

February 4 2013

Daniel E Shearouse

P.O. Box 11330

Columbia, S.C. 29211

Dear Clerk:

You will find enclosed, in accord with Rule 243(c)
I have provided a written explanation as to why the
lower court's determination was improper, well within
the twenty⁽³⁰⁾ days of the date I was given.

Very Truly



Curtis Price, 303786

Petitioner

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FEB 07 2013

S.C. SUPREME COURT

This matter comes before this honorable court by way of application for P.C.R., filed February 20, 2012. On August 28, 2012, petitioner did amend application to include ineffective assistance of counsel - trial and P.C.R. On September 26, 2012, petitioner's action was dismissed. Petitioner did file notice of appeal and on January 9, 2013 was given notice to provide explanation which follows:

• Did the lower court err in its determination in dismissing petitioner's P.C.R. application where the issue of subject matter jurisdiction is to be determined?

Petitioner cites *It v Brown* 351 US 522, 570 S.2d 559, as the legal authority stating that the lack of subject matter jurisdiction can be raised at any time. The lower court dismissed the above action without having a hearing to hear cause.

• Did the trial court's constructive amendment deprive it of subject matter jurisdiction where instructions given did alter and broaden the grand jury's indictment?

Petitioner argues that the trial court's constructive amendment did deprive the court of jurisdiction where it altered and broadened the grand jury's indictment. A criminal defendant is entitled to be tried only on indicted offenses. See *St v Jones* 536 SE2d 396. It is a rule of universal observance in administering the criminal law, that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.

Nowhere in the body of the grand jury's indictment is there any reference to any allegation of the use of a representation of a deadly weapon charged. See Exhibit #1 - Grand Jury indictment

The right to have the grand jury make the charge on its own judgement is a substantial right, which cannot be taken away with or without court amendment. A constructive amendment "destroys the defendant's substantial right to be tried only on charges presented in an indictment returned by a grand jury. See *Stirone v US* 361 US 217, 80 S.Ct 273.

Reversible error occurs when the essential elements of the offense are altered to broaden the possible basis for conviction beyond what is stated in the indictment. It is indisputable that the amendment of the petitioner's indictment was error. See Exhibit #2

Though several court decisions subsequent to *Stirone*, see *Chapman v California* 386 US 18, 87 S.Ct 824, have ruled certain constitutional violations to be amendable to harmless error analysis, constructive amendments have never been included among their number, and *Stirone* has not been overruled. A criminal trial marred by a structural defect cannot reliably serve its function as a vehicle for determination of guilt or innocence and no criminal punishment resulting from such a trial may be regarded as fair. See *Arizona v Fulminate* 499 US 279, 310 111 S.Ct 1246

Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and dismissed as harmless error. Here we cannot know whether the grand jury would have included in its indictment a charge that yet because of the court's admission of evidence and under its charge this might have been the basis upon which the trial jury convicted the petitioner. If so, petitioner has been convicted on a charge the grand jury never made against him. This is fatal error. See *Cole v St of Arkansas* 18 S.Ct 514.

Article One (1), section Ten (10) of The South Carolina Constitution provides in part:

"No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on presentment or indictment of a grand jury of the county where the crime has been committed."

Section 17-19-10 of The South Carolina Code of Laws Provide:

"No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury."

Was trial counsel ineffective where he failed to object to the erroneous instructions given to the jury during the charge of the court which did charge the petitioner of a crime that the grand jury did not present an indictment for?

Petitioner argues that trial counsel was ineffective where he failed to object to supplemental jury instructions that allowed the jury to convict on a theory of prosecution not alleged in the body of the indictment. See *Bailey v St* Writ of Certiorari Opinion No 26975 - May 2011

Petitioner argues that the trial court's instructions did unconstitutionally enlarge the grand jury's indictment; thus counsel was in effect failing to protect petitioner's rights. See Exhibit # 2 - Trial Transcript page 447 lines 1-10 and page 448 2-6.

