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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

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LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

CASE No. 2023-001372

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PETITIONER'S BRIEF

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Respectfully  
S/ Lawton L. Holloway 379523  
Lawton Leroy Holloway  
K.C.I- Unit B2A-28A  
4344 Broad River Rd  
Columbia, S.C. 29210

Index

Index	i
Issue Presented	1
Statement	2

Argument:

Did the PCR Court err in failing to make specific findings of fact and state expressly its conclusions of law relating to each issue presented as stated in S.C. Code 17-27-80? 3-4

Did the Court err in finding that counsel was not ineffective even though counsel on the record failed to present defense of habitation which was explicitly filed in court under counsel's motion. 4-5

Did the PCR Court err in failing to find counsel was ineffective for failing to preserve a defense of other argument as an independent ground for immunity? 5

Did the Court err when it provided segmented instructions to the jury because instructions must be taken as a whole? 5

Did the PCR Court err when it held that applicant's complaint that attorney Price failed to disclose his terminal illness was without merit? 6-8

Was PCR Counsel ineffective for failing to perfect applicant's application on PCR, when he did not investigate or provide any medical conclusions or Documentation to support applicant's claim on trial counsels health and performance. 8

Conclusion 8

Issue Presented

1. Did the PCR Court err in failing to make specific findings of fact and state expressly its conclusions of laws relating to each issue presented as stated in S.C.Code 17-27-80?
2. Did the Court err in finding that counsel was not ineffective even though counsel on the record failed to present defense of habitation which was explicitly filed in court under counsel's motion.
3. Did the PCR Court err in failing to find counsel was ineffective for failing to preserve a defense of other argument as an independent ground for immunity?
4. Did the Court err when it provided segmented instructions to the jury because instructions must be taken as a whole?
5. Did the PCR Court err when it held that applicant's complaint that attorney Price failed to disclose his terminal illness was out merit? The Court held that it was unaware of any rule that attorney must disclose health information to their clients absent an indication that the attorney's poor health could affect his representation.
6. Was PCR Counsel ineffective for failing to perfect applicant's application on PCR? When he did not investigate or provide any medical conclusions or documentation to support applicant's claim on trial counsel's health and performance.

## STATEMENT OF CASE

Petitioner Lawton Leroy Holloway was found guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime per jury trial held during the March 2019 term of the Spartanburg County General Sessions Court before Judge R. Keith Kelly, and was sentenced to imprisonment for an aggregate twenty-year prison term. App. 1-533. Attorneys James Price, IV, and James Price, III, represented petitioner at trial, and Deputy Solicitor Derrick Balsa appeared on behalf of the state.

Petitioner appealed his convictions and sentences. Appellate Defender Taylor D. Gilliam represented petitioner on direct appeal. After briefs were filed, the case was affirmed on appeal. State v. Holloway, 2021-UP-406 (S.C. Ct. App. Filed Nov. 17, 2021). App. 535-589.

On November 4, 2022, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 590-602. The respondent filed a Return dated January 11, 2023. App. 603-614. A PCR hearing in the case was convened on June 20, 2023, at the Spartanburg County Courthouse before Judge Frank R. Addy. App. 616-678. Petitioner was present at the hearing and represented by Attorney Rodney W. Richey, and Assistant Attorney General Joshua Edwards appeared on behalf of the state.

On August 18, 2023, Judge Addy issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 689-696.

Petitioner appealed Judge Addy's Order of Dismissal. This petition follows.

### 1) Argument

Appellant provided to the Court that counsel's representation under the prongs of Strickland v. Washington, 466 U.S. 668, 687-88 (1984) were deficient. This is supported under Yarborough v. Gentry, 540 U.S. 1, 8 (2003) where appellant's Sixth Amendment guarantees reasonable competence. In the present case the following facts and court documents support appellant's argument of court error.

