# In The South Carolina Supreme Court

## For The Eleventh Judicial Circuit

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| Joshua W. Hopkins, Petitioner, | ) | Appellate Case No. 2024-000790 |
| v. | ) | Declaration In Support |
| | ) | Of Petitioner's Pro Se |
| State of South Carolina, Respondent | ) | Johnson Petition |

JOSHUA WARREN HOPKINS state:

1. I am the Petitioner in the above-entitled case. I make this declaration in support of my pro se Johnson petition.

2. Issue 1 - The PCR Court erred by ruling that trial counsel was not ineffective for not advising me to accept the plea offers that were made prior to trial.

3. The PCR Court contends that the record supports that prior to trial I was facing 2 indictments arising from the death of Sabrina Haynes' child on 11-27-13, including activity from 11-12-13 thru 11-27-13. That the initial indictment for Aiding and Abetting Homicide by Child Abuse as a principle true billed on June 1, 2015. The second indictment for Aiding and Abetting Homicide by Child Abuse asserting he aided and abetted his girlfriend, Sabrina Haynes to commit child abuse and neglect resulting in the child's death. It is undisputed that the State made a plea offer to the Applicant on the charge of aiding and abetting the Homicide by Child Abuse and a sentence between 10 to 20 years. That the same offer was presented by counsel Williams, as well as his earlier public defender previously. That it is undisputed that each time I rejected it. That in contrast to Hill, here I allege ineffective advice led not to an offer's acceptance but to its rejection. Having to stand trial, not choosing to waive it, is the prejudice alleged. That the evidence before this Court is that I was informed by counsel on at least 2 occasions of the plea offer of a recommended sentencing range between 10 to 20 years for the crime of aiding and abetting

the homicide by child abuse and dismissing the homicide by child abuse charge. That Counsel Williams, contrary to my testimony, did not indicate that I should reject the plea offer because they would allegedly get a directed verdict in the case. Counsel was aware of the nature of the State's case and my assertion is not credible. Counsel Williams credibly declared I understood the risks I was facing by rejecting the plea offer upon our understanding the nature of the State's case against me as either being the principle or as an aider and abettor, which included the possibility of a life sentence for Homicide by Child Abuse, under S.C. Code §16-3-85 (A)(1) (which carries a minimum of 20 years) in contrast with aider and abettor under §16-3-85 (A)(2) (which carries a potential sentence of 10 to 20 years). That Counsel made me aware of the offer and the risks if I failed to accept the offer. That I asserted my desire to go to trial and that I was not guilty and would not plead guilty.

I assert that throughout my trial Counsel's representation of me, he always advised me not to accept the State's offer because he can file a motion for directed verdict and win. He never gave me the impression that I was gonna lose trial or that I

would not be granted a directed verdict. Also, I only seen and talked with trial counsel about my case on 2 or 3 occasions. And, everytime we spoke, he told me to NOT accept the State's plea offer. The Honorable Judge was not present during the meetings between me and trial counsel so he don't Know what trial counsel said or not said at said meetings. Therefore, he committed an error of law to believe trial counsel's Word over mine. Furthermore, trial counsel failed convey the seriousness of my alleged offense and the severe consequences if I lose trial. We NEVER discussed or talked about losing trial or the possibility of losing trial. Trial counsel's assertion that he can get me a directed Verdict is what I depended on at trial. See Exhibit A (Tr.p. 776 lines 18 - page 778 line 8; Tr.p. 798 line 22 - p. 2) To further substantiate this allegation, trial counsel NEVER advised me on the plea offers. Instead, he told me that he rejected the plea offers. Meaning, I Was never presented with a choice. The choice was done for me.

This prejudice me because at the time of trial, I only possessed a 6th grade education, unlearned in the law, an incarcerated at the Lexington County Detention Center.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." The News & Observer Publ'g Co. v. Raleigh-Durham Airport Authority, 597 F.3d 570, 576 (4th Cir. 2010). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In ruling on a motion for summary judgment, "the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in that party's favor." The News & Observer Publ'g Co., 597 F.3d at 576.

The PCR Court failed to believe my testimony/evidence at the PCR hearing, and failed to draw any justifiable inferences in my favor. The PCR Court was not privy to any conversations between trial counsel and me, so the Court cannot say what I or trial counsel discussed. I alleged the allegation that trial counsel failed to convey the seriousness of not accepting the State's plea offer, and trial counsel never gave me a choice in the matter because he made the decision for me. I followed and adhered to his advice.

4. Issue 2 - The PCR Court erred by ruling that trial counsel was not ineffective for failing to call Waysolbert Hopkins to testify at trial.

