me hear from you, Mr. Grose, first.

MR. GROSE: All right. Thank you, Your Honor. I don't know that it was necessarily anything that Judge McLeod asked anybody to file. This was a situation where, when the State did their return, they submitted a conditional order of dismissal. That was signed, you know, without a hearing; took some time, I guess, to kind of float around and get back to everybody.

We then filed our objections pursuant to the conditional order of dismissal. And I don't recall -- maybe Judge McLeod asked if there was going to be a response. But the Attorney General's Office indicated that they were going to do a response.

And, of course, we had requested a hearing as part of our objections to the conditional order. And, I think, that is how this matter got referred to Your Honor, because you have a term of court this week in Edgefield.

THE COURT: Right.

MR. GROSE: And I would say that our objections, you know, can be divided into two categories: One, there's the procedural objections to, you know, the process that's followed. I don't really know how this came about. But I know, at one point, you know, under the prior chief justice of our Supreme Court, that there were efforts to sort of transfer to the Attorney General's Office decisions about whether or not people got appointed counsel in PCR cases and that sort of thing.

There is no procedure that I'm aware of that authorizes what's become a common practice of the Attorney General's Office submitting conditional

orders of dismissals under certain circumstances.

I also have objections in there with regards to the Attorney General's Office being able to draft orders on the merits in PCR cases. Initially, the statute requires, you know, the judges to draft orders and make findings of fact. And, secondly, you have, you know, the separation of powers issues between the executive branch and the judicial branch. So those are a summary of the sort of procedural objections that we have.

On the substantive objections, you know, I guess -- and this is not necessarily the order that were in the pleadings. But, you know, our main reason for trying to go forward with this successive PCR is because of the conflict of interest at Appellate Defense where Mr. Langford's lawyer, Ms. DuRant, on the appeal of the post-conviction relief, had also been Mr. Phillips' lawyer on the direct appeal. And, quite frankly, there's a systemic problem with the lack of Appellate Defense addressing their conflicts of interest. This is something that's been going on for decades.

Attached to our original PCR application is a report that the Commission had commissioned over a decade ago with regard to appellate defenses. You

know, they named a couple of categories of conflicts, but there's a number of areas where conflicts of interest come up for Appellate Defense. You know, South Carolina adopted a special rule as part of Rule 1.10 on imputing conflicts of interest.

The Spangenberg report actually advocated for Indigent Defense, trying to get that rule appealed, because it created a different standard of justice for somebody who was indigent. You know, Appellate Defense is not just a place where there's a bunch of independent lawyers. I mean, there's an administrative structure there. Lawyers work together on teams. There is no --

THE COURT: Kind of like the Public Defender's Office?

MR. GROSE: It's kind of like -- well, that's it. I mean, if you look -- and there's an ethics opinion interpreting that provision of 1.10. And, in order to comply with it, you have to have all kinds of safeguards in place and Chinese walls and locks to offices and separate filing rooms and all of that.

And, you know, it just -- I mean, when I was running a public defender's office, there was no way that we could, you know, implement all of the

provisions that were required by that rule and that ethics opinion and still live up to other responsibilities as far as, you know, senior lawyers training other young lawyers and that sort of thing.

And, so, you know, the one area that our Supreme Court has always been very strong on -- and, in some ways, it sets us apart from other states. But, you know, our state postconviction relief statute is the first opportunity to raise allegations of ineffective assistance of counsel.

And our Supreme Court has always been strong on the statutory provisions and the provisions of the court rules that play -- give a role to an attorney to assist the Applicant in bringing their cases.

And you've seen the Court exercise their interest in the right to counsel in a number of ways. One of them is -- is that, you know, they've allowed successive PCRs when people have been denied counsel altogether. I believe it's the Carter case that we cite in our pleading, whatever it is that's in there. When there's a conflict of interest for a lawyer in a PCR case, they allow for a successive PCR.

Most recently, in the Robertson case, which was a capital case -- and, you know, one of the few

places that the capital PCR statute differs from the regular statute is the right to two lawyers and that at least one of them have certain qualifications. And the Robertson case, you know, allowed a successive PCR under those circumstances.

And so the right to counsel, conflict-free counsel, is really embedded in our state procedure. And there's no reason to think that our Supreme Court would treat the appeal of a PCR any differently than the circuit court level's handling of a PCR when it comes to the right to counsel. And that is why we believe that this case should go forward.

Also, with regards to the standard that's applied, both in the conditional order of dismissal and in the Attorney General's reply to our objections, they raise -- well, to quote from their response to our objections on page 8, they refer to a possible explanation DuRant did not raise a particular issue.

At this stage, under the PCR case law, the Court has to look at the allegations in the application in the light most favorable to the Applicant before dismissing an action without having a hearing. And the conditional order of dismissal

and the response to objections both try to resolve issues in favor of the State without having a hearing, without having any testimony to base that on.

And so it is our position that this is -- this case, Mr. Langford's case, is one of the narrow types of cases that's allowed to go forward in a successive PCR. And I'd be happy to answer any questions.