Fairness and due process requires that accused receives notice of the charge against him in order to enable him to properly defend himself. See U.S. Constitution Amendment 5 and S.C. Constitution Article 1 section 3.

It is held that an indictment not framed to apprise the accused "with reasonable certainty of the nature of the accusation against him is defective, although it may follow the language of the statute" *US v Simmons* 96 US 360, 362.

The Supreme Court has held that a later jury instruction cannot satisfy (such intent to give notice to the accused) Fifth (5th) amendment right to be tried upon charges considered and found by a grand jury See *Strone v US* 361 US 218, 80 S.Ct 273.

Is there cause to excuse as a procedural default where petitioner has been denied fair process and opportunity to comply with the State's procedures and obtain adjudication on the merits of his claim where P.C.R. counsel failed to amend and effectively argue petitioner's original P.C.R. application to include "all grounds for relief"?

Petitioner states that he did bring to the P.C.R. court's attention issues of conflict of interest between himself and the court appointed attorney to the fore. See Exhibit 3 - P.C.R. transcript page 482 lines 3-13, 485 lines 7-25, 486 line 1-10, 490 lines 1-6, 492 line 6-13, 18-25, 493 1-25, 494 1-22 and 495 1-25. Also See Exhibit # 4 Letter from The Office of Disciplinary Counsel

Counsel failed to include several issues for amendment to argue and have the court review and adjudicate on. Petitioner did make it clear that counsel was not prepared to effectively assist argue grounds for relief. A motion to relieve counsel was denied.

This present application should not be viewed as successive. This honorable court should find grounds to accept this application where in this

case procedural irregularities led to failure to review issues of ineffective assistance of counsel in the first application. When the system has simply failed a defendant where to continue the petitioner's imprisonment without review would amount to a gross miscarriage of justice.

An attorney's errors during an appeal may provide cause to excuse a procedural default, for if the attorney appointed by the State is ineffective the prisoner has been denied fair process and the opportunity to comply with the State's procedure and obtain an adjudication on the merits of his claim. See *Martinez v. Ryan* Opinion No 10-1001 (2012)

Petitioner asserts that he has not received a full fair "bite" of the proverbial P.C.R. apple because of P.C.R. counsel's ineffectiveness. Counsel's failure to argue that trial counsel was ineffective where he failed to object to erroneous jury instructions did prejudice petitioner, allowing the jury to convict on a theory not presented in the bill of indictment. See *Bailey v St Writ of Certiorari* Opinion No 26975 (May 2011) Had counsel effectively argued trial counsel's error to object to instructions it is likely that the proceeding would have been different.

In conclusion, petition prays for relief
that this honorable accepts this application
and grants relief reversing the convictions and
vacating the sentences in accord with Bailey v
St West of Certiorari Opinion No. 26975 (May 2010).

Respectfully submitted

Curtis Price #303786

Pro Se Petitioner

EX-1

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF OR THE ATTEMPT TO
COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on DECEMBER 16, 2003 the

Grand Jurors of Greenville County present upon their oath:

COUNT ONE- ARMED ROBBERY

That CURTIS LAVON PRICE did in Greenville County, on or about the 29th day of June, 2003, while armed with a deadly weapon, to wit: handgun, take by means of force or intimidation, goods or monies described as: cash and credit card receipts from the person or presence of Applebee's Restaurant. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO- POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE
ATTEMPT TO COMMIT A VIOLENT CRIME**

That CURTIS LAVON PRICE did in Greenville County, on or about the 29th day of June, 2003, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws

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S.C. SUPREME COURT

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Handwritten Signature]
SOLICITOR

Muldrow 559 SE 2d 847 (SC 2002)

CHARGE OF THE COURT

447

1 SLINGSHOT, METAL KNUCKLES, RAZOR, OR OTHER DEADLY WEAPON OR
2 WHILE ALLEGING EITHER BY ACTION OR WORDS HE WAS ARMED WHILE
3 USING A REPRESENTATION OF A DEADLY WEAPON OR ANY OBJECT
4 WHICH A PERSON PRESENT DURING THE COMMISSION OF THE ROBBERY
5 REASONABLY BELIEVED TO BE A DEADLY WEAPON SHALL SUFFER
6 PUNISHMENT. THAT IS ARMED ROBBERY, LADIES AND GENTLEMEN.

