RECEIVED

JUN 18 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Lee S. Alford, Circuit Court Judge

STEVEN J. FREEMAN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

ANSWER TO JOHNSON PETITION FOR WRIT OF CERTIORARI

STEVEN J. FREEMAN

Pro-Se Petitioner

Perry Corr. Inst. Q-1-A 116

430 Oaklawn Road

Pelzer, S.C. 29669

INDEX

ISSUES PRESENTED

I. Did the PCR Court err in finding that plea counsel provided effective assistance of counsel where plea counsel failed to request a competency hearing to determine Petitioner's fitness to stand trial when there was a reasonable probability that Petitioner was incompetent at the time of the plea, as evince by Petitioner's suicide attempt after the first day of trial and Petitioner's anxiety attack prior to his plea?

II. Was trial counsel ineffective for failure to request a continuance, request a recess to allow Petitioner time to calm down, or advise Petitioner of all options available to him?

III. (1) Did trial counsel provide ineffective assistance in failing to object to defective indictments before the jury was sworn or plea was entered; (2) Did the State commit perjury and gross prosecutorial misconduct by falsifying indictments?

STATEMENT

Petitioner agrees with the statement prepared by Appellate Defender Dayne Phillips as follows:

Indictments

On November 9, 2006, Petitioner Steven Freeman was indicted by the York County Grand Jury for: (1) murder; (2) burglary in the first degree; and (3) resisting arrest. App. 414-419.

Plea Hearing

On March 5, 2007, Petitioner initially proceeded to trial before the Honorable John C. Hayes, III, and a jury. App. 1. Petitioner was represented by Harry Dest and B.J. Barrowclough, and the State was represented by Kevin Brackett and Willy Thompson. App. 1. On the second day of trial Judge Hayes granted a short recess after defense counsel stated they were not ready to proceed. App. 173, ll. 1-11. When court resumed, the Solicitor informed Judge Hayes that "[Petitioner] has indicated through his counsel that he wishes to change his plea from a plea of not guilty to a plea of guilty to these charges. There are no negotiations in the matter." App. 173, ll. 13-25. Petitioner then pled guilty as charged. App. 174, l. 25 - 177, l. 25.

As part of his mitigating evidence, plea counsel advised Judge Hayes that Petitioner: has been hospitalized twice for attempting suicide; had heavily used anabolic steroids, which "could have [had] detrimental affects on his ability to control himself[;]" and was evaluated by Dr. Harold Morgan, who found that mental

condition "did not amount to a mental defense regarding insanity or guilty but mentally ill, but did say [Petitioner] had a lot of stress on him during that timeframe...." App. 181, l. 6 - 182, l. 6.

Petitioner stated that was not under the influence of any intoxicants and was freely and voluntarily pleading guilty. App. 178, ll. 10-23. After Petitioner agreed to the solicitor's recitation of the facts, Judge Hayes accepted Petitioner's guilty plea and sentenced Petitioner to: (1) fifty years imprisonment for the murder conviction; (2) fifty years imprisonment for the burglary in the first degree conviction; and (3) one year imprisonment for the resisting arrest conviction, to run concurrently for a total of fifty years imprisonment. App. 191, l. 19 - 192, l. 11; 224, ll. 2-7.

Petitioner appealed his convictions and sentence.

Direct Appeal

On July 21, 2008, Appellate Defender Joseph Savitz filed an Anders brief pursuant to Anders v. California, 386 U.S. 738 (1967), and Petitioner subsequently filed a pro se brief. App. 226-235. The South Carolina Court of Appeals affirmed Petitioner's convictions and sentence (State v. Steven Freeman, Op. No. 2009-UP-477 (S.C.Ct.App. Filed October 13, 2009). App. 236.

PCR Application and Evidentiary Hearing

On December 18, 2009, Petitioner filed his application

requesting post-conviction relief (PCR). App. 237-245. The Respondent filed its return on April 7, 2010. App. 257-261. Petitioner filed an amended PCR Application on September 13, 2010, alleging ineffective assistance of counsel and involuntary guilty plea. App. 246-256. An evidentiary hearing was held before the Honorable Lee S. Alford on June 2, 2011. App. 262-386. Petitioner was represented by Brian Murphy, and the State was represented by Harrison Brant. App. 262.