THE COURT: Yeah, Mr. Grose, because, let me tell you, I read through this. I've got it -- you can't see it, but I've got, like, a little table here all spread out with this, because I had to somewhat figure out what this conflict was.

And it appears -- because it appears to me that you want to file or continue to file a PCR because there was a conflict of interest with the appellate defense representing a co-defendant and Mr. Langford, and, also, that she was ineffective because she abandoned some issues and -- but she did for one which she didn't do for the other. That was kind of my understanding from everything that I've read in both these briefs. Am I wrong in stating that?

MR. GROSE: Well, I think that the issue with

Ms. DuRant's conflict is that she had represented Mr. Phillips in the direct appeal and then she represented Mr. Langford in the appeal of his PCR.

Mr. Langford's PCR appeal reached the appellate level before Mr. Phillips' did. And there's probably some -- just reading between the lines in the record, there's probably some reasons specific to that case.

But Mr. Phillips was granted relief on two of the issues in that -- that are identical to issues that Mr. Langford raised. That's why Mr. Langford's order granting -- I mean -- I'm sorry. The order granting Mr. Phillips' relief in the PCR is, I believe, Exhibit 2 to the PCR application.

And, you know, at least in the Robertson context, for example, when counsel wasn't qualified, while there -- the U.S. Supreme Court has not extended the Sixth Amendment to postconviction cases, our Supreme Court did say, in Robertson, you know, that she looked to see, if there was a problem with the counsel, one of the ways that you establish your right to go forward is by establishing prejudice under Strickland. And --

THE COURT: And that's where I'm stuck, because what is the prejudice to Mr. Langford? Because when

I went through all this paperwork when they were convicted, this hasn't even gone to the Supreme Court on the issue about a certified Chinese interpreter. And the Supreme Court upheld it on both of -- before the PCRs even happened. They're saying they didn't see anything wrong with it. So it was brought up in Mr. Langford's PCR --

MR. GROSE: Well, actually, it was not brought up in Mr. Langford's direct appeal.

THE COURT: Yes. I've got Mr. Langford's -- I think when I read it -- I've got it in front of me and I'm looking at it because this is when they talked about the solicitor. I think they got off on the solicitor controlling the docket. But it was one of the things that was brought up. And it was brought up in Mr. Phillips' appeal and the Court upheld it. So I guess my question is, how is Mr. Langford prejudiced?

On top of that, I see that he also has the same issue -- I might be wrong, but is this in federal court also? The --

MR. GROSE: It is. So when I got involved representing Mr. Langford, the statute of limitations was about to run for federal habeas. And so I, more or less, simultaneously filed actions

in federal court and in state court. And there's a procedure in federal court to ask the federal courts to stay their proceedings while you attempt to exhaust the remedies in state court. And I have filed that motion. The Federal Court has not ruled on that motion, but that motion has been filed.

THE COURT: Because I thought all the State stuff needed to be finished before you could go federal. So I was just curious.

MR. GROSE: Well, it is, but there's sort of a -- you know, a -- there's also a federal procedure that allows you to attempt to go back to state court to exhaust your remedies. And because of the -- the statute of limitations for federal habeas is very strict, they allow for filing the federal habeas and then asking for it to be stayed until the state courts have a chance to review it.

THE COURT: Okay. I'll be glad to hear from you, Ms. Meadows.

MS. MEADOWS: Okay, Judge. Just briefly, as to the procedural objections, I'm going to rely mainly on what I argued in the briefs. But I would just say that it's not just the state that prepares proposed orders, it's the prevailing party. And it --

THE COURT: Well, I don't know of any reason. You know, I've read Justice Beatty's order. So it's probably frowned upon by signing an order and a judge not add to it and place their own findings of fact. I've read that order. I don't know that it prohibits any Judge from doing that, I just think it's frowned upon by our state supreme court. So I don't know of any reason why he couldn't have. And I'm not even going to go there with that argument with Judge McLeod. But go ahead.

MS. MEADOWS: Yes, ma'am. So, just briefly, I just wanted to go over the cases that Mr. Grose discussed. So, Carter, he was allowed to file a successive application because his trial counsel also represented him on PCR. So he was basically precluded from bringing claims of ineffective assistance of counsel.

Now, Odom, he was allowed to proceed on a successive action because he filed two actions which were both summarily dismissed before he was appointed counsel or had a hearing. And the court just remanded to the lower court for the issue of an evidentiary hearing under Austin to see if he knowingly and intelligently waived his right to appellate review with his first PCR action.

Now, Robertson was a capital PCR case where the Applicant was represented in his first PCR action by two court-appointed attorneys who he later alleged were not death-penalty qualified. But the court remanded for a hearing to determine whether PCR counsels were not, in fact, death-penalty qualified and, two, whether he was prejudiced under Strickland. So those are very different than the issue we have here.

THE COURT: Let me ask you, Ms. Meadows, do you think Ms. DuRant had a conflict?

MS. MEADOWS: No, I don't. And the first --

THE COURT: She didn't represent anybody at trial?

MS. MEADOWS: I'm sorry?

THE COURT: She didn't represent either one of these defendants at trial?