7 SO IF IN THIS CASE A TOY PISTOL WAS USED, THAT WOULD
8 SUFFICE IF A PERSON PRESENT AT THE TIME OF THE ROBBERY OR
9 DURING ITS COMMISSION REASONABLY BELIEVED THAT THE GUN IN
10 QUESTION WAS A DEADLY WEAPON.

11 NOW AS I'VE TOLD YOU, THIS DEFENDANT IS ALSO INDICTED
12 FOR POSSESSING A FIREARM DURING THE COMMISSION OF A VIOLENT
13 CRIME. THIS IS A STATUTORY OFFENSE. AND SECTION 16-23-490
14 OF OUR CODE OF LAWS READS IN PART AS FOLLOWS: IF A PERSON
15 IS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYS WHAT
16 APPEARS TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT
17 CRIME AND IS CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT
18 A VIOLENT CRIME AS DEFINED IN SECTION 16-1-60 HE OR SHE MUST
19 BE IMPRISONED IN ADDITION TO THE PUNISHMENT PROVIDED FOR THE
20 PRINCIPLE CRIME.

21 NOW I CHARGE YOU, LADIES AND GENTLEMEN, THAT INCLUDED
22 IN SECTION 16-1-60 IS ARMED ROBBERY. IN OTHER WORDS, ARMED
23 ROBBERY IS A VIOLENT CRIME WITHIN THE MEANING OF THE LAW.

24 SO BEFORE THIS DEFENDANT CAN BE CONVICTED OF THIS
25 OFFENSE, THAT IS POSSESSING A FIREARM DURING THE COMMISSION

CHARGE OF THE COURT

1 OF A VIOLENT CRIME, HE MUST FIRST HAVE BEEN FOUND GUILTY BY
2 YOU, THE JURY, OF ARMED ROBBERY. AND THE STATE MUST HAVE
3 PROVED BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT WAS IN
4 POSSESSION OF OR DISPLAYED WHAT APPEARED TO BE A FIREARM AS
5 I HAVE DEFINED THAT TO YOU AND DURING THE COMMISSION OF
6 ARMED ROBBERY.

7 LADIES AND GENTLEMEN, IN THE TRIAL OF A CASE THE STATE
8 CAN RELY ON DIRECT EVIDENCE, ON CIRCUMSTANTIAL EVIDENCE, OR
9 ON A COMBINATION OF THE TWO AS HERE. NOW DIRECT EVIDENCE
10 PROVES THE EXISTENCE OF A DISPUTED FACT BY USING ONE OR MORE
11 OF OUR FIVE SENSES WITHOUT THE AID OF ANY INFERENCES. FOR
12 EXAMPLE, THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO
13 HAVE ACTUAL KNOWLEDGE OF A FACT, IN OTHER WORDS, AN
14 EYEWITNESS, THAT IS DIRECT EVIDENCE.

15 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, IS WHERE
16 CERTAIN FACTS KNOWN THROUGH USING ONE OR MORE OF OUR FIVE
17 SENSES GIVES RISE TO A LOGICAL INFERENCE THAT OTHER FACTS
18 EXIST WITHOUT DIRECTLY PROVING THOSE FACTS. CIRCUMSTANTIAL
19 EVIDENCE, LADIES AND GENTLEMEN, IS PROOF OF A CHAIN OF FACTS
20 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

21 NOW AS I'VE SAID, THE STATE MAY RELY ON EITHER OR BOTH
22 OF THIS TYPE EVIDENCE, DIRECT OR CIRCUMSTANTIAL. AND
23 NEITHER IS INFERIOR TO THE OTHER. THE ONE IS AS GOOD AS THE
24 OTHER IF EQUALLY CONVINCING TO YOU -- EQUALLY CONVINCING TO
25 YOU, THE JURY. THEY'RE EACH ENTITLED TO THE SAME WEIGHT.

