

Date: September 25<sup>th</sup>, 2013

Daniel Shearouse, Clerk  
South Carolina Supreme Court  
Post office Box 11330  
Columbia, South Carolina 29211

RECEIVED

OCT 02 2013

S.C. SUPREME COURT

Re: Willie Green v. State of South Carolina  
Appellate Case No. 2013-213568

Dear Clerk:

Enclosed please find one (1) copy of Appellant Respond  
To Johnson Petition, to be filed in the above cited  
action.

Your assistance in this matter would be greatly  
appreciated.

Respectfully submitted,  
Willie M Green

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State of South Carolina  
In The Supreme Court

OCT 02 2013

S.C. SUPREME COURT

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L. CASSEY MANNING, circuit court judge

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2012-213568

CASE NO. 2013-213568

Willie Buzen,

Petitioner,

v.

State of South Carolina,

Respondent.

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Petitioner Johnson Petition Respond

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Statement of Case

Petitioner Willie Buzen pled guilty to incest, first  
kind degree criminal sexual conduct, and two c-

Statement of case, cont.

counts of second degree criminal sexual conduct with a minor, during the July 2008 term of the Richland County General Sessions Court before the Honorable J. Michelle Childs, judge.

Petitioner received an aggregate fifty-year sentence in the case, App. 1-80. George McElv-  
sen represented Petitioner at Plea proceeding. Petitioner did not have a direct appeal in the case.

On April 30, 2010, Petitioner filed an PCR app-  
licant with the Richland County office of the  
Clerk of Court, App. 81-109. On July 23, 2010, the  
respondent filed a return requesting that a he-  
aring be held in response to Petitioner action.

A PCR hearing was convened on May 23, 2012,  
at the Richland County Courthouse before the Ho-  
norable L. Casey Manning, judge, App. 114-142. Pe-  
titioner was present at the hearing and repre-  
sented by Robert Corney.

On November 19, 2012 judge Manning issued

Statement of case, cont.

An order of dismissal therein denying Petitioner's allegation of ineffective assistance of counsel in the case. App. 143-153.

Petitioner appealed Judge Manning's order of dismissal. On August 16, 2013, Appellate Counsel Wanda Carter filed a Johnson Petition requesting to be relieved as counsel. This Petition follows.

## Arguments

### I. Ground One:

Petitioner received ineffective assistance of counsel in violation of the sixth, and fourteenth amendments of the United States constitution, inasmuch as, plea counsel failed to advise petitioner and failed to object to prosecutor failure to proffer on record.

Petitioner plea agreement of one (1) to five (5) years and probation, and counsel failed to advise petitioner that in absence of such agreement by prosecutor he had a right to withdraw his plea.

### Supporting Facts:

Petitioner submit that during plea negotiation with plea counsel, he agreed to plea guilty to an open plea of one (1) to five (5) years and probation, and without such a plea agreement he would proceed to trial.

Petitioner submit that he negotiated with co-

I.

## Supporting Facts, cont.

unsent an open plea and a sentence agreement plea, but was sentenced under a cap and consecutive sentence.

And plea counsel failed to present expert psychiatric mitigating evidence to establish that at the time of offense, petitioner lacked the capacity to conform his conduct to the requirement of the law.

Plea counsel was required by law to object to the court's failure to allow petitioner to withdraw his plea, see, Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971). Also see, Ricketts v. Adamson, 483 U.S. 1, 10, 107 S.Ct. 2650, 2656, 47 L.Ed. 2d 1, 12 (1987).

Petitioner submit that the validity of his plea did not represent a voluntary and intelligent choice from the alternative courses of action open to him leading up to his plea.

Petitioner submit that in Missouri v. Ryan, 132 S.Ct. 1304 (2012), the United States Supreme

I.

Supporting Facts, cont.

court establish a new rule of constitutional law, that the sixth amendment right to effective assistance of counsel, extends to the consideration and negotiation of plea offers that lapse or are rejected. That this right applies to "All critical stages of the criminal proceeding."

In Padilla v. Kentucky 559 \_\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2011), the court made clear that "the negotiation of a plea bargain is a critical stage" of the criminal proceeding for ineffective assistance purposes, id. At 1392, 130 S.Ct. At 1486 (2011).

petitioner submit that plea judge the Honorable Michelle Childs, in her analysis of the issues surrounding petitioner's mental health evaluation, presentence report and plea,

negotiation knew and acknowledged that a one (1) to five (5) year plea agreement had been negotiated between petitioner, plea counsel and prosecutor, see, ROA, p. 47, lines 15-25.

I.

Supporting Facts. cont.