MS. MEADOWS: No, ma'am. And, actually, they're -- I'm sorry. So Phillips' and Langford's direct appeals were certified in supreme court and consolidated because they raised the exact same issue.

THE COURT: Right. I saw that.

MS. MEADOWS: So I would think, if anything, that Ms. DuRant would be the first person that

Mr. Langford would want representing him because she knew the case so well. But the other conflict is based on the allegations that Mr. Langford brought against appellate counsel Ms. Franklin-Best who represented him on appeal. And the alleged conflict is because Ms. DuRant and Ms. Franklin-Best both worked at the Office of Appellate Defense during their representations of Langford.

And, on that note, Mr. Langford adds that Ms. DuRant abandoned the two issues that his co-defendant was granted relief on, which are the issues that he's raising now. I'm not sure how that's relevant. But, either way, that would be a claim of ineffective assistance of PCR counsel or PCR appellate counsel, which our Supreme Court has rejected.

Now, as to the conflict of interest case, it's the -- it's our position that Mr. Langford cannot make a prima facie case of a conflict. In South Carolina, a defendant must show his counsel actively represented conflicting interests. The mere possibility or speculation of a conflict is insufficient.

First of all, it's our position that Mr. Phillips and Mr. Langford never had conflicting

interests at all because they had the -- they raised the same issue on appeal when Ms. DuRant represented Mr. Phillips. So there weren't any, you know, competing claims there.

THE COURT: No. It was just the decision of the two judges.

MS. MEADOWS: Right. So, ultimately, that's -- that's our argument about this case, is that should -- is that these claims are barred by res judicata. They were -- these ineffective assistance of trial counsel claims were raised -- fully raised and ruled upon by the PCR judge in the first action. And any alleged potential ineffective assistance of Appellate Counsel issue between Mr. Langford's direct appeal attorney and PCR appellate attorney would not have any effect on the ineffective assistance of trial counsel claims.

And, just from a justiciability standpoint, it's our position that if this Court does allow Mr. Langford to proceed on the merits, an issue comes up where a circuit court judge is, essentially, overruling what the first PCR circuit court judge found based partially on another circuit judge's ruling on Mr. Phillips' PCR.

THE COURT: Right.

And does anybody know where Mr. Phillips' case stands as far as appellate-wise on a decision?

MS. MEADOWS: I'll let Taylor answer that one.

MR. SMITH: Yes, Judge. That is on petition right now before the Supreme Court. We don't yet know whether they'll grant or deny cert.

It's a little unusual, because the State did not give notice that PCR had been granted to Mr. Phillips until several months to a year after the order had been signed. So it's actually a delayed appeal. But we're -- that is on appeal now. The State does dispute that Mr. Phillips is entitled to relief. So there is not yet a final adjudication in that case.

THE COURT: Well, Mr. Smith, let me ask you, did you not read this opinion also where Mr. Phillips raises this issue in front of the Supreme Court on direct appeal about the interpreter?

MR. SMITH: Yes, Judge. That's one of my arguments in Mr. Phillips' appeal: Why the order granting him relief should be overturned and that the interpreter was qualified under either qualification statute. So that is an argument I'm raising in that case.

THE COURT: All right. Anything else, Mr. Grose?

MR. GROSE: Yes, ma'am. I guess the first issue is in Mr. Langford's appeal: Neither the issue of the Chinese interpreter nor Investigator Jones' testimony was raised. That was raised by Mr. Phillips. But the issue was just the constitutional issues on solicitor docket-control that was raised in Mr. Langford's direct appeal.

As Mr. Taylor points out, the objection that was made and briefed in the supreme court was under the wrong statute. And that was one of the reasons why the PCR court granted relief on the Chinese interpreter issue. Not only did Mr. Phillips get relief on the Chinese interpreter issue, he got relief based on the testimony of, you know, Investigator Young that was inadmissible.

And so while those issues were raised in Mr. Langford's PCR and ruled on by the trial court, he has not had a conflict-free appeal on that. And the remedy -- once we have a hearing on this, the remedy may be to allow him to appeal those issues with conflict-free counsel. That's one possible remedy. And, that way, one circuit court judge wouldn't be going back behind another circuit court

judge and it would let the supreme court or the appellate court --

THE COURT: I don't understand why y'all aren't that -- [remote platform interruption] -- what the Supreme Court says in the -- it's kind of a moot issue all the way around.

MR. GROSE: Well, it's not moot because, right now, Mr. Phillips has a new trial based on that issue.

But, Your Honor, you keep focusing on the Chinese interpreter issue. The Supreme Court could flip the Circuit Court on the Chinese interpreter issue and still grant relief based on the improper testimony from Investigator Young. So it's a lot more, I guess, complicated --

THE COURT: But what else is it that Mr. Langford -- [remote platform interruption] --

MR. GROSE: I'm sorry, Your Honor. You're breaking up.

THE COURT: -- the Chinese interpreter for filing another PCR besides the conflict? Or was it just the conflict? If we take out the Chinese interpreter altogether --

MR. GROSE: Well, you still -- you have a conflict, regardless of whether you take out the

Chinese interpreter or leave the Chinese interpreter in. The issue for the -- you know, of whether or not there's prejudice if, ultimately, the Chinese interpreter issue doesn't prevail, then that may be a prejudice issue or not.