Curtis Price - Direct Examination

1 Let's start with the first one being the issue with
2 testimony of Mr. Marty Clapp.

3 THE WITNESS: Before I go any further, Your
4 Honor, I would like to bring to your attention that
5 Ms. Horlbeck, I've only seen her -- this is my second time
6 seeing her. I asked for her assistance in preparing my
7 case today and I haven't gotten the assistance that is
8 necessary to me to put up my case. As they said, my
9 witnesses, they haven't -- I talked to Torre Nurse who is
10 in Texas now and he told me he was waiting on some kind of
11 document from her so he could get back to her. I talked
12 to her earlier this week and he hasn't heard anything from
13 her -- he hasn't received anything from her.

14 As far as Ms. Mohanna -- Joey, he's now in
15 Florida and she had sent me these letters telling me all
16 about how it came to be that she had to testify against me
17 in order to keep her daughter out of DSS and things of
18 that nature.

19 THE COURT: I'm just now coming into this
20 case so what's the significance of keeping the daughter
21 out of DSS?

22 THE WITNESS: She basically perjured herself
23 to keep her daughter out of DSS, some kind of deal she
24 made that I didn't know anything about and my attorney
25 didn't know anything about.

Curtis Price - Direct Examination

1 THE COURT: What witness is this?

2 THE WITNESS: Joey Reeves, she just got
3 married.

4 THE COURT: Joey, that's a woman?

5 MS. HORLBECK: That's the co-defendant who
6 testified in this case.

7 MS. RATIGAN: Mohanna in the transcript.
8 That's the out of state witness that Ms. Horlbeck could
9 not reach.

10 THE COURT: And the other witness is who?

11 THE WITNESS: Torre Nurse, and it's as boy.

12 THE COURT: And what do you believe he would
13 testify to?

14 THE WITNESS: He would testify to the fact
15 that she had overheard me and him discussing financial
16 matters of me needing money the day before ---

17 THE COURT: Overheard you and who?

18 THE WITNESS: Me and Torre. Torre, he was
19 living in Atlanta at that time.

20 THE COURT: Who testified that ---

21 THE WITNESS: Joey.

22 THE COURT: Joey testified that she overheard
23 you and Torre?

24 THE WITNESS: Yes.

25 THE COURT: So if Torre were on the stand

Curtis Price - Direct Examination

1 right now, what do you think he would testify to right
2 now?

3 THE WITNESS: He would testify that she was
4 listening in on a conversation that me and him was going
5 shopping for an engagement ring. The thing was if you buy
6 her a ring that would solve a lot of problems. Right now
7 she's scarred that she's going to lose me. I'm like well,
8 the money to buy a ring I've got things I want to do. He
9 was like well, she wasn't your girl and I'm like -- so we
10 went looking for a ring. So she overheard and
11 misconstrued -- I don't know how she got so twisted. I
12 don't know how these things became totally different than
13 what it was. There was no need for me to go rob anyone.
14 I had my own money. And I wouldn't rob anybody for a
15 ring.

16 THE COURT: So you're saying that you did in
17 fact have a conversation with Torre Nurse?

18 THE WITNESS: Yes.

19 THE COURT: And it was about Torre's
20 suggestion that you needed to buy Joey a ring in order to
21 keep her from running off and y'all went looking for a
22 ring. And Joey, apparently, testified at trial to that
23 conversation -- that at the end of that conversation that
24 y'all made a decision to go rob somebody for the money.