Petitioner testified at the evidentiary hearing that he had attempted suicide twice and was admitted to the psychiatric ward of Piedmont Medical Center on August 22, 2006. App. 268, ll. 11-17. Petitioner also testified that he was "diagnosed with borderline personality disorder, depression with mixed anxiety, impulse control disorder, adjustment disorder" and was prescribed Zoloft. App. 268, ll. 16-21. Petitioner stated that he was later prescribed Vistaril instead of Zoloft and that the doctor at the detention center stopped prescribing Petitioner Vistaril approximately three weeks prior to his guilty plea. App. 272, l. 21 -273, l. 25.

Furthermore, Petitioner testified, "I told [plea counsel] they weren't giving me my meds." App. 274, ll. 4-7. Petitioner stated that on the first day of trial he had "a lot of anxiety, a lot of racing thoughts, a lot of ... panic like the walls are closing in on you and the room's spinning." App. ll. 16-22. Petitioner also stated that after the first day of trial, he was crying a lot and

attempted suicide by putting a plastic trash bag over his head. App. 276 ll. 5-20.

Petitioner testified that on the morning of the second day of trial, he informed plea counsel he could not catch his breath and was having racing thoughts. App. l. 4 - 278 l. ll. Petitioner state that he then decided to plead guilty and that plea counsel did not ask him about his mental health or attempt to discourage him from pleading guilty. App. 278, l. 17 - 279, l. 7. Notably, Petitioner testified that plea counsel failed to ask for a continuance and that he "would not have pled guilty if [he] had time to calm down." App. 279, l. ll - 280, l. l. Petitioner reiterated, had he not been mentally incompetent at that time, he would not have pled guilty to murder. App. 287, ll. 9-ll.

Plea counsel, Harry Dest, admitted at the evidentiary hearing that he knew about Petitioner's prior suicide attempts, bouts with depression, and anabolic steroids usage. App. 299, ll. 10-25. Dest stated he hired Dr. Harold Morgan to evaluate Petitioner's mental health condition and that Dr. Morgan's found Petitioner's "competency was never an issue, insanity was never an issue." App. 300, ll. 2-15. Dest also maintained that Petitioner's testimony "regarding being tearful" was inaccurate because "virtually every single time that I went to see him, he cried." App. 301, ll. 15-20.

Furthermore, Dest maintained that he had "prepar[ed] for trial the entire time" and was "left with the option of pursuing a defense of voluntary manslaughter by claiming that the legal

provocation was [Petitioner] perceiving or observing his girlfriend in the middle of a sexual act." App. 302, ll. 15-23. Dest also maintained that Petitioner never told him about not being prescribed medication three weeks prior to the plea hearing. App. 303, ll. 4-13. Dest further claimed that he informed Petitioner about the possibility of receiving a life sentence and was "trying to convince [Petitioner] not to plead." App. 303, ll. 7-25.

Dest admitted that, although it had been approximately two months after Petitioner was evaluated by Dr. Morgan, he did not request a continuance or a competency hearing prior to Petitioner's guilty plea. App. 306, ll. 1-7. Dest stated that the plea judge would not have granted a motion for a continuance "to explore a plea offer" and that an an officer of the court, [he] did not see anything in [his] observations or [his] experience with [Petitioner] from beginning to end which would suggest that [Petitioner] wasn't competent to stand trial." App. 306, ll. 15-24.

Dest maintained, "Had I thought for one minute that [Petitioner] was not mentally fit to [plead guilty], I would have asked the judge for a continuance....But as an officer of the court, I can't say that observed those types of characteristics that would let....me make that motion." App. 310, ll. 8-13. Dest reiterated that he had Petitioner evaluated prior to trial and "[t]here was never indication....that [Petitioner] didn't

understand what he was doing, or that he had racing thoughts, or that he could not comprehend the consequences of his actions." App. 311, ll. 7-11. Similarly, B.J. Barrowclough's testimony at the evidentiary hearing mirrored the testimony of his co-counsel, Harry Dest, by stating that Petitioner did not suffer for a mental illness and was competent to plead guilty. App. 326, ll. 8-1.