But you still have to do the analysis of, you know, the claims raised about Investigator Young's testimony. And then you couldn't resolve the prejudice -- the Chinese interpreter issue doesn't take that issue out of the case --

THE COURT: Right.

MR. GROSE: -- that issue is still there.

And so, you know, even if they were -- in order for Mr. Phillips to have his convictions reinstated, an appellate court is going to have to flip two issues. And, at this point, I think that, you know, we meet our burden of being able to show that there was a conflict and -- and I want to address that in a second and respond to what Ms. Meadows said. But I think we've met that burden.

And I think we've made a prima facie case, based on the Phillips order, that we've established prejudice. And even if they flip the one issue, we still have that second issue for prejudice.

With regards to the conflict issue, you

shouldn't be representing co-defendants, period, whether it's at the trial court level or it's on appeal. And there's a rule -- or our rules tell us how to deal with that. Sometimes you have waivable conflicts and sometimes you have non-waivable conflicts.

Our position would be that this is a non-waivable conflict. Even if you say it's a waivable conflict, there was no full disclosure and waiver by Mr. Langford. And that gets back to the systemic problem that we've had at Appellate Defense for decades.

The Supreme Court will appoint counsel when there's a conflict of interest. But it doesn't seem to ever be raised by Appellate Defense; it always seems that it's raised by an Applicant, either pro se or because their lawyer in the circuit court raised it to the Supreme Court.

And the -- you know, you just can't get around the fact that Ms. DuRant represented both of the co-defendants in this case at various stages during, you know, the litigation. And that is, on its face, a conflict of interest that was -- that there was never a waiver of by Mr. Langford.

And so, yes, I do believe that we've satisfied

that there is a conflict of interest. And to, you know, have a rule that says a public defender's office is treated differently than other law firms seems to have some problems on the face.

But, regardless, Ms. DuRant represented both co-defendants and the provisions of that rule weren't followed with regards to separating -- I mean, obviously, Ms. DuRant couldn't have a Chinese wall between herself representing Mr. Phillips and herself representing Mr. Langford. And so, you know, that's just a problem I don't think you can get around.

And I think the case law is -- is if you look at the Carter case and you read it in context of how our Supreme Court has dealt with, you know, the right to have representation in postconviction, we fall within the narrow set of categories where we can raise this in a successive PCR.

MR. SMITH: Judge McCaslin, may I make another point in response?

THE COURT: Absolutely.

MR. SMITH: Okay. I would say that it seems to me that Mr. Grose is trying to use the conflict of interest -- the potential conflict of interest to get past the procedural bar to successive PCR

applications. The problem would be, we do not agree that there is a conflict of interest here.

But, for the sake of argument, even if there had been a conflict of interest, how would the conflict of interest between two appellate attorneys revive a claim of the ineffective assistance of trial counsel?

It would be one thing if Mr. Grose were arguing that Ms. DuRant had some sort of conflict of interest with Mr. Langford's trial attorney who was supposedly ineffective for not objecting to the interpreter or to the investigator's testimony. But, even for the sake of argument, if there was a conflict of interest between the direct appeal attorney and the PCR appeal attorney, how does that affect the substantive issue of what trial counsel did or didn't do?

The problem is that Mr. Grose is trying to relitigate the claims about whether trial counsel was ineffective for not making certain objections. The problem is -- is that shouldn't be affected about the relationship between two appellate attorneys. So that's my point here.

MR. GROSE: But, Mr. Smith, you ignore the fact that Ms. DuRant represented both Mr. Phillips and

Mr. Langford. And that is, flat out, definition of a conflict of interest. And the rules are -- is that you're entitled to one full bite at the apple to be able to litigate your PCR allegations -- allegations of ineffective assistance of counsel with conflict-free representation.

Mr. Langford has not had the opportunity to litigate his PCR claims in the South Carolina Supreme Court with conflict-free representation, and that's the problem here.

MS. MEADOWS: If I could just briefly address the issues with the Rules of Professional Conduct, this is something that I put in our motion to dismiss, but -- actually, a different Langford case in 1993. The Supreme Court said: Nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

And the scope of the Rules of Professional Procedure says: A violation of a rule should not give a rise to a cause of action, nor should it create any presumption that a legal duty has been breached.

So that's what I don't -- I don't understand how that can be a basis for an ineffective

assistance of counsel claim. But, also, as -- going back to what Taylor said, the only issue that we see that could have possibly been affected by the conflict is Mr. Langford's allegation that Ms. Franklin-Best was ineffective for failing to file a reply brief.

So, should this Court deny our motion to dismiss and allow Mr. Langford to proceed, it's our position that that is the only issue that he should be able to raise, because that is the only thing that could have been affected by the conflict.

MR. GROSE: Well, there is case law in South Carolina -- it might be the Lomax case. It is simultaneous representation of defendant and her husband in guilty plea was a conflict, and it gets into un-waivable conflicts. And, despite the Langford case from 1993, our Supreme Court, on a number of occasions, have cited to the Rules of Professional Responsibility in some of their decisions to determine whether or not a trial right was violated.