Counsel failed to communicate under civil rules of procedure 407 and rule 1.4 the specifics of the offered pleas and the conditions for clarification to appellant under Lafler v. Cooper 2011 WL 3151278 S.C. US Brief of the American Bar Association as Amicus Curiae in support of respondents. S.C.R.A.C.T Rule 407 RPC 1.4.

Rule 1.4 (a) (1) a lawyer must promptly inform the client of any decision or circumstance with respect to which the clients informed consent... is required by these rules; Rule 1.4 (b) a lawyer must explain a matter to the extent reasonably necessary to permit the client to make informed decisions.

Defense counsel's failure to communicate a plea offer, and to fully accurately explain the choices facing the client at this critical stage of the case, effectively deprives the client of the right to knowingly and intelligently make a decision that will predictably have a dramatic effect on his future.

Counsel failed to fully communicate with the appellant and his sisters, who retained his service, part of the service contract was to keep the appellant and his sisters informed of pleas and possible sentences.

On page 626 volume II, Line 18, appellant was asked if he know the penalty for murder? Line 19, appellant replied, "I knew it was probably 30 years." I didn't know it was life. On line 21, the question was asked when you get this plea offer of 10 to 15; you weren't gauging it off the possible life sentence? Appellant answered no. The appellant was asked if counsel ever advise that he could get life (626 line 24). The appellant answered no (p. 627 line 2). On page 627 the appellant stated that he was prejudiced by not knowing the full scope of the plea (p. 627, line 11,12).

Q. Tell me how you believe you were prejudiced?

A. If I fully understood the plea, I would've taken the deal. On page 625 lines 14-16, the appellant testified that he believed that 15 years meant 15 years. He was not aware that based on the 85% that meant a reduction of the 15 years. On page 649 Clara Harrison, the appellants sister and one of the parties that retained James Price testified that if we had known that appellant was at risk of not coming out of prison, we would have told him, "you need to take this deal" (19-24). She stated, "we never heard of anything like that, you know. Ten years to us is ten years. We had no idea that it could've been reduction (pg. 649 line 25, pg. 650 line 1,2).

On page 646 Andrea Goodjoin one of the appellant's sisters and one of the parties that retained James Price II was asked;

Q. When did you find out the details about the plea offer?

A. When the trial ended.

Andrea Goodjoin testified that she did not find out what the plea offer really meant from attorney Price. She stated that she was approached by James Cheek, a plea attorney from Spartanburg SC. She learned that the appellant could've gotten way less time, possibly 5 to 6 years. I was dumb founded. That was the first time that she

really understood what the offer was (646 line 13-25, pg. 647 line 1-22). She also testified in line 21-25 that if we were told that he could get life in prison and that he could die in prison, he would have taken the deal. He listens to my sister and me pg. 648 that's why we tried to seek the best attorney that we could. On page 655 attorney Powers Price was asked prior to trial did you discuss with the appellant that you can get life without parole? Attorney Powers did not definitely state yes. She skirted with her answer so that she would not perjure herself by answering yes. Again, when asked about the terms of the 10 to 15 year plea she avoided a firm yes to prevent perjury. On page 656 lines 21-25 she was asked again did you explain you are looking at <sup>LIFE</sup> or you can take the 15 years. She would only say that the plea deal was still on the table.

On page 662 James Harder Price; IV Price answers were also vague on page 661, page 20 "I'm sure I went over the fact that the deal is 85%. On page 662 Price was asked who told him Price Sr. or Ms. Price or yourself? At line 8 he stated that it was so long ago but I'm confident I did. Again, no certainty. PCR Court erred in stating that the trial counsel properly communicated all offers and explained parole eligibility based on letters to the appellant. On page 686 dated September 12, 2018, there is a plea offer for voluntary manslaughter a minimum two years, maximum thirty years. The letter doesn't explain that 85% of 2 to 30 years is a reduction or time served nor does it mention that if the client is found guilty of murder, he is facing life in prison. The second plea offer for manslaughter is dated November 28, 2018 for a sentence of 10 to 15 years. There is also nothing in the letter that breaks down the actual time to be served at 85%, nor was there any mention that if convicted of murder, the client could get life in prison. Sending a letter is far from making certain the client fully understands.

