

The State OF South Carolina

In The Court Of Appeals

Certiorari to Cherokee County

Honorable, Circuit Court Judge

Mark Earls,

Petitioner,

Vs.

State Of South Carolina,

Respondent,

RECEIVED

OCT 28 2024

SC Court of Appeals

Appellate Case No.

Pro Se Johnson Petition for Writ of Certiorari

Marl Earls#

Lee Correctional Institution

990 Wisacky Highway/

Bishopville, South Carolina 29010

Question Presented

Is jurisdiction granted to family court pursuant to **South Carolina Code Ann. §63-19-1850 (cum.supp.23) §63-19-1860; §63-19-1870**, if so, did the state violate applicant fourteenth amendment rights under the Federal constitution when the police failed to obtain jurisdiction from family court?

Factual Analysis

In case at bar, the police conduct violated applicant rights under §63-19-1850; §63-19-1860; §63-19-1870. As such, the applicant invokes his rights under the juvenile code pursuant to South Carolina Code Ann. §63-3-510 (B) (cum.supp.23).

Accordingly, the police obtained an arrest warrant without first obtaining the signature of applicant probation officer. This is clearly evident by virtue of the signature on the arrest warrant (App.pg. 145). Applicant arrest took place on May 7th, 2015, and the state invoked the automatic waiver provision which is not applicable to juvenile revocation hearings. The family court retains jurisdiction of the juvenile until the 18th or 21st birthday whichever is so stipulated by the court. The state obtained arrest warrants and indictments for the applicant. By virtue of the mandatory language of statute, the applicant liberty interest is implied in the language of statute.

Moreover, counsel testimony at hearing clearly shows that he failed to conduct an investigation into applicant case. Counsel testified that he was unaware that a juvenile hearing was held (App.pg.146; lines2-23) But the PCR court ruled that the applicant failed to show prejudice (App.pg.181)counsel is required to conduct an investigation, and in this case, the fact that applicant was juvenile which was known by all parties is not effective assistance of counsel but ineffective assistance of counsel since this was critical to the outcome of case. Without subjecting ourselves to second guessing counsel actions, the facts speak volumes for the applicant to be granted relief ion this case.

Whenasherein, the applicant was a juvenile counsel should have known. If this hearing was not held then counsel could make a motion to court to have the case dismissed since the General

Sessions court lacked jurisdiction over applicant pursuant to §63-19-1850; §63-19-1860; §63-19-1870.

This was and as well is deemed to be a critical stage of the adversarial process, for the applicant and counsel abandoned applicant at a critical stage.

Legal Analysis

The very nature of the juvenile system makes clear the family court juvenile adjudication is an inherently different process than typical criminal prosecution. Indeed “[t]he primary purpose of the juvenile process is to exempt an infant from the stigma of a criminal conviction and its attendant detrimental consequences.” See, *In Re Skimer*, 272 S.C. 135,137 (1978)

South Carolina as *parens patriae*, protects and safeguards the welfare of its children. Family court is vested with the exclusive jurisdiction to ensure that, in all matters concerning a child, the best interest of the child is the paramount consideration. See, *Harris v Harris*, 307 S.C. 351,353(1992); See also, *State v Cagle*, 111 S.C. 548 (1918) the state is vitally interested in its youth, for them is the hope of the future. It may therefore, exercise large powers in providing for their protection and welfare.¹

A brief overview of the family court juvenile justice system is illustrative. The children’s code broadly defines the class of people who may initiate juvenile adjudicatory proceedings, including parents guardians, “any person who has suffered injury through the delinquency of a child, or an officer having arrested a child in charge.” See, South Carolina Code Ann. §63-19-1020 (cum.supp.23) Once a case has been initiated, a family court judge hears the matter and makes findings of fact. §63-19-1410 (a) (cum.supp.23) The family court can adjudicate the juvenile as delinquent and has a wide variety of rehabilitative measures at its disposal, including probation,

¹ South Carolina Board Of Juvenile Parole: Policy & Procedure Pgs.4-6

supervision, restitution, mentoring, treatment or commitment to the Department of Juvenile Justice not to exceed the juvenile's twenty-first birthday.²

Finally, while most of the facts presented are based on others' actions, counsel shares in some of the blame that denied appellant the right to counsel and a fair trial, especially when, as herein, counsel never put the prosecution case to the full adversarial test because of his actions, the court, and the prosecution.

While it is unsettled law whether individual errors, which may not be independently prejudicial when taken as a whole, applicant recognizes the threshold to asking the cumulative prejudicial question is to first find multiple errors exist in this case to form a cumulative prejudicial effect.

Therefore, when we examine whether trial counsel gave effective assistance, we examine all aspects of the counsel's performance at different stages, from pretrial proceeding through trial and sentencing. Separate errors by counsel at trial and at sentencing should be analyzed together to see whether their cumulative effect deprived the defendant of his right to effective assistance, they are, in other words, not separate claims, but rather different aspects of a single claim of ineffective assistance of trial counsel.