And so -- and, again, Ms. Meadows is not really focusing on the fact that Ms. DuRant represented both of these people. It's almost like they want to try to deflect it to something else. They don't

have a response to that.

MS. MEADOWS: Well, in the Lomax case, wasn't the attorney representing the husband and wife at the same time, not --

MR. GROSE: I don't see --

MS. MEADOWS: -- six years after?

MR. GROSE: I don't see how there would be a difference between -- I don't see how I could represent Defendant A charged with murder today and go in and represent them and then come back six years later and represent the co-defendant in the PCR. I just don't see how I could do that. That would not pass the smell test.

And, you know, I don't think that a trial court would allow that to happen. I think that when [remote platform interruption] came into our Supreme Court, there's no reason to believe that they're not going to hold appellate counsel to the same types of standards as they hold trial counsel to.

MS. MEADOWS: But the test is active conflict of -- actively represented conflicting interests. So she was not representing -- she had -- I mean, it had been five or six years since she had represented Mr. Phillips --

MR. GROSE: Well --

MS. MEADOWS: -- not representing either of them at the same time.

MR. GROSE: Well -- but you have a duty of loyalty to prior clients. And just because the representations aren't going on at the same time, that does not mean you don't have an active conflict of interest.

MS. MEADOWS: Well -- and, again, I'd say that goes to the Rules of Professional Conduct, not to a PCR claim.

MR. GROSE: Well, you know, and in the Carter case, he was represented in two different stages. I mean, it -- when you read all the cases together, I think it's clear that our Supreme Court wants an Applicant to have a full bite at the apple with conflict-free representation, and that includes on the appeal of the PCR.

THE COURT: So let me just make sure that I've got this right in my head: Mr. Grose, you're saying that, regardless, just because she represented co-defendants in two separate different actions, one was a PCR and one was the appeal from a PCR, that you think that is a conflict because they were co-defendants?

MR. GROSE: I do. It may be two separate

actions because it's two separate case numbers, but it is the same subject matter. So, yes, I do believe that it is a conflict of interest. And if it -- I believe it's an un-waivable conflict of interest. But if --

THE COURT: But one was a PCR action, right?

MR. GROSE: One was PCR and one was a direct appeal, but it's the same subject matter.

THE COURT: But a direct appeal from the PCR, Langford's PCR?

MR. GROSE: No. She represented Mr. Phillips in the direct appeal from the convictions at trial --

THE COURT: Right.

MR. GROSE: -- and Mr. Langford in the direct appeal of the denial of his PCR. It's the same subject matter because it's the same underlying crime, the same jury trial.

THE COURT: But the appeal also -- I thought it was from the [remote platform interruption] appeal to the PCR. She just did the direct appeal and the PCR appeal for Langford?

MR. GROSE: She did the direct appeal for Phillips and the PCR appeal for Langford.

THE COURT: Okay. Anything else, Ms. Meadows?

MS. MEADOWS: I'd just add that, in Carter, the Applicant's trial counsel represented him in his PCR claim -- in his PCR action. That's why he was allowed to have a successive application, because he couldn't -- I mean, his attorney couldn't raise ineffective assistance of counsel claims against himself.

And, still, I'm not understanding how to get around the res judicata issue because, like I said, these exact same issues were fully litigated in his first PCR. And, you know, the Court might, on Phillips' appeal, reverse and say that the PCR court incorrectly granted relief for Phillips. So I just don't see how, really, to get around that.

MR. GROSE: Well, you get around it because you go back to the stage it was before there was a conflict. And that would be -- one of the remedies would be to allow the conflict appeal. And we should probably have a hearing on the merits to hash out what the remedies would be.

THE COURT: All right.

Mr. Smith, anything else?

MR. SMITH: Yes, Judge, just one more thing on the remedies. And I know Lily talked about this too: That we don't concede this issue at all. But

it's the State's position that if you were to deny the State's motion to dismiss, the sole issue -- the issue should be restricted to whether Ms. DuRant was ineffective for not -- was ineffective for appealing on some issues but not others; that there shouldn't be a new PCR where we question trial counsel and all those people again, because those issues are decided, that record is set; that it should be -- the question before the Court should only be restricted to why DuRant did or did not raise an issue.

So instead of having a new PCR, no holds barred, where any issue was on the table again, I don't think we need to go to an evidentiary hearing to see that the --

THE COURT: In other words, to start all over?

MR. SMITH: Exactly.

MR. GROSE: And, Judge, I don't necessarily disagree with that. I mean, I think that -- I don't think that this case should be summarily dismissed. One of the things -- one of the problems that we have with the order and the State's reply is that they draw -- as they said, you know, they rely on, you know, possible explanations for why Ms. DuRant did or didn't do what she did without having any

testimony on that issue.

I mean, the issues that we're raising are, you know, a combination of the record at the trial and what Mr. Langford presented at the prior PCR. And if -- ultimately, if the remedy is that Mr. Langford gets a new appeal with conflict-free counsel, you don't necessarily have to bring trial counsel in and question them again. I would agree with them on those issues.