25 THE WITNESS: I told her no, she couldn't

Curtis Price - Direct Examination

1 know what we were talking about because she couldn't keep
2 her mouth shut and that was her testimony about that.

3 THE COURT: We're going to go forward with
4 what we have and at the end of it, I'll size up whether or
5 not we need to keep the record open. I hear what you're
6 telling me. I'll make sure you get a fair trial here.

7 THE WITNESS: Your Honor, if I could just
8 have your attention here because I don't feel Ms. Horlbeck
9 is prepared as we should be today due to the fact that we
10 haven't had an opportunity to sit down and exchange ideas.
11 I had no idea what she was going to bring forth today
12 before I seen her. I saw her maybe 20 minutes ago in four
13 or five months. I haven't had an opportunity to discuss
14 my thoughts and ideas about what's going on about how we
15 could best go at it and I'm frustrated with it.

16 I got my family trying to call her. I did
17 not receive any mail or anything letting me know what's
18 going on. I've asked the Disciplinary Counsel to see
19 what's going on here, you know, why am I not been given
20 the counsel that I've been guaranteed? This is an
21 evidentiary hearing. I need her assistance to bring forth
22 evidence. I have questions about the grand jury. She
23 never said anything about that. I don't know what she's
24 thinking about this case. I don't know if she even
25 believes in this case.

Curtis Price - Direct Examination

1 It matters to me. This is my life and I need
2 her help, and I've not gotten that help.

3 Last week I found out that I was coming here.
4 I didn't even know I was coming to court today until last
5 week. A friend of mine -- as a matter of fact he had a
6 docket and I was on the docket. What am I doing on the
7 docket? So I filed a Motion to Relieve Counsel and I ask
8 that you grant her relief because she's really hasn't
9 helped.

10 THE COURT: Well, here are the points that
11 have been raised so far -- the category of points that
12 have been raised so far that the exhibits that are listed
13 should not have been allowed into evidence. That's one.
14 That Clapp should not have been allowed to testify as an
15 expert witness. That's two. The closing arguments were
16 improper, that's three. I don't need any help from a
17 lawyer to determine whether those were valid.

18 The next one you listed was that your
19 counsel's preparation was lacking, and then the last one
20 is that you need the testimony of these two witness. We
21 can go through the trial and I can tell whether you need
22 the testimony of these witnesses and whether or not that
23 could possibly be helpful to you.

24 The point about the preparation being lacking
25 and how that might show up in Mr. Hamilton's performance

Curtis Price - Direct Examination

1 during the trial is what he's talking about right now, so
2 what is your response to that?

3 MS. HORLBECK: As to whether or not I'm ready
4 to go forward?

5 THE COURT: Right.

6 MS. HORLBECK: Well, Your Honor, I first
7 spoke with Mr. Price in December of 2008. I went to the
8 institution where he was currently incarcerated. We spoke
9 for approximately an hour, hour-and-a-half. He has my
10 address. He sent me a letter outlining the grounds that
11 were just relayed to the Court. Additionally, I gave him
12 my card with a 1-800 number on it. He's called me several
13 times. I've spoken to him several times about his case.
14 His family members have called. One family member in
15 particular has called me and I returned those phone calls,
16 haven't heard anything back.

17 I did send a letter to Mr. Nurse along with a
18 proposed affidavit outlining what Mr. Price had expected
19 that witness to testify to. I have received nothing back
20 from that witness. I send it on letterhead. He had every
21 opportunity to call me and discuss it, make changes. I
22 spoke to the witness Joey Reeves several times. Just out
23 of an abundance of caution, I called her last night and
24 I'll be glad to tell the Court what she said. I don't
25 know if this will answer any questions or not, but I don't

Curtis Price - Direct Examination

1 think I could be any more prepared.

2 If there is any question and the Court thinks
3 that I am not prepared, I'll be more than happy to stand
4 aside and allow him to get another attorney, but I don't
5 know anything else that I can do to prepare for the case.