5. The PCR Court contends that the decision not to call Waysolbert was an [redacted] an informed strategic decision because trial counsel testified that there was nothing to gain from the testimony of my father. That the record shows that during trial, my defense introduced evidence through cross-examination about significant number of hospital visits and also a visit on 11-11-13 that included x-rays. On cross-examination of Dr. Stephan Platte, he developed that on the 11-11-13. hospital

visit [redacted] the complaint was for fever and nasal congestion and eye pain. Tr. p. 224. However, the hospital notes indicated a large bruise on the anterior chest wall. Tr. p. 225. That Counsel suggested to Dr. Platte that law enforcement should have been notified, but Dr. Platte indicated he had not reviewed the records sufficiently to make the assessment and asserted this was [redacted] the first time he had reviewed the actual 11-11-13 records. Tr. p. 225-227. However, he did not see evidence in the 11-11-13 records that reported bruising on the buttocks. Tr. p. 229. That on cross-examination of Dr. Spalding, the pathologist, he confirmed that there were x-rays done on the child on 11-11-13 visit probably checking for skeletal injury, but [redacted] he did not find there being an x-ray that showed any broken bones on 11-11-13. Tr. p. 519-520. That at the hospital visit, it is clear the child was returned to the custody of the family as Waysolbert testified in the PCR hearing. That trial counsel's references at trial concerning the bruise on the child prior to the incident, yet DSS had not been called by the hospital as a result. That Counsel further testified that by not calling Hopkins with his limited value, he was able to secure the final closing argument, which he believed was a benefit, particularly when the Applicant's statements

about the version of the incident were already in evidence, which was generally consistent with his version. That I claim counsel should have had my father's testimony presented about the testimony from a 11-11-13 hospital visit in which he drove the victim and viewed the child at the hospital. And that he did not see any injuries on the child. That I believe this testimony was important to my defense. That this argument ignores the credible testimony of counsel. First, counsel was aware of my father's (Waysolbert Hopkins) testimony about the earlier event. That Counsel had him on the witness list for this reason. See Tr. p. 36. That counsel Williams stated that the reason he was on the list was to be a potential witness about the trip to the hospital. Second, Counsel Williams presented through cross-examination of SLED Agent Teresa Baird, evidence that the child was taken to Lexington County Hospital on 11-11-13, and was seen by Dr. Stephen Schwab, consistent with what would be my father's testimony about the fact of the hospital visit. Tr. p. 536, 538. That trial counsel further developed the significant number of dates that the child had been seen by a doctor over the period from 2011 through 11-11-13.

That at the 11-11-13 hospital visit, he was developed that the child was looked at by a doctor and the visit included taking x-rays. Tr. p. 536. Third, there was no evidence of injuries to the buttocks presented concerning the time frame of the 11-11-13 hospital visit by either the State or the defense. Fourth, the time frame for the charges began on 11-12-13, after the 11-11-13 hospital visit. Fifth, as important, in making his determination of cause of death, Dr. Spalding determined that the 11-11-13 hospital records did not have any relevance to his post-mortem examination concerning the 11-27-23 cause of death or status of the injuries. Tr. p. 589 lines 12-19. That my father had a limited role in the possible presentation. It did allow me to have the advantage of final argument, which would have been lost if this evidence had been introduced. That a strategic decision to not call a witness can furnish a reasonable basis for the failure to do so, provided it is an informed strategic decision. That I failed to show this was deficiency on Counsel's part and not the result of neglect or ignorance. That I failed to show the existence of Sixth Amendment prejudice and his absent testimony had limited probative value as it related to the

11-27 cause of death. First, the pathologist saw little significance in the 11-11 event to the 11-27 cause of death. Further, the indictment did not include the 11-11 date as part of the crime frame. And, that the failure to present further and potentially inconsistent defense evidence through the father did not undermine confidence in the verdict.

6. I assert that Trial Counsel was ineffective pursuant to Rule 1.1; 1.2, 1.3, 1.4, & 1.8 of the South Carolina Rules of Professional Conduct, Sixth Amendment, Fourteenth Amendment, S.C. Const. art. I §3, art. I §14. I specifically ask my trial counsel to call my father as an alibi witness and character witness. My father's testimony would have helped me tremendously due to the false allegations made by Dr. John Spalding when he testified that there was a bloody diaper delivered with the deceased Minor. See Exhibit A (Tr. p. 564 line 14 - p. 565 line 19). My father was at my house before EMS and law enforcement officers arrived. Therefore, he had firsthand knowledge of what condition Minor child was in before being taken to hospital. I was prejudiced because Dr. Spalding testified to evidence he never observed or witnessed. Second, the ER

doctor submitted a report stating that Minor died from cardiopulmonary arrest, nausea, and vomiting and diarrhea as being the diagnosis. See Exhibit A (Tr.p. 582 lines 2-9). So, this error prejudiced me because there was no overwhelming evidence of guilt in this case. There was no eyewitnesses who observed me physically assaulting minor. Next, there was no audio/security surveillance footeges capturing me assaulting Minor or admitting that I assaulted Minor. Third, I NEVER confessed or admitted to this alleged offense. Lastly, I was denied the opportunity to present tangible evidence/material facts to the Court and jury in the form of witness testimony. The Supreme Court of South Carolina stated that "[c]onsidering plea agreements allow our overly burdened criminal courts to function." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). It also asserted that the same rationale for effective assistance of counsel should apply for ensuring that in rejecting a plea, the defendant understands that the risk of proceeding to trial carries a mandatory minimum sentence. Id. Moreover, requiring counsel to inform defendants of the mandatory nature of their potential sentence is consistent with South Carolina's Rules of Professional

Conduct Rules 1.1, 1.2, 1.3, & 1.4, which defines prevailing professional norms. And Strickland v. Washington, 466 U.S. 668, (1984) provides that, "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation.