THE COURT: Well, I don't know that it goes back as far as the PCR. Why doesn't it just go back to the appeal from the PCR and why she didn't claim, basically --

MR. GROSE: I agree. I probably said that, right? I mean, if the remedy is that he gets an appeal, then the record that he would be taking up on appeal would be the trial transcript, the testimony from the first PCR that wasn't appealed. And that would be the record on appeal.

You wouldn't -- yes, you would go back to the -- if you adopt that remedy, yes, you would go back to the point where the problem was, which was the conflict on appeal, and then Mr. Langford would be able to have an appeal with conflict-free counsel.

THE COURT: And that would only be to appeal his PCR.

MR. GROSE: That would be. But the vehicle to get back into Court is -- is the conflict of interest. If you find that there's a conflict of interest, then the remedy would be -- I mean, I can see two possible remedies. But I agree that -- and that's why I've mentioned it a number of times that the remedy would be a new appeal. It would be like an Austin appeal or a White appeal when counsel didn't file the notice of appeal.

I understand we're in a slightly different procedural process than that, but that would be the same type of consideration. You're trying to correct the flaw in the process which happened after the appeal was filed.

THE COURT: All right. Well, anything else, Ms. Meadows?

MS. MEADOWS: I'm sorry. I lost my train of thought.

And, you know, it's still our position that because Mr. Langford and Mr. Phillips did not have conflicting interests on direct appeal, that it wouldn't be a conflict of interest on his PCR appeal. He was not representing interests adverse

to -- to Mr. Langford when she did -- when she represented his co-defendant. So that would be our position on the conflict.

THE COURT: I'm just going to tell you I'm not really sold on the conflict. I need to think about it. I'm just not, because both of these cases were consolidated for appeal.

MR. GROSE: Well, they were consolidated for oral argument. The -- Mr. Langford and Mr. Phillips, while they did raise overlapping issues, they did not raise identical issues, there was not identical briefing. And the Supreme Court issued separate opinions. And even when it was consolidated for oral argument, the cases were still argued separately. Mr. Langford's case was argued first and then there was a break and then Mr. Phillips' case was argued. They were just argued back-to-back on the same morning.

THE COURT: Let me ask you this: I guess it's just stuck in my head. Let's just say there's a conflict and he gets to go back and file an appeal. What is his issue? The Chinese interpreter?

MR. GROSE: The Chinese interpreter and Investigator Young's testimony. It would be -- it would be both issues. We want to get relief on both

issues that Mr. Phillips got relief on. And I just -- you seem to be focused on the Chinese interpreter issue. And I understand why that is because of the procedural history of Mr. Phillips' case that's different than Mr. Langford's case.

But that's not the only issue. I mean, the testimony by Investigator Young that Mr. Phillips' lawyer introduced, actually --

THE COURT: Said it was trial strategy.

MR. GROSE: Well, yeah. And --

THE COURT: And I assume it backfired.

MR. GROSE: Well, Judge Maddox -- you know, to be a trial strategy, it has to be a valid trial strategy. And, regardless, it's not -- you know, regardless of whether or not that was Mr. -- and, actually, this gets right to the heart of a conflict, because it was Mr. Phillips' lawyers that introduced that testimony about -- through Mr. Young. And the ineffectiveness is -- is that Mr. Langford, his lawyer, didn't object to that.

THE COURT: Well --

MR. GROSE: And the, you know, I mean --

MS. MEADOWS: Judge, these issues were raised in his first PCR action. So I don't see --

THE COURT: I agree. I agree. And then he

even brought up the alibi witnesses too. You know, if we want to go there, he says he wasn't even there.

MS. MEADOWS: And that was the main issue in his first PCR. Both of those alibi witnesses even testified at his PCR on Mr. Langford's behalf.

MR. GROSE: Well -- and I just want to be able to appeal the ruling on that without the conflict that Mr. Langford had because he had Mr. Phillips' lawyer. I mean, I would --

THE COURT: That would be getting a second bite at the apple then.

MR. GROSE: No. It's getting the -- a full first bite with conflict-free counsel, which --

THE COURT: And, I'm telling you, I'm not sold on the conflict --

MS. MEADOWS: But how would that affect those two ineffective assistance of trial counsel claims?

THE COURT: Absolutely. I think that --

MS. MEADOWS: How would that affect -- how would --

(Indecipherable crosstalk.)

MR. GROSE: Well, I --

THE COURT: Obviously, what's happened here is, we have two circuit court judges ruling differently

on a PCR. That is the deal. I don't know that it makes any difference that one did a direct appeal and the other one did the co-defendant's appeal in a PCR. They're just two totally separate issues.

And, on top of that, if I throw it all together, it was consolidated. I really don't see any prejudice to Mr. Langford, I just don't, because I want to know what the remedy is. If I grant the remedy, you're going to go -- you keep saying I'm harping on the Chinese interpreter. But, other than that, you don't have any other issue that hasn't been litigated.

And I really do believe it's already been litigated for both of these. But, you know, I'm not the Judge in that case, back on the direct appeal. So I'm just trying to figure out what the remedy is for Mr. Langford.