Petitioner submit that plea counsel, probation agent Rocky Reingro and judge Childs created a environment during meetings before plea hearing and during plea proceeding, with discussions about presentence report and probation, using such terminology that "constituted mental coercion" overbearing the will of petitioner, see, Baady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 95 L.Ed.2d 747 (1970).

Petitioner submit that plea counsel inadequate performance during plea negotiation and proceeding was prejudicial, where counsel failed to aggressively pursue the conditions of the plea agreement, upon which petitioner had agreed, a failure which resulted in a severe harsher punishment.

Petitioner submit that he was prejudice where plea counsel not ensuring that the conditions of plea agreement were kept, counsel representation during plea negotiations,

1) did not ensure that petitioner had an su-

I.

Supporting Facts, cont.

efficient awareness of the relevant circumstances and likely consequences of the plea, negotiations or proceedings, see, McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct 1441, 1449, 25 L.Ed. 2d 763 (1970).

a) did not present expert psychiatrist mitigating evidence, and failed to advise petitioner that in absence of such mitigating evidence, the plea court was required by law to allow him to withdraw his plea, see, Brady v. United States, supra.

And as a result of such constitutional errors, counsel performance fell below the objective standard of reasonableness considering the circumstances under the prevailing (current) professional norms, see, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 50 L.Ed. 2d 674 (1984).

II.

## Ground Two:

Petitioner received ineffective assistance of counsel, inasmuch as, Plea counsel failed to present at Plea, independent psychiatrist to establish mitigating expert testimony to oppose state aggravating and future dangerousness evidence.

## Supporting Facts:

Petitioner submit that judge Childs in her analysis of the issues relating to his mental competency, capacity to conform conduct to requirement of the law and future dangerousness, stated that "I just don't have enough information on him." ROA, p. 45, lines 5-12.

Further, the judge stated she wanted "both a evaluation report from the mental health department, and pre-sentencing report from probation," ROA, p. 47, lines 20-25.

Petitioner submit that when Plea coun-

II.

Supporting Facts, cont.

set out before the court witnesses and evidence, that his competency and capacity to conform, would be a significant factor at plea proceeding, at a minimum the plea judge was required by law to ensure petitioner had access to competent expert psychiatrist,

who would have conducted appropriate examination and assisted in evaluation, preparation and presentation of his defense, Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985).

Petitioner submit that at plea hearing counsel presented the testimony of Dr. Barbara Kizell who stated that petitioner had mental and psychological issues,

that warrant evaluation and treatment, see, ROA. p. 37 lines 7-20; p. 38, lines 25; p. 39, lines 1-24. Thus, putting into issue petitioner's mental competency and capacity to conform his conduct to the requirement of the law.

## II.

### Supporting Facts, cont.

Petitioner submit that during his plea negotiations and proceedings, the absence of independent psychiatrist to conduct professional examination on issues relevant to his defense, to help determine whether his insanity defense was viable, to present testimony and to assist in preparing cross-examination of state psychiatrist witnesses and testimony,

resulted in an inadequate resolution of the issues of petitioner's mental competency at the time of offense, and his capacity to conform his conduct to the requirement of the law.

With such psychiatrist assistance petitioner would have been able to put before the plea court, enough information relevant to his mental competency to permit plea judge to make a sensible determination, see. AKS v. Oklahoma, supra.

Petitioner submit that the basic concern of plea counsel during plea proceedings,

II.

Supporting Facts, cont.

should have been to "neutralize the evidence of aggravating circumstance", advanced by the state and to present mitigating evidence in support of Petitioner's defense, see, Godfrey v. Georgia, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed. 2d 398 (1980).

Petitioner submit that Plea counsel knew after talking with Dr. Krell, that the issue of mental competency would be relevant at Plea hearing,

but, even after requesting and receiving twenty-five hundred (\$2,500.00) from Petitioner for independent psychiatrist mitigating evidence, (see exhibit # one (1)),

Plea counsel failed to present at Plea proceeding any mitigating psychiatrist testimony, to oppose state aggravating future dangerousness evidence.

That during his Plea proceeding without psychiatrist expert assistance he was

II.

supporting Facts, cont.

prejudice, because he could not offer or present a well informed expert opposing view,

and thereby, loss a significant opportunity to raise in the mind of plea judge, questions about the state's proof of an aggravating factor, Ake v. Oklahoma, supra.

And that his guilty plea was not a waiver of his claim of incompetency, see, In Interest of Antonio, 319 S.C. 395, 461 S.2. 2d 825 (Ct. App. 1995).

III.

### Ground Three :

Petitioner received ineffective assistance of counsel, inasmuch as, plea counsel failed to consult with petitioner before deciding not to file notice of intent to appeal guilty plea.