In South Carolina, the issue of whether cumulative prejudice analysis applies to multiple *Strickland v. Washington*, 466 U.S. 668 (1984) claims of ineffective assistance of counsel in per appeals remains an unsettled question. See, *Walker v. State*, 397 S.C. 226, 243 n.5 (Ct.App.2012); *Lorenzen v. State*, 376 S.C. 521 n.3 (2008) South Carolina Supreme Court and South Carolina Court of Appeals have both mentioned cumulative prejudice analysis on several occasions, however, some circuit judges have in per cases recognized the analysis in granting

² South Carolina Board of Juvenile Parole ;djj.sc.gov pgs. 23-34

relief for ineffective assistance of counsel before being reversed by either Court Of Appeals or South Carolina Supreme Court. Lorenzen, id, at 535,

A) Cumulative Analysis and the United States Supreme Court

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

Thus, in these jurisdictions courts conclude that defense counsel provided constitutionally inadequate assistance only when at least one claim of counsel error satisfies the two-pronged test on its own. Robertson, id, at 542. Conversely, courts in a majority of states have either recognized or plainly adopted some form of cumulative analysis for reviewing ineffective counsel claims. See, Brooks v State, 929 SO.2d 491, 514 (Ala. Crim.App.2005); State v Savo, 108 P.3d 903, 916(Alaska Ct.App.2005); In Re Jones, 917 P.2d 1175, 1196 (Cal...1996); Burns v State, 76 A.3d 780, 790-91 (Del. 2013)

Although some slight variations exist among these state courts, cumulative analysis generally entails the consideration of multiple claims of trial counsel errors through either the deficient performance or prejudice prong of the Strickland test. See, Harris v Wood, 64 F.3d 1432, 1438-39 (9th Cir. 1995); Bowers v state, 578 A.2d 734, 744 (Md. 1990) Some courts have concluded that, while specific types of error by trial counsel may not amount tom deficiencies under Strickland, the “ fundamental lack of formulation and direction in presenting a coherent defense” can establish deficient performance under the first prong. See, Stouffer v Reynolds, 168 F.3d

1155, 1162-65 (10th Cir.1999); *Dyer v Crisp*, 613 F.3d 275, 278 (10th Cir. 1980); *United States v Haddock*, 12 F.3d 950, 955 (10th Cir.1993) Many courts have questioned whether multiple counsel deficiencies, each failing individually under the prejudice prong of the Strickland test, nonetheless violated the defendants right to a fair trial when viewed in the cumulative manner. *Savo*, *id*,

Under *Stevens v State*, 617 S.E.2d 366 (2005) court found that because the defendant likely would not have pled guilty to all eighteen counts and may well have received a lighter sentence if the court had four or five counts before it rather than eighteen., *Stevens*, *id* at 368.,

B) Strickland language supports cumulative review

The language of the Strickland opinion suggests that the Supreme Court anticipated that appeals would involve multiple claims of deficiency by counsel and that courts should review the resulting prejudice cumulatively. *Strickland*, *id*, at, 690, (Citing *United States V Bagley*, 473 U.S. 667,683 (1983)

In the deficiency prong of the two-part test, the court specifically focused on defense counsel's "Performance" *Strickland*, *id*, at 687,. As professor Blume& Christopher Seeds argue," the cumulation of deficiencies begins in the first prong." See, *Reliability Matters; Reassociating Bagley Materiality, Strickland prejudice and Cumulative Harmless Errors*, 95 *J.Crim.L&Criminology* 1153, 1165; John Blume & Christopher Seeds (2005) Additionally, the court elaborated on the overall performance of counsel during representation, holding a defendant proves deficient performance by showing that "counsel made errors so serious" that the defendant was deprived of the constitutionally adequate representation guaranteed by the sixth amendment. *Strickland*, *id*, at, 687,.

A similar choice of words is present in the prejudice prong of the Strickland test. Strickland, id. The court noted that the “defendant must show that the deficient performance prejudiced the defense.” Further, the court explained that the second prong is satisfied when the defendant proves that “counsel’s errors was so serious as to deprive the defendant of a fair trial, a trial whose result is reliable “lower courts have particularly looked to the use of this language and the plural use of “errors” to find each individual counsel error should not be viewed in a vacuum. See, Schofeld v. Hosley, 642 S.E.2d 56, 60 (GA.2007); Exparte Aguilar, 2007 WL3209751.n3 (Tex. Crim. 2007). Indeed. One could easily discern a directive from the court for a separate, individual review of each claim of deficient performance under Strickland if the majority had chosen singular words such as counsel’s error or action. Strickland, id, at 687,.