I hate that he's sitting there. And Mr. Phillips, we don't know what's going to happen with him, because we don't know what the court is going to do or when they're going to issue an opinion. I don't know. I need to think about it.

MR. GROSE: Would it help if we sent you the briefs from the direct appeal so that you could see that the issues were, in fact, different?

THE COURT: Could you do that, please?

MR. GROSE: I could, yes.

THE COURT: And I'm trying to think. Mr. Grose, if you could, flush out this argument on a conflict for me, because I did read the report and recommendation. I don't see any case law in your brief that backs it up, not that I want anyway. If you could, just flush out those issues.

And, Ms. Meadows, you can do the same. I'll look at them, but I'm probably more focused on whether it was a conflict or not. The rest of it, I think, the issues have been heard, don't want to hear any more about it. I'm more interested in the conflict because I think that's what this whole case turns on.

So if you could flush out the -- both of y'all could flush out the conflict for me. And if I could have the brief from the first appeal, that would be awesome.

MS. MEADOWS: So you want a brief on the conflict --

THE COURT: Ms. DuRant's conflict. What --

MS. MEADOWS: Okay.

THE COURT: That's what this whole thing turns on.

MS. MEADOWS: Okay.

THE COURT: I don't want to go into anything else about anything else. All I want to know is about the conflict. And I'd like the -- do you have the -- did Mr. Langford submit his own -- his direct appeal?

MS. MEADOWS: Our office has everything.

THE COURT: Okay. I'd like to see it, both for Mr. Langford and for Mr. Phillips.

MS. MEADOWS: Yes, ma'am.

THE COURT: Because, my thing is, I just don't know how he's been prejudiced. And the only way I'm going to find it, is if there was a conflict. And that's what I'm looking for.

MS. MEADOWS: Well, I think the only prejudice that can be shown is that another circuit -- a different judge disagreed in Mr. Phillips' case.

THE COURT: And that's nothing left to turn on.

MR. GROSE: Well, the prejudice is, is that I think the circuit judge was correct to grant Mr. Phillips' relief. And if Mr. Langford had had a conflict-free appeal, he would have raised those issues and would have gotten a reversal.

Judge, you referenced the report and recommendation from federal court. You might

have -- I don't -- there's not been a report issued --

THE COURT: No, no. I was talking about your report that you attached as an affidavit.

MR. GROSE: Okay. Okay.

THE COURT: That's what I was talking about. I'm sorry if I didn't make myself clear.

MR. GROSE: Okay. I understand.

MS. MEADOWS: I don't see how this report has any bearing on this issue.

THE COURT: Well, I'm just telling you I want case law. I'm looking for something else.

MR. GROSE: Okay.

MS. MEADOWS: Yes, ma'am.

THE COURT: All right. Thank you, Mr. Grose. And it was good seeing you again.

Mr. Smith, nice to see you.

And, always, Ms. Meadows, it's good to see you again.

MS. MEADOWS: Yes, ma'am.

THE COURT: Thank you, Mr. Langford. I know you probably don't even know what in the world we're talking about, a bunch of lawyerese over here. But I do thank you for attending. And I will give your case some great consideration, I promise you.

THE DEFENDANT: Thank you a lot, Your Honor.

THE COURT: Bethanie, thank you.

-- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Edgefield County, South Carolina, on the 13th of November, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 28, 2021

s/*Bethanie K. Creppon*

Bethanie K. Creppon
Circuit Court Reporter

The Grose Law Firm, LLC

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November 23, 2020

The Honorable Debra R. McCaslin
Circuit Court Judge
205 East Main Street, Suite 463
Lexington, SC 29072

Re: *K.C. Langford v. State of South Carolina*
Case Number 2020-CP-19-00091

Dear Judge McCaslin:

Please allow this letter to follow the WebEx hearing convened on November 13, 2020 on the State's motion to dismiss and Mr. Langford's objections to the conditional order of dismissal. Please allow Mr. Langford to bring the following four matters to Your Honor's attention.

First, please allow me to memorialize the State's email of November 13, 2020 transmitting copies of the direct appeal briefs in direct appeals of *State v. Langford* and *State v. Phillips* and confirming that Mr. Langford raised a single issue and Mr. Phillips raised two additional issues including the Chinese interpreter issue.

Second, during the hearing, the State relied on *Langford v. State* for the proposition that "the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction." 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993). Our Supreme Court, however, routinely looks to the Rules of Profession Conduct to support its decisions in criminal appeals. *E.g. State v. Inman*, 395 S.C. 539, 550, 720 S.E.2d 31, 37 (2011) (involving witness intimidation prohibited by RPC); *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001) (citing Rule 407, SCACR, Rule 3.8, RPC, comment); *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000) (citing Rule 407, SCACR, Rule 3.8, RPC, comment); *State v. Sierra*, 337 S.C. 368, 376, 523 S.E.2d 187, 191 (Ct. App. 1999) (citing Rule 407, SCACR, Rule 3.7, RPC); *State v. Hunter*, 313 S.C. 53, 55, 437 S.E.2d 41, 42 (1993) (citing Rule 407, SCACR, Rule 3.8, RPC). Regardless, *Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987) guarantees a PCR Applicant conflict-free representation to pursue relief under the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, *et. seq*. This matter, accordingly, involves Mr. Langford's right to conflict PCR counsel to raise allegations of ineffective assistance of trial counsel.

