

STATE OF SOUTH CAROLINA

In The Supreme Court

Certiorari To Charleston County

Court of Common Pleas

McYoung Rogers, Circuit Judge

**RECEIVED**

OCT 03 2013

S.C. SUPREME COURT

D'EL J. Grant; ..... PETITIONER,

v.

STATE OF SOUTH CAROLINA ..... RESPONDENT

"Notice Of Appeal For writ Of Certiorari"

2013-000135

D'el J. Grant; # 285741  
EE-C-I-570-SOUTH-149  
990 WISNEY HWY  
Bishopville, SC, 29010  
Pro-Se Petitioner

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## - ISSUE PRESENTED -

- Did trial Counsel err in failing to object to the Trial judge failure to properly instruct the jury; the Element<sup>s</sup> of the two Count<sup>s</sup> of murder in resolving the doubt to the Petitioner favor; As to an lesser including offense of manslaughter where there were reasonable doubt to murder?
- Did trial Counsel err in failing to encourage Petitioner to accept the states (30) thirty year plea offer, which was lesser than the (2) two life Sentences upon conviction, As the defense had (4) four eye witnesses which indeed scared Petitioner shoot both deceased?
- Did (PCA) Hearing Judge err in finding that the petitioner did not meet his burden of proving Ineffective Assistance of trial Counsel?

## - STATEMENT OF CASE -

- Petitioner Del J. Grant; Was Sentenced and convicted of (2) two Counts<sup>o</sup> of murder by Jury trial, held on: "November of 2007", term of an General Session Court in "Charleston County Court. This matter was before the Honorable: Judge "Howard Polking", (Tran-App: 1-370...).
- Petitioner Was Sentenced to (2) two Concurrent Life Sentences.
- Petitioner was represented by Trial Counsel: "Margaret Yanning",...
- Petitioner Respectfully appeal the conviction, as Appellante Counsel "Mr. Robert M. Dade", perfect his appeal as Respectfully dismissed... "State v. Grant", Op. No.: 2010-UP-388 (S.C. App. Filed August-25<sup>th</sup> 2010).
- Petitioner Respectfully appeal his Dismissal as stated: Post-Conviction Relief; "December-31<sup>st</sup> 2010". Petitioner hearing was held and Representation of Counsel "Artie Box", on: "December-6<sup>th</sup> 2010". An Conditional order was issued by: "Robert M. Young", (Honorable Judge); Summarily Dismissing Petitioner claims dated: "December-6<sup>th</sup> 2010".
- Petitioner here to Petition for "Writ of Certiorari".

# - ABUSEMENT -

• Trial Counsel did Rendered Ineffective Assistance of Counsel Falling below the Constitutional Level of Competency of the U.S.C.A. Const. Amend 6;  
For the Failure to object to the trial judge instruction<sup>s</sup> of the Reasonable Doubt Charge of an Lesser included offense of murder to Manslaughter;  
to resolve that doubt as governing the (2) TWO Count<sup>s</sup> of murder.

• Petitioner trial Counsel "Margaret Fanning" During the trial of: November-5<sup>th</sup>; through: November-7<sup>th</sup> 2007; Rendered Ineffective Assistance of Counsel, Prejudicing Petitioner to an Fair trial as Counsel Failure to Timely Object for Review, of an Unconstitutional error; Warranted as the trial judge Failed to properly instruct the jury of the reasonable doubt charge: "Tpt. p. 535 line. 5-11"; to Petitioner split of an lesser included offense from murder too Manslaughter, as an reasonable doubt was governed. "32<sup>nd</sup>: Illinois State; 155 SR. 409 ("If you have a reasonable doubt as to whether the defendant be guilty of murder or manslaughter, it was their duty to resolve that reasonable doubt in favor of the defendant").

• As one in this case as petitioner; those vital instruction<sup>s</sup> were not Carved into the record, to penetrate the mind<sup>s</sup> of the jury as to give petitioner an Warranted Right to an impartial jury.

• Petitioner Cite<sup>s</sup>: "Strickland v. Washington"; 466 US. 668, 104 S.Ct. 2059 (U.S. 1984):

- Petitioner show<sup>s</sup> that his counsel during trial Performance was Deficient, as showing that Counsel made an error that was so Serious, that Counsel was not functioning as an Counsel Warranted to the petitioner by the Sixth Amendment; As petitioner "Life and Liberty" was at his counsel mercy: Citing: Powell v.