Petitioner's father, Randall Freeman, testified that Petitioner acted "very strange" on the day of the plea and that Petitioner "[d]idn't quite understand what was going on." App. 331, ll. 14-17. Petitioner's father also testified that it was not normal for Petitioner to cry and be emotional. App. 332, ll. 1-11. Petitioner's mother Yvette Freeman, testified that Petitioner was crying and appeared to be dazed prior to pleading guilty. App. 336, ll. 2-7. Petitioner's mother recalled that Petitioner "was very, very remorseful" and only seemed "clear-headed' for part of the guilty plea proceeding. App. 339, ll. 12-20. Additionally, Henry Terry, a pastor who visited Petitioner in jail, testified that Petitioner "looked like a beaten person, a depressed person, a person that didn't know what was going on." App. 342, ll. 9-13.

Dr. Harold Morgan, a forensic psychiatrist, maintained at the evidentiary hearing that he reviewed the incident report, witness statements, investigate reports, and interviewed Petitioner in preparation for his valuation of petitioner. App.

347, ll. 15-21. Dr. Morgan testified about Petitioner's hospitalizations after attempting suicide and Petitioner's diagnosis, which included: adjustment disorder; impulsive control disorder; depression; alcohol dependence; and borderline personality disorder. App. 348, l. 5 - 350, l. 20. Dr. Morgan recalled that Petitioner was not taking any medication when he interviewed Petitioner for the second time. App. 348, ll. 1-4.

Dr. Morgan admitted that "severe anxiety could erode that ability to make competent decisions" and that Petitioner had not been taking his medication. App. 352, l. 8 - 353, l. 9. Dr. Morgan also admitted that Petitioner's anxiety at trial "could" have overcome Petitioner's ability to make competent, rational, and informed decisions leading up to his decision to plead guilty. App. 352, ll. 5-7; 355, ll. 4-10. Dr. Morgan further testified that Petitioner's suicide attempt the night before Petitioner decided to plead guilty illustrate that Petitioner was not thinking rationally. App. 360, ll. 16-24.

Additionally, Dr. Morgan also testified that anxiety and depression can make a person "briefly incompetent." App. 361, ll. 7-11. However, Dr. Morgan maintained that Petitioner "was clearly competent to stand trial on both times that I saw him. And that [Petitioner] did not meet the standard for an insanity defense." App. 357, ll. 16-20. Dr. Morgan also claimed that he has not been provided with any information that would make him change his opinion that Petitioner was competent to stand trial. App. 361, l. 24 - 362, l. 2.

Order of Dismissal

On August 3, 2011, Judge Alford ruled in his Order of Dismissal that Petitioner failed to prove plea counsel provided ineffective assistance of counsel and denied Petitioner PCR relief. App. 387-410. Relevant to this petition, the PCT court found that Petitioner "failed to prove he was incompetent at the time of his plea" because Petitioner's "own testimony established he was able to communicate with his lawyers in preparation for trial, during trial, and immediately before he plea guilty." App. 403. The PCR court also found that "the testimonies of [Petitioner's] mother and father, and their pastor, not persuasive on the issue. App. 403. Specifically, the PCR court noted that "[t]hese witnesses failed to otherwise present any credible testimony indicating [Petitioner] did not understand what he was doing when he pled guilty, or did not understand the consequences of doing so." App. 403-404.

Furthermore, the PCR court noted that plea counsel's "testimony in this case established that they both had extensive direct interaction with [Petitioner], and neither one of them ever observe any behavior from [Petitioner] indicative of incompetency. [Plea counsel's] testimony established [Petitioner's] tearful and emotional behavior at the plea was not unusual; to the contrary, they observed this behavior every time they met with [Petitioner]." App. 404. The PCR court further

found that "[t]he testimony of [Petitioner's] expert, Dr. Morgan, did not help his case. He testified he examined [Petitioner] and found him to be clearly on two occasions, the second of which as a month before trial." App. 404. The PCR court concluded that Petitioner "failed to meet his burden of proving he was incompetent at the time of his plea' and found that counsel was not ineffective for failing to further investigate [Petitioner's] alleged incompetency, request a Blair hearing, or request a continuance to have [Petitioner] further evaluated because the evidence before this Court clearly refutes [Petitioner's] claim of mental incompetency." App. 405.

ARGUMENT I.

The PCR court erred in finding that plea counsel provided effective assistance of counsel because plea counsel failed to request a competency hearing to determine Petitioner's fitness to stand trial when there was a "reasonable probability" that Petitioner was incompetent at the time of the plea, as evinced by Petitioner's suicide attempt after the first day of trial and Petitioner's anxiety attack prior to his plea.