Third, this Court requested the parties provide additional information regarding the Mr. Langford's allegation of a conflict of interest because the same Appellate Defender

represented Mr. Phillips in his direct appeal and Mr. Langford in his PCR appeal. In order to determine the prevailing professional norms, courts look to many authorities, including the American Bar Association Criminal Justice Standards, the National Legal Aid and Defender Association ("NLADA") standards, and state and local bar publications. *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010). Thus, the Spangenburg Group, *South Carolina Commission on Indigent Defense: Appellate Division Review, Final Report,* February 14, 2008, is an appropriate consideration in this action. Additionally, the NLADA Standards and Evaluation Design for Appellate Defender Offices (Black Letter),[1] Section II(E) requires Appellate Defender Offices to "have a written definition of situations which constitute a conflict of interest, requiring the assignment of outside counsel," which includes representation of co-defendants.

Fourth, at this stage, this Court is concerned with whether "it is apparent on the face of the application that there is no need for a hearing to develop any facts." *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). Based on the record currently available, this Court cannot say that Mr. Langford's PCR Appellate Defender did not have "an actual conflict of interest adversely affect[ing]" her performance." *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). This Court should develop the record regarding the decision by Mr. Langford's PCR appellate defender not to appeal the Chinese interpreter and the Investigator Roosevelt Young issues.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: Mr. K.C. Langford (via US Mail)
Lillian Loch Meadows, Esquire (via Email)
Clerk of Court, Edgefield County

[1] Found at http://www.nlada.org/defender-standards/appellate/black-letter (last viewed Nov. 23, 2020).

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January 29, 2021

The Honorable Charles L. Reel
Clerk of Court, Edgefield County
P.O. Box 34
Edgefield, SC 29824

Re: *K.C. Langford v. State of South Carolina*
Case Number 2020-CP-19-00091

Dear Mr. Reel:

Enclosed for filing, please find Mr. Langford's Response to State's Rule 59(e) Motion, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: The Honorable Debra R. McCaslin (via Email)
Mr. K.C. Langford (via US Mail)
Lillian Loch Meadows, Esquire (via Email)

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	
	)	Case No. 2020-CP-19-00091
K.C. Langford,	)	
Applicant,	)	
	)	**Response to State's Rule 59(e) Motion**
vs.	)	
	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

To: The Honorable Debra R. McCaslin, Presiding Judge, Eleventh Judicial Circuit

On January 11, 2021, "the State move[d] pursuant to Rule 59(e), SCRCP, for the Court to alter, amend, and reconsider its judgment denying the State's motion to dismiss and granting an evidentiary hearing on Applicant's claims of ineffective assistance of PCR appellate counsel and conflict of interest" ("State's Motion"). This Court should deny the State's motion for the following reasons:

1) As a threshold matter, Rule 59(e) applies only to judgements and, therefore, does not apply to an order denying a motion to dismiss.

2) The State's Motion does not address the primary issue before this Court, to wit: Mr. Langford was denied his right to conflict-free legal representation to pursue his PCR remedies pursuant to S.C. Code Ann. § 17-27-10, *et. seq. See also Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999)*; Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987). If this Court determines Mr. Langford did not have conflict-free representation during the appeal of his PCR, then the remedy is a new PCR appeal, as if the first appeal never occurred. *See, e.g. Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Once the conflict was established, the *Carter* court did not inquire into whether conflicted counsel made the "correct choice" as the State suggests this Court should do here.

3) The State's Motion conflates the deficient performance and prejudice prongs of *Strickland v. Washington*, 466 U.S. 668 (1984), by stating, "The fact that Phillips prevailed on post-conviction relief on issues DuRant did not raise—which have not yet been reviewed on appeal—is not probative on the conflict of interest issue." The merit of the claims abandoned by prior PCR appellate counsel pertain to the prejudice prong.

4) Throughout this litigation, the State continues to imply our Supreme Court strictly bars successive PCRs. This contention is not correct. For example, in *Robertson v. State,* a capital case, our Supreme Court "conclude[d] that non-compliance with section 17-27-160(B) constitutes deficient performance per se" because "[t]o rule otherwise . . . would render meaningless the Legislature's intent to have *qualified* counsel appointed to capital PCR applicants." 418 S.C. 505, 521, 795 S.E.2d 29, 37 (2016) (emphasis original). The remedy was a second PCR, as it should be here.

For the foregoing reasons, this Court should deny the State's Rule 59(e) motion and convene an evidentiary hearing.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

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Attorney for K.C. Langford

January 29, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	
	)	Case No. 2020-CP-19-00091
K.C. Langford, SCDC# 294500,	)	
Applicant,	)	
	)	
vs.	)	
	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2020-12-16-01, Section (c)(13), by emailing at copy to counsel, at their AIS email address, as reflected below:

Lillian Loch Meadows, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
lillymeadows@scag.gov

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
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January 29, 2021
Greenwood, South Carolina