Alabama", 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("The defendant requires the guiding hand of counsel at every step in the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence")... By Counsel Failure to Object; and require of the trial judge to properly instruct the jury as the "Judges of the Case"; of the Element<sup>10</sup> warranted of the charged instruction<sup>10</sup>; that if an "Reasonable Doubt" occurred in their deliberation, that the "Reasonable Doubt" would be resolved in Favor to Petitioner of an Lesser included offense of Murder to "man-slaughter". By Counsel Failure to Object and Request for the proper instruction<sup>10</sup> governed by: "King v. State", 135 So. 409; this issue prejudice Petitioner to an fair and impartial trial by jury; as this issue was neither preserved as an claim and cause to excuse Counsel Objection Ineffectiveness; to warrant an Objection claim under: "Fed. Rule. Crim. Proc. 52(b)"; and "Federal Habeas Proceedings" - "See: Edward v. Carpenter", 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d. 518 (2000)... Petitioner further Exhibits for the record that the deficient performance prejudiced the L.D. Defense As Four (4) Eye Witnesses; Scoped Petitioner as even in "The Heat of passion" during an heated argument; that this could have been self-defense, mandating manslaughter: "State v. Taylor", 200 S.Ed.2d. 387 (1973)... And by this; Petitioner show<sup>10</sup> presentation of probable and credible evidence by the Trial Record; that if Counsel had not abandoned that Defense for instruction<sup>10</sup>; Petitioner would not be convicted and sentenced to (2) two life sentences<sup>10</sup>; as the outcome would have been different, if Counsel Ineffective-Deficient-Performance, was as an functioning attorney guaranteed to Petitioner by his (6) sixth Amendment Right to an fair trial; Petitioner "life and Liberty" mandated to him to be free from an abridgement by Ineffective Counsel Performance guaranteed by his (14<sup>th</sup>) Fourteenth Amendment.. For this cause; the Petitioner prays for Reversal and Remanding for an New Trial

Mandating direction<sup>s</sup> and Instruction<sup>s</sup> from this Court, with Effective Assistance of Counsel to instruct the jury to Manslaughter charge...

- Trial Counsel erred in its Failure to encourage petitioner to accept the states (30) thirty year plea offer that was Highly Favorable than (2) two life sentences. Such Failure rendered Ineffective assistance of trial Counsel Failure to render Effective performance as an Effective Counsel by the "U.S.C.A. Const. Amend. 6"...

Petitioner asserts:

The American Bar Association's standard on the precise question before us is simply stated in its Model Code of Professional Responsibility, Ethical Consideration: 7-7 (1992):

"A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable."

"Anthony J. Amsterdam, in Trial Manual 5 for the Defense of Criminal Cases (1988), discusses the question in more detail:

"The decision whether to plead guilty or contest a criminal charge is ordinarily the most important single decision in any criminal case. This decision must ultimately be left to the client's wishes. Counsel cannot plea a client guilty, or not guilty."

against the client will. [Citation-Omitted] But Counsel may and [i]m]ust give the client the benefit of Counsel's professional advice on this crucial decision; and often Counsel can protect the client from [i]n]terester only by using a considerable amount of persuasion to convince the client that a plea which the client instinctively disfavors is, in fact, in his or her best [i]n]terest. This persuasion is most often needed to convince the client that she should plea guilty in a case in which a [i]n] guilty plea would be [i]n]destructive". 3201 at 339. "Borio v. Heame", 837.3d. at 32-33....

• Petitioner asserts that this type of deficient performance of Petitioner trial Counsel; is clearly what: "Streichland v. Washington", 466 U.S. 668, 104 S.Ct. 2052 (U.S. 1984) prohibit... After the Solicitor offered Petitioner (30) thirty years; Petitioner Counsel was to be an shield to bring forth guidance to petitioner as once the state had offered (30) thirty years to petitioner; As petitioner not knowing an Double life Sentence could be the out come of his guilt at trial of [i]n]... By counsel not performing [i]n] as the Sixth Amendment [i]n]stead Petitioner, as petitioner. Would have gracefully [i]n]cepted the plea of (30) thirty year, as state witnesses of Year; Witnessed petitioner cheat both victims: See: "Trp. 390 line: 22-23"; and: "Trp. 204 line: 1-9; and 8"Trp. 205 line: 20-23"; and: "Trp. 206 line: 1-3; and: "Trp. 68-69 line: 22-25; and 5"Trp. 69 line: 23-25"; and: "Trp. 70 line: 1-7"; Lastly: "Trp. 123 line: 4-16....

And by the state as the prosecution in this case must prove beyond a reasonable doubt every element of the offense as charged against the petitioner. "Jackson v. Virginia", 443 U.S. 307 (1979); Petitioner asserts the reasonable doubt was short; mandating petitioner the guidance of his counsel to except the plea at hand. "Judge v. State", 321 S.C. 334, 471 S.E.2d. 146 (1976), cited ruled in part in "Jackson v. State", 342 S.C. 95, 335 S.E.2d. 926 (2000), holding that - "Judge v. State" -; supra, held that a petitioner statement is insufficient to satisfy the prejudice promp. Counsel has a duty to advise a client on whether a particular plea to a charge appears desirable. Id. "Borick v. Ibrin", 99 T.2d. 442 (2<sup>nd</sup> Cir. 1996). A defendant has the right to make a reasonable informed decision as to whether to accept a plea. "Nilly v. Lockhart", 474 U.S. 52 (1985). Also "Von Moltke v. Gillies", 332 U.S. 708 (1948), "Commonwealth v. Napper", 385 A.2d. 521 (1978) ("Where Counsel Failed to advise on the feasibility of accepting a three year plea offer rather than face a trial and risk a ten-to-forty year sentence") also: "State v. Day", 969 T.2d. 39 (3<sup>rd</sup> Cir. 1992) ("Where the Court found Counsel ineffective in not advising his client to accept a five year plea bargain when the likely hood of his conviction was overwhelming and the possibility of a maximum twenty-two year sentence existed.)... In short - "A petitioner should not be deprived of an opportunity to accept the plea offer and receive a lesser sentence." "United States v. Day". In this case; petitioner counsel performance fell below the wide range of U.S.C.A. Const. Amend. 6.; of Effective Assistance of Trial Counsel. Such performance of an deficient performance, prejudice petitioner from taking the (30) thirty year plea, As petitioner had no idea that an (Double) life sentence was at hand. Petitioner was Not only deprived of his Sixth Amendment Guaranteed Right to effective assistance of counsel; But he was also deprived of his "Life and Liberty"; As was deprived by his counsel performance of such plea instructions... I deprivation was not noted by trial Counsel; the out come of that trial would have been different.