## 2) Argument

Did the Court err in finding that counsel was not ineffective even though counsel on the record failed to present defense of habitation which was explicitly filed in court under counsel's pre-trial immunity hearing. The trial counsel failed to present a case that the decedent was an unwelcome guest, and that upon re-entry he was trespassing. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen mean of ejection were reasonable under the circumstances." Rye, 375 S.C at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. I'd rather; the defense of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." I'd rather, "The defense of habitation is analogous to self defense and should be charged when the defendant presents evidence that he was defending himself from imminent attack on his own property. "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." State v. Lee 293 S.C. 536, 537, 362 S.E. 2d 24, 25 (1987). Based on the record, the trial counsel testified at the PCR hearing and stated that the trespassing issue was considered in the case App 666 lines 8-23. The trial counsel failed according to record to develop the trespassing and habitation defense issues at the pre-trial hearing. Because of trial counsel's terminal illness, medications, his mental faculties had deteriorated during the trial to the point that he couldn't remember his defense argument or that he had to preserve the specific issues

raised for appellate review as supported by the PCR and trial transcripts which clearly made him ineffective in representing his client.

### 3) Argument

Did the PCR Court err in failing to find that counsel was ineffective for failing to preserve a defense of others argument as an independent ground for immunity? Under court documents (pg. 694) the PCR Judge held that counsel failed to preserve a defense of others argument. However, on pg. 695) the PCR court held that counsel reasonably chose to focus more on a defense of others theory. How can the court conclude such a ruling when the courts findings are contradictory unto themselves when it was clear that counsel's intention for appellant's defense was for defense of habitation? The PCR Court's ruling again is conflicting when it held that the applicant failed to show he acted in self-defense. He goes on to say that counsel chose to focus on defense of others theory, which appears to have been a stronger defense. For defense of habitation, the parties need only show that a trespass occurred. Here there was no conclusion of law relating to the issue as stated in S.C Code 17-27-80.

### 4) Argument

Did the Court err when it provided segmented instructions to the jury because instructions must be taken as a whole? The record clearly shows that the trial court erred in giving instructions in the following manner; When the PCR Court considered the Jury instruction as a whole in light of the evidence and issues presented, it failed to find for the appellant that the trial court erroneous instructions concerning implied malice from the use of a weapon connected to appellant's murder jury instruction was an improper inference charge regardless of the evidence presented at trial. A trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon. Clearly on page 516 of the trial transcript the court connects defense of habitation, involuntary intoxication and implied malice from the use of a weapon in the instruction. As a whole to the jury under State v. Burdette 427 S.C 490, 832 S.E. 2d 575 (S.C. SCT 2019). The Court has clearly ruled that regardless of the evidence presented at trial, trial court shall not instruct a jury that the element of malice may be inferred when the deed is done with a deadly weapon. Our ruling today is effective in this case and in the cases which are pending on direct review are not yet final so long as the issue is preserved. In the present case, petitioner's trial council's poor health and deficient mental capacity due to illness and medication prejudiced him when trial counsel failed to raise the issue of implied malice when clearly State v. Burdette was a major ongoing issue that was resolved a few months after appellant's trial. In addition, appellant's direct appeal counsel was ineffective for failing to raise the issue the issue on appeal of ineffective assistance of Counsel on the issue of the implied malice charge concluding from Burdette. Here in petitioner's claim, PCR Counsel also erred clearly after the ruling in Burdette to argue as a whole the jury instructions provided for on the courts record. This is a clear violation of the Sixth Amendment due process under State and Federal Constitutional Law.