6 THE COURT: Mr. Price.

7 THE WITNESS: I haven't spoken to you since
8 the last time when I gave you -- when I saw you in
9 November.

10 MS. HORLBECK: You and I have spoken
11 substantially. After speaking to you ---

12 THE WITNESS: I have not spoken to you --

13 MS. HORLBECK: You've had my 800 number.

14 THE WITNESS: How could I call you on an 800
15 number, we have no access to 800 numbers.

16 MS. HORLBECK: You have called me several
17 times, Mr. Price.

18 THE WITNESS: I must have me confused with
19 somebody else, Ms. Horlbeck.

20 Your Honor, the fact that she's prepared to
21 go forward, when I gave her that in November, it has way
22 more than what she's listed here today. The fact that
23 Mr. Hamilton's preparation for the trial, she has not
24 outlined even half of the things I was speaking about for
25 his trial preparation. The exhibits were one thing, yes,

Curtis Price - Direct Examination

1 but if we go back and think about preparation trial, his
2 lack of, I guess, the Fourth Amendment Violation that we
3 have when we talk about the warrants.

4 These warrants here was given to me by
5 Mr. Hamilton ---

6 THE COURT: Okay. I'll tell you what I'm
7 going to do. Mr. Hamilton, are you free tomorrow?

8 MR. HAMILTON: I have a Family Court trial
9 but it may not go no farther.

10 THE COURT: You think it's going to settle?

11 MR. HAMILTON: It could possibly settle.

12 MS. HORLBECK: I'll be here.

13 THE COURT: I'll set this for 11:00 tomorrow
14 morning.

15 MS. HORLBECK: I'll talk to Mr. Price in the
16 meantime.

17 THE COURT: This is not unusual that you
18 think she's not ready when, in fact, she might very well
19 be ready. I'm going to give you two a chance to talk. So
20 put this, sort of, confrontation attitude aside and
21 cooperatively deal with her and we'll get this thing
22 tried.

23 Sir, for your benefit, I regret that we won't
24 be able to do this thing today. I hope that your schedule
25 will permit you to be here tomorrow. But as you can

Curtis Price - Direct Examination

1 imagine, this is the kind of case that if we don't do this
2 right and make sure it's done right, we'll all be back
3 here two or three years from now doing it over again.
4 It's better to give everybody a fair chance to be
5 completely prepared and have confidence that everybody is
6 prepared and then go forward.

7 We have a fairly light morning. We have two
8 cases set.

9 MS. RATIGAN: Mr. Posey has told me that he
10 wants to be ready to go at 9:30 because ---

11 THE COURT: Let's do it at 10:30.

12 MR. HAMILTON: Only if I get caught up in
13 Family Court --

14 THE COURT: Then we won't be able to try it.
15 It would just have to be taken up another day.

16 MS. RATIGAN: Just one thing, we need an
17 Order to hold him over.

18 THE COURT: Shirley, can you prepare one,
19 please.

20 THE CLERK: I have it here.

21 THE COURT: Thank you.

22 --END OF TRANSCRIPT RECORD FOR FEBRUARY 25, 2009--
23
24
25

PRICE VS. THE STATE

P R O C E E D I N G S

(Proceedings continuing from previous day, 2/25/09)

MS. RATIGAN: If it please the Court, Your Honor, this is the case of Curtis Price versus the State, Docket No. 2007-CP-23-8108. This case was actually originally called yesterday afternoon. I read the case into the record and Ms. Horlbeck read the issues she wishes to raise on appeal and Your Honor granted a continuance to this morning in order for counsel to meet more with her client.

Just to reiterate he was indicted for armed robbery and possession of a weapon during the commission of a violent crime. He was represented by Mr. Hamilton after a jury trial before Judge Pyle on July 23, 2004. He was convicted and found guilty of those charges.