For that cause; Petitioner Plead For an New Trial; For this issue...  
Petitioner Seeks For Review in this respected court for reversal of  
the petitioned petitioning.

• "The (PCB) judge did err in finding that petitioner  
had failed to meet his burden of Proving Ineffective  
Assistance of Appellate Attorney along with trial  
Counsel Ineffectiveness."

• Petitioner (PCB) Counsel Was ineffective For not Exhibiting into  
the record of the trial transcript to show Deficiency of Petitioner  
trial Counsel Ineffectiveness as to the Failure of trial Counsel to  
Object at the jury instruction<sup>10</sup> as an heated argument had  
taken place; that Petitioner would have such reasonable doubt P.D.  
his favor than the double sentencing of two life sentences...  
With such introduction of the trial transcript: "Miller v. United States,  
317 U.S. 601, 63 S.Ct. 187. (He alleged that he had repeatedly urged his attor-  
ney to present to the circuit court of appeal the sufficiency of the  
evidence to sustain his conviction and that his attorney had invari-  
ably replied that this could not be done without obtaining a  
transcript of the evidence)..... Petitioner asserts<sup>10</sup> that if his (PCB)  
attorney was functioning as the: S.C. Rule. Civ. Proc. 71.1(d); of the U.S.C.  
A. Const. Amend. 6.; warranted; Petitioner would have met his burden  
of proving that his Trial Counsel and Appellate Counsel<sup>10</sup> fall below the  
range of Competency to show that prejudice was created as the  
Appellate and (PCB) hearing would have been different At trial.  
Petitioner asserts<sup>10</sup> that due to his Counsel Ineffectiveness at  
his (PCB) Hearing: "Strickland v. Washington"; 466 U.S. 668 (1984)... Petition-  
er would have shown that even an trial error occurred as Counsel failed  
to Advise Petitioner of Plea offer; Rendering Trial, Appellate, and (PCB)  
counsel Ineffective; For insuring out such Warning of Plea offer:

"Irby v. State", 153 SE 2d 409..... This case shows that in Reasonable  
doubt should have been warranted - "Tranpt. p. 335 Lines 3-11; as trial  
Counsel should have objected as an showing of clear error....."

Petitioner asserts that this court take into consideration  
the Facts and law of this case and Grant writ to hear the here  
issue!!

Respectfully  
Submitted;

Diet Grant # 285741  
LEC-I-SMU-SOUTH # 149  
990 Wisnoldy Hwy  
Bishopville, SC, 29010

Pro-se; petitioner

Dated: 9/24/2013

- CONCLUSION OF CASE -

For the foregoing reasons, petitioner appeal to alter and Amend the Judgment of the (PCB) (Appellant) and (Trial) Court decision pursuant to 39(e); As petitioner do set forth an claim of material fact and an genuine issue 56(e),...

Petitioner plead this Court to grant his petition for Writ of Certiorari.

Respectfully  
Submitted;

Diel J. Grant; # 283741  
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Bishopville, SC, 29010

Pro. sc; Petitioner,

Dated: 9/24/2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Charleston County  
Court of Common Pleas  
M. Young Rogers, Circuit Judge

D'EL J. IRANT; ..... PETITIONER,

v.

STATE OF SOUTH CAROLINA ..... RESPONDENT,

"TO PROCEED IN FORMA PAUPERIS"

- "CERTIFICATE OF SERVICE" -

Petitioner Request for leave to proceed "In Forma Pauperis" for  
this "Writ of Certiorari" to the Supreme Court with out filing fee:  
§24-27-150; as Petitioner is with out asset. Petitioner request that this  
action Not be dismissed for failure to pay fee: §24-27-130.... Also sees  
"Lyles v. State"; 310 S.E.2d. 228 (S.C. App. 1998); and "State v. Martin"; 471 S.E.2d.  
134 (S.C. 1993); "Rules Civ. Proc. Rule: 3(c). Petitioner hasly states an copy of  
this motion was issued to the Attorney General Office of the Appen-  
ch in this case & Supreme Court.

Respectfully  
Submitted;

D'el J. Irant # 285741  
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Dated: 9/24/2013

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