Petitioner asks this Court to take the following into consideration: Petitioner testified he spent six months in the county jail awaiting trial. "I never asked to plea guilty." App. 366, ll. 7-13. Petitioner stated that he would not have pled guilty if he had time to calm down and gather his thoughts. Petitioner also testified that he asked trial counsel for advice and counsel told him that "It would go against my ethics to tell you either way." App. 367, ll. 3-5. Petitioner testified he was admitted into the psychiatric ward of Piedmont Medical Center on August 22, 2006 (five days before incident). Petitioner was diagnosed with mental illnesses such as Borderline Personality Disorder, Impulse Control Disorder and Depression with mixed anxiety. Petitioner was prescribed Zoloft at that time for depression and the Zoloft was continued at the county jail. In November of 2006, Mental Health switched the Zoloft to Vistaril to help with Petitioner depression, anxiety, and sleeping problems. Three weeks before trial Mental Health stopped the

prescription for the Vistaril. Petitioner continued to trial where he had an anxiety and panic attack under the very stressful situation and pled guilty. Once Petitioner entered the Department of Corrections he was immediately prescribed mental health medication for Bi-polar Disorder, depression, anxiety and to control mood swings and he has been on this medication for over five years. Petitioner has been under the care of SCDC Mental Health and has since entering the Department of Corrections.

Dest also maintained that Petitioner's testimony "regarding being tearful" was inaccurate because "virtually every single time that I went to see him, he cried." App. 301, ll. 15-20. Dest also stated that "as an officer of the court, [he] did not see anything in [his] observations or [his] experience with [Petitioner] from beginning to end which would suggest that [Petitioner] wasn't competent to stand trial." App. 306, ll. 15-24. Petitioner contends the emotional episode at trial was different from the others because of his plea, to stop the trial because he was emotionally upset, not because he was guilty. Petitioner made a hasty decision to plea under the emotional distress of trial, which Dr. Morgan testified to "severe anxiety" could erode the ability to make a "competent decision" and that Petitioner was not taking his anxiety medication. App. 352, l. 8 - 353, l. 9. Dr. Morgan's stated that [Petitioner's] impulsivity could completely take over his decision-making ability. App. 360, l. 16 - 361, l. 3. Thus, raising doubt as to Petitioner's fitness to stand trial.

At plea hearing hearing Dest stated that he was prepared to go forward in a trial setting and this development today was something that surprised us. App. 204, 11. 15-18. Dest then stated we came out here and he was breaking down crying in the courtroom right before your Honor stepped on the bench and that's when all of this really sort of came to a head with respect to his decision to plead. App. 204, 1. 23 - 205, 1. 2. In order to win favor with the court Dest stated He [Petitioner] simply told me he didn't want the Burgess family or anyone else associated with this case to suffer anymore. App. 204, 11. 20-22. If that was so [Petitioner] was not admitting guilt.

The Court asked Petitioner questions pertaining to his plea, but never asked why he was choosing to change his plea from not guilty to guilty as charged, under the circumstances Petitioner should have had a say before the plea hearing got underway. Petitioner made quick responses to some questions and answered an important question about his mental health problems falsely.

The Court: Are you under the influence of anything that would cause you to be intoxicated? App. 178, 11. 10-12.

Mr. Freeman: No, Sir. App. 178, 1. 13

The Court: You kind of have to wait until I finish, so this lady has to take it down so wait until I finish. App. 178, 14-16

Mr. Freeman: Sorry, Sir. App. 178, 1. 17.

The Court: Mr. Freeman, Have you ever been treated for any mental or emotional disability? App. 181, 11. 1-2

Mr. Freeman: No, Sir. App. 181, l. 3

At which time Dest had to intervene regarding Petitioner's mental problems. App. 181, l. 6 - 183, l. 10.

Petitioner contends that he was not mentally fit to stand trial, thus pleading to all charges. Petitioner restate that he spent six months in the county jail and had numerous emotional breakdowns before Dest, but never requested to plea. It wasn't until the very stressful situation of trial he pled guilty to all charges.