Along with using the words in the plural form throughout its discussion of the Strickland standard, the court emphasized that lower courts should remember that the principles laid out in the opinion must not facilitate the judicial construction of “mechanical rules” Strickland, id, at 696; Ruth A. Moyer, To err is Human; To Cumulate Judicious; The Need for United States Supreme Court Guidance on Whether Federal Habeas Courts Reviewing State Convictions may Cumulatively Assess Strickland errors, 61 Drake. L. Rev. 447, 466-76 (2013)

Rather courts reviewing ineffective counsel claims must “consider the totality of the evidence” that was presented to the fact finder. Strickland. Id, at 695,. Merely dissecting and distinguishing each individual deficiency contravenes the fundamental focus on considering whether the proceeding as a whole was just and reliable. Strickland, id, at 686,. Indeed, the court stressed that the “ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Moyer, id, at 484. Thus, the court’s rejection of

formalistic rules accompanying individualized reviews signals the courts acceptance of cumulative analysis of multiple claims of ineffective assistance. Moyer, *id.*, at 485,

C) Supreme Court precedent approves of cumulative analysis

Additionally, other Supreme Court precedent further demonstrates that courts should review ineffective counsel claims cumulatively. Blume & Seeds, *id.*, at 1171. As early as 1935, the court approved of cumulative analysis for certain trial errors-specifically, in the context of reviewing claims of prosecutorial misconduct. See, *Berger v United States*, 295 U.S. 78 (1935) the court reversed and remanded for new trial holding that a prosecutors misconduct was not “slight or confined to a single instance” but was, in fact, pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded or inconsequential. *Berger*, *id.*, at 89.

As Blume& Seeds argue, the various suggestions of the court accepting cumulative prejudice reviews for ineffective counsel claims began with *United States v Bagley*, 473 U.S. 667 (1985) which was decided in the term immediately following the *Strickland* decision. See, Blume& Seeds, *id.*, at 1167, 1169; *Bagley*, *id.*, at 681; *United States v Valenzuela-Bernal*, 458 U.S. 858, 874 (1982) In *Bagley*, the court adopted the *Strickland* prejudice test for appeals, previously controlled under *Brady* regarding the materiality of evidence suppressed by prosecution. *Bagley*, *id.*, at 682-83; *Valenzuela-Bernal*, *id.*, at 874. Mirroring the *Strickland* prejudice prong, *Strickland*, *id.*, at 687, .the court held that evidence withheld from the defense by the prosecution i s “material only if there is a reasonable possibility that had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Bagley*, *id.*, at 682,

Ten years later, a majority of the court mandated a cumulative review of multiple *Bagley* materiality claims. In *Kyles v Whitley*, 514 U.S. 419 (1995) the court ruled that the Fifth circuit

erred in analyzing materiality by focusing individually on separate pieces of suppressed evidence. *Kyles*, id, at 422, the court unequivocally emphasized to lower court that pieces of suppressed evidence must be “considered collectively, not item—by-item.” Accordingly, the majority in *Kyles* reversed the appellant’s conviction and held that the “net effect” of suppressed evidence undermined confidence in the reliability of the jury’s verdict. *Kyles*, id, at 437, 453. Given that *Strickland* and *Bagley* are inextricably linked by their prejudice tests. *Bagley*, id, at 682, the courts position in *Kyles* demonstrates that it would also likely approve of cumulative prejudice analysis in ineffective counsel claims. *Blume & Seeds*, id, at 1169,

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Conclusion

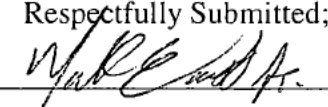
In assessing multiple Strickland claims of ineffective assistance of counsel, courts should consider the cumulative prejudicial effect of multiple attorney deficiencies. A majority of courts around the nation have reached this conclusion. On numerous occasions, the South Carolina judiciary has come close to joining that majority. The wide-ranging suggestions of support for cumulative review from the United States Supreme Court, as well as, courts’ around the country are further proof of the need for its recognition in South Carolina. Due to the persistent problems occurring in individualized Strickland reviews as well as the issue of differing claim definitions, cumulative prejudice analysis is necessary to provide consistent reviews of multiple claims of

ineffective counsel for all pcr applicants. In adopting cumulative review, South Carolina will take a crucial step forward in its pcr process to ensure that all criminal defendants receive fair review of their fundamental constitutional rights to effective counsel and a just proceeding.

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Wherefore, it is prayed court grant writ

Dated: 17 day of October, 20 24.

Respectfully Submitted;
S/ 
Mark Earls/ Pro Se

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Proof of Service

I, **Mark Earls**, being duly sworn say that:

A copy of the within Pro Se Brief has been served upon the respondent herein listed below by first class mail on the 17th day of October, 2024, to address as follows:

South Carolina Attorney General

C/O Judicial Circuit PCR Division

Post Office Box 11549

Columbia, South Carolina 29211

Dated: 17th day of October, 2024.

Respectfully Submitted:

SI Mark Earls Jr.

Mark Earls /Pro Se