## 5) Argument

The PCR Court erred when it held that the applicant's complaint that attorney James Price II failed to disclose his terminal illness was without merit. The court held that it was unaware of any rule that attorney must disclose. Rule 407, SCACR, Rules of Prof Conduct, Rule 1.16, Rule 1.16. Declining or Terminating Representation:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (2) The lawyer's physical or mental condition materially impairs the lawyers ability to represent the client. Defending Lawyers in Disciplinary Proceedings 31 AMJUR trials 633.

### 7. The attorney duty of faithful performance.

It is clear that an attorney has an affirmative duty to withdraw from the representation of a client if his physical or mental condition impairs his ability to effectively represent the client. The model rules provide that the lawyer must withdraw from a matter if his physical or mental condition materially impairs his ability to represent the client<Rule 1.16 (a) (2). By implication, this duty undoubtedly includes a corresponding duty to cease practicing law altogether if the condition or disorder renders the attorney physically or mentally unfit to competently service clients; and a duty to monitor attorneys' performance in this regard in appropriate cases (31). In, In re Smith (S.C. 2012) 401 S.C. 96, 736 S.E. 2d 270 it supports the S.C. appellate rule 1.16 (a) (2) prohibiting attorney from representing client if the lawyer's physical or mental condition materially affected the lawyer's ability to represent client. "The State," provided an obituary: Prominent Greenville defense attorney dies of rare disease. "James H. "Chip" Price IV died September 12, 2020 after a year long battle with idiopathic pulmonary fibrosis, a rare disorder that causes scarring in the lungs. Price died at Duke University Medical Center in North Carolina, where he had received a double lung transplant months earlier. He was 70" (official website: The State www. The State. Com// prominent Greenville defense attorney dies of rare disease). What is Idiopathic Pulmonary Fibrosis? It is a serious (long term) disease that affects the tissue surrounding the air sacs, or alveoli, in the lungs. This condition causes permanent scarring in the lungs called fibrosis that makes it progressively more difficult to breathe. As the disease progresses, people with IPF experience acute exacerbations where symptoms suddenly become much more serious. Other complications of IPF include pulmonary hypertension and respiratory failure, which happen when the lungs cannot deliver enough oxygen into the blood stream without support. This prevents the brain and other organs from getting the oxygen they need. There is currently no cure for IPF (<https://www.nhlbi.nih.gov/health/idiopathic-pulmonary-fibrosis>).

Attorney James Price III was terminally ill. The medical facts show that his physical and mental condition materially impaired his ability to represent the client. This is a clear violation of Rule 407, SCR, and Rules of Prof. Conduct, Rule 1.16. James Price III and his Co-Counsel, his children (James Price IV and Powers Price), were well aware of his failing physical and mental condition. They should have terminated representation. Regardless of lead counsel's diminished mental capacity, all the children wanted to do was close out the case and transition from a 40 year criminal defense firm, which traditionally had been its bread and butter to family law (Volume II pg.662 line 18-21). The applicant's legal fees exceeded 50,000, which were needed to assist in paying

for the \$797,300 double lung transplant through Duke University Medical Center (www. Duke health. Org). This clearly shows regardless of lead counsel's decreased capacity his primary intent was to collect the fees. The University of California and San Francisco Health list the requirements needed to be added to the National Transplant list as follows:

1. Patient given a diagnosis of immediate death without a lung transplant.
2. Eligibility for Double Lung Transplant is 60 years or less.
3. A core prognosis of 18-24 months life expectancy (without transplant the patient will die 1-2 years).

Due to trial counsel's impaired mental and physical condition, his ineffective assistance of counsel prejudiced the appellant:

11. Failure to request specific jury instructions. 17 S.C. Jury, Post-Conviction Relief 11. Where counsel fails to request a charge on applicable law which existed prior to the trial, counsel is ineffective for failing to request such a charge. Chalk v. State, 313 S.C. 25, 437 S.E. 2d 19 (1993) (failure to request a State v. King charge). This is true even if the Supreme Court had not found an attorney ineffective for failing to request the charge until after trial. Id.