Ineffective Assistance of Counsel

Dest had ever opportunity to request a Blair hearing and let the court know about Petitioner's mental breakdown before trial or entering his plea. Petitioner believed he only had two choices, continue with trial or plea guilty. Petitioner was not able to continue with trial during that time so the only option left was a plea. Petitioner was a layman at law, he had never been in trouble before and did not know about Bliar hearings, recesses, continuances or any other option available to him. Petitioner was not able to assist in his own defense at the time of his breakdown and his plea was involuntary due to his mental incapacity to gather his composer before making such an important decision. Petitioner did not want to enter a plea of guilty, however he knew of no other option. Trial had started and Petitioner was under a very stressful time, without taking his mental health medication, and Petitioner plead guilty.

Petitioner contends counsel provided ineffective assistance in failing to request an Blair hearing to determine his mental fitness to stand trial, when Petitioner's numerous breakdowns raises doubt. Dr. Morgan's last meeting with Petitioner was more than a month before trial and thus Petitioner mental state at trial was different then that of his one-on-one meeting with Petitioner.

Doubt of Petitioner's lack of mental capacity to stand trial has been proven by Petitioner in this case. Dest had provided ineffective assistance in failing to fully investigate Petitioner's fitness to stand trial. See Pate v. Robinson, 383 U.S. 375, 384, 86 S.Ct. 836 (1966).

Prejudice

"The prejudice in the case at hand is that Plea counsel failure to request a Blair hearing given the Petitioner mental history is in violation of his due process. Under the Jeter standard Petitioner has proven by the evidence there was, at minimum, a "reasonable probability" that Petitioner was incompetent at time time of his plea." Matthews, 358 S.C. at 460, 596 S.E.2d at 51;

CONCLUSION TO ARGUMENT I.

Based on the facts of this case. (1) Petitioner had a prior mental history. (2) Petitioner attempted suicide twice in the month of August (same month as incident) and was admitted into a psychiatric ward six days and released five days prior to incident. (3) Petitioner was prescribed medication while at the psychiatric ward and the medication was continued at the county jail. (4) Petitioner's medication was stopped prior to trial where Petitioner had a breakdown and pled guilty. (6) Trial counsel, Co-counsel, Petitioner's parents and Pastor all testified that Petitioner was very emotional on the morning of his plea. And (7) Petitioner was then prescribed mental health medication by the Department of Corrections and has been on this medication since his incarceration.

Therefore, based on the foregoing Petitioner has proven his trial/plea counsel provided deficient performance by not requesting a competency "Blair" hearing, when there reasonable doubt raised that Petitioner was unfit to stand trial and a reasonable probability Petitioner was incompetent to plea due to his lack of mental/emotional capacity. Trial/plea counsel committed an unprofessional error that prejudiced the outcome of the proceedings.

Petitioner's Petition for Writ of Certiorari should be granted.

ARGUMENT II.

Trial Counsel was ineffective for failure to request a continuance, request a recess to allow Petitioner time to calm down, or advise Petitioner of all options available to him.

In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel's performance was deficient; and (2) the performance prejudiced the applicant's case. Strickland v. Washington, 466 U.S. 668, 687, (1984); Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show counsel was deficient, the applicant must establish counsel failed to render reasonably effective assistance under prevailing professional norms. Strickland, 466 U.S. at 687; Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a guilty plea has been entered, the applicant must prove counsel's representation was below the standard of reasonableness and but for counsel's unprofessional errors, there is a "reasonable probability" the defendant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991).

Petitioner contends he would not have pled guilty had he been given enough time to calm down and gather his composer. This argument is supported by the six months he spent in the county jail insisting on going to trial, "never requesting to plea."

Petitioner testified on the second morning of trial he entered the courtroom breaking down and informed Dest he could not continue with trial, at which time Dest requested a brief recess. Petitioner stated he asked Dest for his advise and Dest informed Petitioner "it goes against his ethics to tell me what to do. He could not tell me either way." App. 367, ll. 3-5; App. 367, ll. 14-18. Petitioner testified he asked to speak with his parents and was told no but Dest went and spoke with his parents and Dest informed Petitioner his parents approved of whatever he did. App. 278, ll. 1-6.

Petitioner testified he turned down a plea offer of murder 45-50 years from the state before trial. App. 280 ll. 7-16. Dest testified there was never a plea deal offered to Petitioner.

Petitioner states Dest provided ineffective assistance in failing to request a continuance. Dest testified a continuance would not have been grant by the court. This was pure speculation into what the court would have done.