He received consecutive sentence of 30 years for armed robbery and five years for the weapons charge. The appeal was dismissed after an Anders Brief was file to the Court of Appeals in February of 2007.

THE COURT: He got consecutive sentences totaling 35, yes, Your Honor.

MS. RATIGAN: Yes, Your Honor.

THE COURT: I was under the impression he had consecutive sentences totaling 60. I misunderstood.

MS. RATIGAN: It's 30 for the armed robbery

PRICE VS. THE STATE

1 and five for the weapons charge.

2 THE COURT: Okay. And Ms. Horlbeck.

3 MS. HORLBECK: Your Honor, I believe
4 Mr. Price has a motion.

5 THE COURT: Mr. Price.

6 MR. PRICE: Your Honor, we were preparing for
7 today and maybe Ms. Horlbeck and I got to talking and she
8 told me some things and I can't believe that there's no
9 case law for a Fourth Amendment violation. I just can't
10 believe there is no case law for that. I'm under the
11 impression that she just doesn't really want to take it.
12 I don't know how she can't find case law when I found old
13 case law that was 100 years old.

14 THE COURT: Other than the fact that you are
15 concerned that she didn't find the right case law for you,
16 what other problems are there with her representation of
17 you that causes you to ask for her to be relieved?

18 MR. PRICE: I haven't seen any documentation.
19 I asked that the grand jury issue be reviewed. I haven't
20 seen no documents of the grand jury issue. I was asking
21 her about helping me investigate the fact that for my
22 trial there were documents that was presented that
23 Mr. Hamilton didn't actually get into evidence. I was
24 trying to get her to assist me to find some case law on
25 that as well.

PRICE VS. THE STATE

1 There were some letters that Julia wrote that
2 she testified that were contrary and I was trying to get
3 that into evidence and I was trying to find some case law
4 and I needed her help and I haven't had it.

5 THE COURT: What was it that was denied?

6 MR. PRICE: There were letters that spoke and
7 she was supposed to be testifying to this and testifying
8 to that and that she had all kind of things going on.

9 THE COURT: This is Reeves letters.

10 MR. PRICE: Uh-hum.

11 THE COURT: Anything else?

12 MR. PRICE: I had gave her an amendment I had
13 wanted her to assist me with as far as my application and
14 there are a lot of things in there that I asked and are
15 just not in there. Some of the records that weren't
16 reviewed and essentially a Brady violation, and I haven't
17 seen anything according to that as well.

18 THE COURT: Anything else?

19 MR. PRICE: There were some records that were
20 supposed to be brought in as evidence as trial. They
21 never made it as well. I was trying to get her help as
22 well. There were radio communications between the
23 officers that night and they never made it in as well.
24 There's a lot of things I'm missing for my case that shows
25 that it wasn't prepared to a reasonable standard that

PRICE VS. THE STATE

1 should have been. I'm on trial for my life, and it was
2 half done the whole way and I'm trying to prove that
3 today. I have basically my word with no documentation and
4 I was under the impression that my counsel was supposed to
5 assist me with that.

6 THE COURT: Anything else?

7 MR. PRICE: There was also prosecutor
8 misconduct that I had wanted to bring up as well. She
9 used perjured and she just went out on a limp, Your Honor.
10 When I just go back over in my mind, I see so many things
11 now that seemed so wrong to me that I wanted to bring to
12 your attention, Your Honor.

13 THE COURT: Is that it?

14 MR. PRICE: (Witness nods).

15 THE COURT: You can be seated. I took a
16 break yesterday to give you time, Mr. Price, to make sure
17 that you were able to tell Ms. Horlbeck everything you
18 were concerned about with regards to Mr. Hamilton's
19 preparation for trial because when that's the subject of
20 PCR, that's a big body of information to gather up and
21 it's difficult to spend a short amount of time trying to
22 understand how an alleged lack of preparation could effect
23 the outcome of a trial.