\*Powers Price testified that she drafted the motion for defense of habitation. The position was that the decedent was a trespasser and the killing was lawful. The motion on page 12 of trial transcript states:

The decedent, Jeremy Bell re-entered Holloway's home uninvited, threatened Holloway and his family just prior to stabbing because Jeremy was a trespasser on Holloway's property. At no point—and deadly force was reasonably necessary to expel, Holloway meets the requirements of defense of habitation and is entitled to immunity pursuant to South Carolina Code 16-11-450 (a). (Volume II pg. 630-631). Due to lead counsel's terminal illness and diminished capacity, his ineffective assistance of counsel caused prejudice. He failed to raise the defense that he stated he would raise in the initial motion. Trial Court attempted to correct the issue by adding Defense of Habitation to the jury charge. The jury was never made aware that Bell was a trespasser. The jury was never aware of the fact. As a result of counsel's poor health, he simply forgot to raise a defense of habitation, failing to preserve the issue and further he failed to request defense of habitation as a jury instruction. Due to counsel's diminished capacity, he failed to object to the burden shifter, bias jury charges. He failed to object to the implied malice charge. "Regardless of the evidence presented at trial, a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon" (State v. Burdette Supreme Court of S.C. 427 S.C. 490 832 S.E. 2d 575). This argument was heard in the courts prior to the start of the defendant's trial in March of 2019. This issue should have been objected to the moment the implied malice charge was given because there was evidence presented that could reduce, excuse, justify or mitigate the homicide. The trial counsel never bothered to object. Further, due to counsel's failing health, he did not make certain that the client understood all of the elements of what he was facing nor did he fully explain the plea offers.

The ABA standards emphasize the importance of competent counsel at the plea stage: A lawyer's duty to represent a client competently in the pre-trial stage of criminal case, including in plea negotiations is recognized in the ABA model

rules of professional conduct (Brookhart v. Janis, 385 U.S. 1, 7-8 (1966)). Model rules 1.4 (b) a lawyer must explain a matter to the extent reasonably necessary to permit the client to make informed decisions. Defense counsel's failure to communicate the plea offer, and to fully and accurately explain the choices facing the client, effectively deprived the petitioner of the right to knowingly and intelligently make a decision that had a dramatic affect on the petitioner's future. If counsel had clearly communicated that if found guilty of murder, the petitioner could get life without parole, and explained that a 10 year sentence at 85% means the petitioner would be looking at 8.5 years instead of 10 years. Knowing that a guilty charge of murder could be life verses a 10 year plea would be 8.5 years if explained in that manner the petitioner would have been able to make an informed decision. Instead counsel offered the plea deals at 85% and never even mentioned that the petitioner could get life in prison if found guilty. There was no mention of life in the plea arrangements on pg.686 and pg. 688 of volume II. Further, co-counsel James Price IV and Powers Price never stated on the record that they absolutely explained the offer. This failure to communicate prejudiced the appellant and caused him to lose the benefit of a favorable plea, counsel's performance should be deemed constitutionally deficient.

#### 6) Argument

PCR counsel Rodney Richey, was ineffective for failing to perfect appellant application on PCR. Attorney Richey did not investigate or provide any medical conclusions or documentations to support appellants claim of trial counsel's poor health and ineffective assistance.

There were no amendments made to the applicant's original application for PCR. Had PCR counsel thoroughly examined the jury charge which was discussed in the application, the fact that the trial lawyer failed to object to the implied malice charge which was connected to the defense of habitation and murder instructions, this could have been raised during the PCR hearing.

#### Conclusion

Based on the forgoing argument, the petitioner would request that this petition be granted in order to allow full briefing on the above raised issues.

S/ Lawton L. Holloway  
Petitioner.

RELIEF

Conviction be reversed, sentence vacated and case be remanded to the lower court for further proceedings.

Respectfully

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