Petitioner contends it was around 15 minutes from his breakdown in open court to his plea. It was one continuous motion. Petitioner was not on his mental health medication at that time and lacked the mental capacity to stand trial.

Petitioner's mother testified Dest came and spoke to her before the plea. App. 336, ll. 11-18. She stated that she told Dest to please don't let Steven plead guilty. Was there some way we could talk to him because I knew if I could talk to Steven,

give him time to clam down, let him see the whole thing. App. 336, ll. 15-18.

In proving the two prong test of Stickland standard dealing with guilty pleas (1) Dest unprofessional error was that of not requesting a continuance when from the beginning of this case to Petitioner's breakdown, Petitioner had insisted on going to trial; (2) But for the unprofessional errors committed by Dest at trial, Petitioner would not have pled guilty and would have continued with trial.

If Petitioner had continued with trial the defense would have presented a defense of voluntary manslaughter, which would be supported by the evidence in this case. The Jury would have learned Petitioner viewed his pregnant girlfriend engaged in an sexual act with victim. The jury would have learned Petitioner and victim got into an argument and started fighting, no weapon was used. The victim fell hitting his head against the concrete floor, leading to blunt force trauma and leading to the victim's death. The jury would have learn the death was accidental not intentional. Petitioner is not guilty of murder therefore Dest allowed Petitioner to plea to a charge he is not guilty of. Dest never enter into plea negotiations with State upon Petitioner plea. Manslaughter would have been an option in this case. The jury would have also learned of false testimony given by two of the State's witness's (used at the plea hearing and in the order of dismissal).

Petitioner asks this Court to consider the six months he spent in the county jail and the appeal filed immediately after his plea. Also please take into consideration Petitioner needed his medication during the trial.

Borrowclough testified he did not ask for a continuance. However, Borrowclough stated "Dest asked for a break where Judge Hayes gave us, you know maybe 20 minutes, 30 minutes, something like that. But, I mean, not a continuance for a week or anything like that." App. 323 ll. 18-21. In Pittman v. State, 524 S.E.2d 623. The Supreme Court held that 20-to-30 minutes is not an sufficient amount of time for a defendant to voluntarily enter a guilty plea. Petitioner asks this Honorable Court to apply this principle to the case at hand. Between Petitioner's breakdown in open court, til the time he went in front of Judge Hayes and entered his plea was less than 30 minutes. In this case Petitioner did not have a sufficient amount of time to calm down before making a voluntary and rational decision to make such a serious decision to plea guilty.

CONCLUSION TO ARGUMENT II.

Based on the facts, Petitioner first, did not have a competency hearing to fully evaluate his mental fitness to stand trial. Second, the time between his breakdown and plea was less than 30 minutes. Third, Petitioner's parents and pastor, Dest and Borrowclough all testified Petitioner was very emotionally upset on the morning of his plea. Fourth, Dr. Morgan testified given

Petitioner's mental problems and Petitioner was not taking his medication during the trial and "could have impaired his ability to make a rational decision to plea." Fifth, Dest did not take the time to enter into plea negotiations, but stated the evidence would support manslaughter. And finally, Dest had a sworn duty to Petitioner to defend him and his due process rights, once Petitioner became emotional and asked to plea, Dest should have try to give Petitioner as much time as he needed before commencing to the plea hearing minutes later. Although Petitioner pled guilty, Dest's error of not requesting continuance (whether or not it would granted) prejudiced Petitioner's case, because if Dest would have given Petitioner time to calm down, he would not have pled guilty, but insisted on continuing trial, as Petitioner had shown for the six months prior. Any competent attorney would have requested an continuance or longer recess to make absolutely sure defendant was mentally fit to plea.

Therefore, based on the foregoing, Petitioner has provided clear evidence of counsel's unprofessional errors and there were a "reasonable probability," but for counsel's errors Petitioner would not have pled guilty and insisted on continuing with trial. For these reasons Petition For Writ of Certiorari should be granted.

ARGUMENT III.

(1) Trial counsel provided ineffective assistance for failure to object to the defective indictment before the jury was sworn or plea was entered; (2) State committed perjury and gross prosecutorial misconduct by falsified indictments.

Petitioner contends trial/plea counsel was ineffective for failing to object to the defective indictments presented by the prosecution. See App. 375 -- 383; Exhibits App. 384, 386.