24 If that's what happened, it's usually not one
25 thing that you can point to that leads to the outcome

PRICE VS. THE STATE

1 being different than it would otherwise be. It's a list
2 of things, a series of things, over the course of a trial
3 that have the cumulative effect of affecting the outcome
4 of a trial. It takes a while, and I wanted to make sure
5 you both had a chance to converse about.

6 Ms. Horlbeck, did you have a chance to here
7 everything he wanted to say about that element of the
8 claim for a post-conviction relief?

9 MS. HORLBECK: We spoke for a few minutes and
10 then Mr. Price terminated the interview. But what I did
11 is I went back to my office and got the Memorandum that he
12 sent and everything that he has listed for the Court is
13 listed in his letter. When I went back to my office, I
14 prepared for those issues.

15 So, yes, I am prepared as a result of
16 discussions with Mr. Price before he terminated those
17 discussions. Everything he has talked about now is talked
18 about in his memo.

19 THE COURT: Mr. Price, is there anything you
20 want to say about the termination of your meeting with
21 Ms. Horlbeck?

22 MR. PRICE: She wasn't truthful, Your Honor.
23 I asked her a question and she told me an untrue statement
24 and I felt at that point that she was just -- I don't
25 know --

B-1



EX-4

The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Leslie M. Coggiola
Disciplinary Counsel

Tiffany N. Richardson
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

June 12, 2009

PERSONAL & CONFIDENTIAL

Ras Curtis Price #303786
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Lawyer: Caroline M.W. Horlbeck, Esquire
Matter Number: 09-DE-L-0208

Dear Mr. Price:

This office has conducted a preliminary investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by The Supreme Court of South Carolina.

This office is not authorized to give any advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain any individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed by you at trial or on appeal using appropriate procedures.


Ras Curtis Price
June 12, 2009
Page Two

In your letter of complaint, you allege that Caroline M.W. Horlbeck has failed to diligently represent you. Specifically, you allege that Ms. Horlbeck is not communicating with you regarding the status of your case. You also allege that you have not received requested documents. As a result of your letter, this office conducted a preliminary investigation to ascertain if Ms. Horlbeck's conduct violated the Rules of Professional Conduct or RLDE.

From our investigation, this office has determined that there is no evidence of any such lawyer misconduct on the part of Ms. Horlbeck arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rule 19(b)(2) of RLDE. As required by these rules, a copy of this letter is being sent to Ms. Horlbeck as notice of the dismissal of this complaint.

Sincerely,



Tiffany N. Richardson

TNR/

cc: Caroline M.W. Horlbeck, Esquire

SOUTH CAROLINA
GREENVILLE COUNTY

SUPREME COURT OF
SOUTH CAROLINA

CURTIS L. PRICE 303786
PETITIONER

Case No: 2012-213406

THE STATE
RESPONDENT

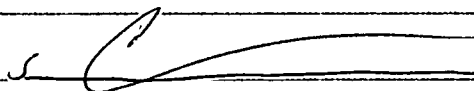
Certificate of Service

Petitioner certifies the original explanation and conclusion equating eight (8) pages and exhibit 1-4, consisting of eleven (11) pages has been mailed out through the mailroom at M^cC.I. to be deposited into the U.S. Mail to be mailed to:

The Supreme Court of South Carolina
% Daniel E. Shearouse
P.O. Box 11330
Columbia, South Carolina
29211

sworn to before me

This 4 day of February 2013
Joseph L Young
notary public



Curtis L Price
386 Redemption Way
M^cCormick S.C. 29899

my commission exp 10/1/2021

Pass Letters Price 303286

McC 01 F 4 171

386 Redemption Way

McCormick SC 29899

RECEIVED

FEB 04 2013

MCCI
MAIL ROOM

Supreme Court

c/ Daniel A Shearouse

P.O. Box 11330

Co/a SC 29211

The Department of Corrections is not censored this item. Therefore the department does not assume any responsibility for its contents.