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S.C. SUPREME COURT

Wallace Demery Jr. 388733
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

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Patricia A. Howard-Clerk
P.O. Box 11330
Columbia, SC 29211

On September 12, 2024 my P.C.R. was denied with prejudice. I believe the P.C.R. court erred in ruling based upon these mitigating factors. These factors existed before the P.C.R. and after. During the course of the initial investigation, Mr. Weeks was informed that my sister was in fact a witness whose statement could prove vital. I told my attorney that Lashonda Demery was there to pick me up and she could verify I was alone and no one else was there which would make witness testimony inconclusive. The witness statement were taken days after the incident and after news outlets have ran the story in the papers and news channel. I relayed to my attorney that another witness, Denis Robertson was there the day Mr. Caesar came to my job and made threats. Denis was also incarcerated at the time Mr. Weeks came to visit me in County Jail. In Ingle v. State 2/19/02 defense counsel can be ineffective for failing to properly investigate a witness testimony where that testimony directly contradicts the theory of the defense. If Mr. Weeks would properly look into the witness testimony he would have known the witnesses for the state were false. Because Mr. Weeks failed to investigate the witnesses statements and the witnesses I provided, He did not provide adequate counseling. To establish a Brady violation you must show evidence at issue is favorable to the accused, either because it is exculpatory or because it is impeaching; State suppressed the

evidence, either willfully or inadvertently; prejudice ensued; material to verdict at trial (State v Greer 391 S.C. 179, 705 S.E. 2d 491) (2010) To support my issue of a brady violation, my knife that I use and had in my possession during the time of the incident was taken by first responder Nakia Cooper but never turned into evidence. That piece of evidence could prove vital because its a weapon that was in my possession but did not use because the incident that took place happen to fast without time for thinking. That missing evidence would show I had no malice but defending myself was on impulse not premeditated. Malice is defined as the intentional killing of a person knowing it to be wrong, intending to do it, knowing it to be wrong without just legal cause. I acted in self-defense, having that missing evidence could have been vital in proving that. Another issue that was raised at P.C.R but was ignored was the conflict of interest. The private investigator Mr. Weeks had employed resigned during the case and took employment with the solicitor over my case. That is a huge conflict that was raised but the issue was not handled at P.C.R or trial court. Another issue is the no trespass Mr. Ceasar had on him. When that issue was raised it was ignored along with the fact that Mr. Ceasar was a known bully who has been in and out of prison and was known for violence. I got treatment for PTSD, anxiety, and depression and was prescribe seroquel. Mr. Weeks were advised to have an evaluation done which he never done. Going into my plea I was led to believe I was going to receive 0-5 years. This was stated in front of my father, and my wife both who testified at my P.C.R but was not considered. In Jordan v State

374 S.E. 2d 683, 684-685 (1988) holding trial counsel rendered ineffective assistance of counsel in failing to withdraw guilty plea after state reneged on plea, and reasoning that counsel's conduct in not protecting defendant's right to enforce the plea agreement with the solicitor office fell below "prevailing professional norms." Smith v State 775 S.E. 2d 696 (2015); Davie v State 675 S.E. 2d 416 (2009). My plea offer was told to me, my wife, my sister, and father. When ask what would he do, he advised us that if it were his son he would tell him to take the plea. A guilty plea along with the resulting waiver of fundamental constitutional rights is valid only if it is made voluntarily, knowingly, and intelligently. Quoting Boykin v Alabama 395 U.S. 238 (1969). Pittman v State 534 S.E. 2d 623 (1999) When a defendant enters a guilty plea in reliance on a plea bargain that is accepted by the court, due process requires the plea bargain be honored. Santo bello v New York, 404 U.S. 257 (1971); Reed v Becka 511 S.E. 2d 396 (Ct. App, 1999) if it is not honored either two remedies is available, the court can require specific performance of the plea agreement or allow the defendant to withdraw his guilty plea altogether and start over. Dingle v Stevenson 2014 WL 8382931 at 4. In Custodio v State 644 S.E. 2d 36 (2007) (South Carolina Supreme Court), The Supreme court held that plea counsel was ineffective in failing to have plea agreement between defendant and solicitor office enforced based on the detrimental reliance exception. Had my lawyer explain and enforce the plea offered we would not be here. In State v Thomason 355 S.C. 278, 283, 284, 584 S.E. 2d 143 (Ct. App. 2003) quoting State v Cantrell 250 S.C. 376, 379, 158 S.E. 2d 184 (1967) An accused is not permitted to speculate on

the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized. I asked my attorney to appeal. In *Roe v Flores-Ortega* 528 U.S. 470, 480 (2000) holding that counsel only has a constitutionally imposed duty to consult with the defendant about an appeal when "there is reason to think either that a rational defendant would want an appeal or that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. When asked to appeal Mr. Weeks told my father he wanted another 15,000 dollars. When stated that we need him to only file the appeal he was angry we did not want him to represent me. I never knew it was 2 type of manslaughter charges. Mr. Weeks never told me that it was involuntary and voluntary manslaughter. So when I was told by Mr. Weeks that O-5 for manslaughter I did not expect nor knew there was two different types and the meaning of each one. For voluntary manslaughter plea I would have acted as the initial aggressor. In *State v Campbell* 111 S.C. 112, 113, 96 S.E. 543 (1918) A person assaulted, being without fault in bringing on the difficulty has the right to use such force as is necessary for his complete self protection, or which in the mind of a person of ordinary reason and firmness would reasonably prevent the assailant from taking his life or inflicting serious bodily harm. He was not limited to use the same force and no more than that with which he was threatened. The plea of accidental homicide, if it can be called a plea, is certainly not an affirmative defence because the state cannot ask for a conviction unless

it proves that the killing was done with criminal intent. Quoting State v Owens 433 S.C. 482, 860 S.E. 2d 357 (2021).

For the defense of habitation to apply a defendant need only to establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.

State v Rye 375 S.C. 119, 651 S.E. 2d 321 (2007). Even at the preliminary hearing solicitor Durant was going to grant a self defense motion but Mr. Weeks refuse the motion. After being convicted I found out about the two different types of manslaughter, and the immunity hearing that should have taken place. Had I knew all of this then I know the outcome would have been different.

An immunity hearing under code 1976 § 16-11-450 which states, a person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of a deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer. Even in the matter of Dean v State, 2015 WL 1481686 shows how trial counsel was ineffective but P.C.R. didn't in fact deny his claim. As a trial counsel, it's his duty to perform to his best ability and as a client I expect nothing less by trial counsel, being ineffective goes against my right. When asked to provide full case file Mr. Weeks charged my father and gave him some papers that were printed with duplicates to look full but was not complete. In the matter of Haddock 321 S.E. 2d 601 (1984)

clients case file should be returned upon request. Granting this Writ of Certiorari will give me the fair fight I never received. In conclusion, Mr Weeks did not uphold his duty as trial counsel and his performance fell way below of a competent attorney. He did not provide adequate advice or help. There are items that were never shown to me in my file, and I have yet to receive it. I even reached out to the lower court to resolve these issues but to no prevail, I was not given a fair shot, and the lower court ignored the issues. There have been less issues that were raised in other cases that were overturned. Thank you for the opportunity.

Sincerely

Wallace Pemey Jr.

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