Petitioner's bill of indictment prints that, "At a Court of General Sessions, convened on November 9, 2006, the Grand Jury of York County present upon their oath." Furthermore, the indictment is affixed with a true bill stamp and signed by Assistant Deputy Solicitor Willy Thompson, who was the State's Judicial officer assigned the responsibility of processing the document.

At PCR hearing Petitioner submitted into evidence a certified true copy of the Judicial Department's calendar of Circuit Court terms. See App. 384. The Circuit Court term calendar shows clearly that on November 9, 2009 "NO" Court of General Sessions had been opened in York County for the Grand Jury to present anything upon their oath, much less that a crime had taken place. Thus, False information is contained in the State indictments, prepared and processed by Assistant Deputy Solicitor Willy Thompson. The State submitted into evidence a copy of an administrative order setting the dates for the convening grand

jury in York County, signed and dated by the Honorable Lee S. Afford, Presiding judge of Petitioner's PCR hearing. The term of court are set by the Chief Justice, along with S.C. Court Administration. Clearly the Honorable Judge Afford has no jurisdiction to set a term of court.

South Carolina law is very specific concerning matters of false information in a State document. It is an offense against public justice to willfully give false information in a State document. S.C. Code Ann. §16-9-10.

It should be noted that a criminal indictment is a document required by the law of this state. In State v. Gentry, 363 S.C. 96, 610 S.E.2d 494 (2005), our Supreme Court held that an indictment is a "notice document" required by both our state constitution and statutory law. See S.C. Const. Art. I. §11, and Art. V. §22; See also S.C. Code Ann. §17-19-10 (2003) ("[n]" person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury...," except specific instances).

Therefore, for purposes of establishing an offense of perjury against public justice, a State indictment would satisfy the document requirements specified under subsection A(2) of the S.C. Code Ann. §16-9-10.

It should also be noted that a County Prosecutor, [Assistant Deputy Solicitor Thompson] is required to know the laws of this state, and has special responsibilities to see that justice is

done, and is held to the highest standards of professional ethics. See Appellate Court Rules, Rule 407. Assistant Deputy Solicitor Willy Thompson Knowingly and willfully caused false information to be printed and published in Petitioner's indictments, thereby violating the provisions of §16-9-10. Assistant Deputy Solicitor Thompson is guilty of committing an act of perjury against public justice, which would by necessity also constitute gross professional misconduct. See Rule 407 SCACR; Rule 8.4(b); Rule 8.4(d); and Rule 8.4(e).

Accordingly, both perjury and gross professional misconduct are established in this case.

Counsel's Deficient Performance

In Stickland, the court explained that "access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled." Id. 466 U.S. at 685, 104 S.Ct. 2063 (quoting Adams v. United State ex rel. McCann, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 240, 87 L.Ed 268 (1942) "Counsel ... has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Id. 466 U.S. at 689, 104 S.Ct. at 2065.

A criminal attorney is constitutionally required to conduct pretrial investigations and discovery, and file any necessary motions to suppress. See Kimmelman v. Morrison, 477 U.S. 365, 385 (1986). It was conclusively shown above that false information is

contained in Petitioner's true billed State indictments, and easily discoverably through examination of the document. Under these circumstances, "any competent" trail attorney would have not hesitated to enter an objection, and/or move to suppress Petitioner's defective indictments, especially given the certainty of prevailing on such a motion.

Barrowclough testified he has been practicing law for almost sixteen (16) years. App. 326, l. 5. Borrowclough admitted to reviewing the indictments before trial. App. 328, ll. 13-22. All attorneys licensed to practice criminal law in South Carolina are required to know and understand this State's statutory laws and rules related to the lawful return of true bill indictments. Therefore, it would be an untenable position for trial counsel to now claim ignorance of the law.

South Carolina criminal law sets forth clear provisions for challenging defects in an indictment. See S.C. Code Ann. §17-19-90 ("every objection to an indictment for any defect apparent on the face and would move to squash such indictment before the jury shall be sworn and not afterwards"). Unquestionable Dest should have untilized §17-19-90, to challenge Petitioner's true bill indictments.

In summary, the false information is apparent on the face of the indictments, and easily discoverable through an examination of the documents. Accordingly Dest provided a deficient performance in not entering an objection to Petitioner's

defective indictments, or motioning to squash. Petitioner plea guilty to those defective indictments.