### Supporting Facts :

Petitioner submit that the United States Supreme Court have established the legal principle that "A lawyer who disregards specific instructions from the defendant to file a notice,

of intent to appeal acts in a manner that is professionally unreasonable, *Rodriguez v. United States*, 346 U.S. 327, 89 S.Ct. 1715, 23 L.Ed. 2d 340 (1969).

That when counsel fails to file requested appeal, the defendant is entitled to a [new appeal], without showing that his appeal would likely have had merits.

That a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel

III.

Supporting Facts : cont

to file the necessary notice, and counsel's failure to do so can not be considered a,

"strategic decision", filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.

Petitioner submit that after plea proceeding he discuss with counsel, the prosecutor failure to keep the plea agreement he had agreed to with counsel, and he wanted to appeal his,

guilty plea for that reason. Further, Petitioner wife went to plea counsel office and discussed Petitioner desire to appeal. see exhibit "2".

Petitioner submit that plea counsel failure to file appeal was prejudicial, and if not for counsel un-constitutional error he would have timely filed appeal.

Petitioner submit that a denial of assistance

III. Supporting Facts, cont.

of counsel altogether, either actually or constructively, is presumably prejudicial.

And counsel failure to give notice of appeal, depriving petitioner of appellate proceeding altogether was prejudicial.

IV.

Ground Four :

The PCR court erred in it's ruling that petitioner did not request or ask counsel to file notice of appeal, without first, determining whether plea counsel had actually consulted with petitioner about appealing guilty plea.

Supporting Facts :

Petitioner submit that the record of these proceedings is void of any evidence that he waived his right to appeal his guilty plea.

And PCR court erred in ruling that petitioner did not ask or request that counsel file appeal, without first, determining whether counsel failed to consult with petitioner, itself, was deficient performance, see, ROE V. FLORES-GUTIERREZ, 538 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000)

Petitioner submit that in determining whether plea counsel had a constitutionally-imposed duty to consult with him about appeal,

IV.

Supporting Facts, cont.

PCA court should have considered such factors as whether petitioner received the sentence bargained for as part of the plea,

And whether plea expressly reserved or waived some or all of appeal rights. And PCA court failure to consider such factors, was prejudicial where petitioner was deprived of,

opportunity to successfully argue during appellate review his meritorious claims, see. ROE v. Flores-Ortega, supra.

Petitioner submit that he had ultimate authority to make the fundamental decision to appeal his guilty plea, JONES v. BARNES, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983).

And plea counsel failure to give notice of appeal, effectively, did not represent petitioner on appeal and such complete denial,

of counsel on appeal requires a presumption of prejudice, see. Penson v. Ohio,

IV. Supporting Facts, cont.

488 U.S., 75, 88-89, 109 S.Ct. 346, 107 L.Ed.2d  
300 (1988),

Respectfully Submitted,  
Willie M Green

Sworn to and subscribed before me

this 23rd day of September 2013

Susan H. Frye  
NOTARY PUBLIC

My Commission Expires  
March 5, 2018

my commission expires \_\_\_\_\_

State of South Carolina  
In the Supreme Court

---

L. Casey Manning, circuit court judge

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CASE no. 2013-213568

Willie Green,

petitioner,

v.

State of South Carolina,

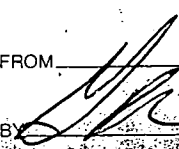
respondent.

Proof of Service

I certify that on September 25<sup>th</sup>, 2013 I mailed a copy of Petitioner Johnson Petition Respond to the following address: South Carolina Supreme Court, P. O. Box 11330, Columbia, South Carolina 29011.

Respectfully submitted,  
Willie M Green

RECEIPT

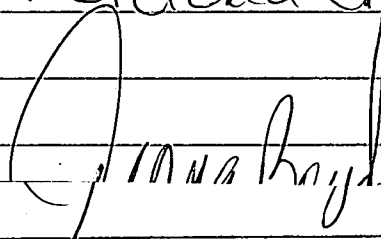
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DUE		<input type="radio"/> MONEY ORDER	

1152

9/10/13

To whom It May Concern,

After Willie GREEN sentencing I ASKED MR MCELVEEN to file An Appeal. MR MCELVEEN told me since he filed A motion to Reconsider that will put A hold on the APPEAL PROCESS And never filed for An APPEAL. MR MCELVEEN told me WILLIE GREEN was to get A private evaluation And he needed 2500<sup>00</sup> dollars. WILLIE GREEN NEVER Received A private evaluation only the regular court ordered evaluation.



Jeana Boyd

NOTARIAL

M. STEVE FUNDERBARK

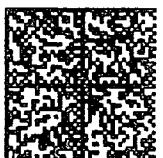
M. STEVE FUNDERBARK

Willie Breen # 334538 WA.182  
BRCI-4460 Broad River Rd.  
Columbia, South Carolina 29210

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