Prejudice

In interpreting the prejudice prong under defendant's Sixth Amendment right to effective counsel, our State Supreme Court identified a narrow category of cases in which prejudice is presumed. In Quattlebaum, the Supreme Court concluded, consistent with existing federal precedent, "... that a defendant must show either deliberate prosecutorial misconduct or prejudice to make out a violation of the Sixth Amendment, but not both. Deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice." Id. 527 S.E.2d at 109. Our Supreme Court further determined that the focus must be on the misconduct because the court bears the ultimate responsibility for maintaining judicial integrity and high standards of professional conduct among the members of the bar and for protesting and defending the constitutional rights of the accused See Quattlebaum, 527 S.E.2d at 109.

Above, prima facie evidence was presented showing that the Prosecutor violated the provisions of §16-9-10, and thereby committed an act of perjury against public justice by willfully giving false General Sessions Court information in Petitioner's true billed indictments. Moreover, it was further established that the Prosecutor's act perjury against public justice, would by it's very nature also constitute a violation of the Rules of Professional Conduct, specially, Rule 8.4(b), 8.4(d), 8.4(e), and

establish gross prosecutorial misconduct.

The term of court are set by the Chief Justice, along with S.C. Court Administration. It is prejudicial to Petitioner for Judge Afford to set a term court or falsify the Administrative Order document, App. 386. [See exhibit (A), letter from the York County Clerk of Court] stating "The York County Grand Jury met on November 9, 2006, there was not a term of court that week." Clearly the Grand Jury did not indict Petitioner in the Court of General Sessions as printed on the face of his indictments. See court term calendar App. 384. and exhibit (A). Given the defective indictments the court had no jurisdiction to accept Petitioner's plea of guilty.

CONCLUSION TO ARGUMENT III.

Under the circumstances found in this case, Petitioner's conviction and sentence cannot be allowed to stand because to do so, the State would have to now become a knowing party to the Prosecutor's acts of perjury and gross misconduct, and maintaining Petitioner's indictments in its records, thereby representing those acts to be public.

Above Petitioner established a claim of ineffective assistance of trial counsel by his showing that (1) counsel's performance was deficient in failing to object to the defective indictments, and (2) because prejudice is presumed due to the Prosecutor's acts of perjury and gross misconduct.

Accordingly, and based on the foregoing Petitioner should be granted petition for Writ of Certiorari.

IN CLOSING

I, Steven J. Freeman, Petitioner, hereby swear upon my life that everything I have stated in this brief is the truth and not falsified and fabricated in any way.

I swear that I would not have pled guilty if I had enough time to calm down and gather my composer. I wanted a trial to prove I did not act intentionally on the date on incident nor I did have any intentions of harming or killing the victim, the death of the victim was an accident. I did not sit on a car as a Prosecution's witness Bianca Moison testified and I did not kick nor stomp the victim as Prosecution's witness Timothy Carter testified. I acted irrational after seeing my pregnant girlfriend having sex with the victim. I am truly sorry for my actions and for the death of the victim and the pain I have caused. I can do something good in this world and be a productive person in society if given the chance.

I ask this Honorable Court to grant my writ of certiorari and allow me a chance to let my side be heard by a jury.

Thank you for your time.

S/ Steven Freeman

Steven J. Freeman

Petitioner

CLERK OF COURT'S OFFICE
Post Office Box 649; York, South Carolina 29745

Exhibit "A"

July 6, 2009

Steven Freeman #320516
Perry Corr Inst Q4B 108
430 Oaklawn Road
Pelzer, SC 29669

Re: letter regarding court dates

Terms of court are set by the Chief Justice, along with SC Court Administration. Accordingly, criminal court was held in York County the weeks of November 13 and November 27, 2006. The York County Grand Jury met on November 9, there was not a term of court that week.

General Sessions Division

RECEIVED
JUN 18 2012
S.C. SUPREME COURT

CERTIFICATE OF SERVICE

I, Steven J. Freeman, Petitioner, hereby certify that on this 12th day of June, 2012 served my answer to appellate counsel's Johnson Petition in the case of Staven J. Freeman v. The State upon the Supreme Court of South Carolina, P.O. Pox 11330, Columbia, S.C. 29211, by depositing it in the United States postal service by way of Perry Correctional Institution.

Steven Freeman

Steven J. Freeman