7. The PCR Court erred by finding that trial Counsel was not ineffective for failing to speak with victim's biological father and family members.

The PCR Court contends that during the proceeding before that Court, neither the biological father nor the family members of the victim's mother testified. That a family member of the victim's mother testified at trial, Priscilla Haynes. At the time of the trial, her mother and the victim's great-grandmother, Wilhelmina Haynes had died 2 years before. That the record reflects SLED had interviewed the biological father, Timothy Swearington, on 11-27 and it was indicated by him to SLED that he was not actively involved in his child's life in November 2013 and his last contact had been in May 2013. That Counsel Williams testified that he had copies of the statements of the family

members that were interviewed by SLED, which included the mother's family members and individuals who cared for the child. That the record indicates that counsel was aware of Priscilla Heynes' information about the family during his cross-examination and this included the fact that the mother's mother and Priscilla's sister, Helen Haynes lived in Miami and Priscilla did not keep up with her. That counsel was aware of the existence of the DSS reports that had been made by the neices Regina Washington and had noticed some injuries 2 weeks prior and Tarkie Reese, who was also a babysitter. That I failed to present at the hearing any particular item of evidence from any of the mother's family or the victim's biological father that either the defense counsel was unaware and would have impacted upon his investigation or would have possibly been presented in court and it remains unclear what I needed to additional investigate. Moreover, I have not shown what further investigation would have revealed.

8. I assert that trial counsel was ineffective pursuant to Rule 1.1, 1.2, 1.3, & 1.4 of the South Carolina Rules of Professional Conduct, Sixth Amendment, Fourteenth Amendment, S.C. Const. art. 1 § 3, & art. 1 § 14 because he NEVER conducted a thorough investigation by failing to speak with the victim's biological father and other family members to determine who was abusing Minor and for how long. I was not in the Minor's life long before this unfortunate incident transpired. However, I did provide home care while I lived with Minor's mother. I fed, bathe, and provided clothing for Minor. I babysitted Minor while Minor's mother went to work. Basically, I took care of the child as my own. The Minor's father and other family members on the other hand have firsthand knowledge of who the primary caretakers for Minor are and whose responsible for the abuse committed upon Minor. I explicitly told trial counsel that, "I did not abuse, mistreat, or harm Minor in any way." Furthermore, I explained to him that, "I did not aid or abet any one to harm, abuse, or

mistreat Minor in any way." Counsel testified that he was aware of the existence of the DSS reports that were made by the nieces Regina Washington and Tarkie Reese. See Exhibit A (Tr. p. 549 line 1 - p. 551 line 2). These nieces also have firsthand knowledge of who regularly babysit and take care of Minor. Also, they know how long this alleged abuse has been going on. The PCR Court reasoned that since SLED interviewed Minor's father and nieces, no further investigation was warranted. This is deficient performance because trial counsel allowed the State to give the narrative in this case. A private investigator would have uncovered all of the individuals who babysitted Minor, took care of Minor, and/or lived with Minor preceeding the Minor's abuse and during Minor's abuse. This investigation would have also uncovered my innocence in this matter. Trial Counsel was ineffective for NOT subpoening the Minor's father and nieces to testify at trial so their testimony could be heard and presented to the jury.

I further assert that PCR Counsel was ineffective pursuant to Rule 1.1, 1.2, 1.3, & 1.4 of the S.C. Rules of Professional Conduct,

Sixth Amendment, Fourteenth Amendment, S.C. Const. art 1 §3 & art. 1 §14, and Martinez v. Ryan,

because he failed to ensure that I effectively litigate this issue and by not subpoening the Minor's biological father and other family members to testify at the PCR hearing. The PCR Court denied me relief on this issue because the Minor's biological father and other family members such as Regina Washington and Tarkie Reese - who were also babysitters - made reports to DSS about the possibility of abuse to the Minor. At the out-set of this case and Counsel's representation of me, I have claimed innocence. Counsel was obligated to thoroughly investigate and reexamine all of the State's evidence AND witnesses. PCR Counsel was under the same obligation in this case to ensure that the biological father and the family members of the victim's mother testify at the PCR hearing. These witnesses would have given testimony that I was a doting and caring father to the Minor and my father played an instrumental part in ensuring that I provided the best care for Minor. Furthermore, had I been learned in the law at the time of trial, I would have testified on the

stand on my own behalf. I would have informed the Court and jury of innocence and to dispute the State's narrative that I caused harm to the Minor and/or aided or assisted harm to Minor. The State presented no evidence that I physically harmed Minor. There was NO overwhelming evidence of guilt, such as; eyewitnesses, audio/video surveillance footage(s), DNA, or confessions. So, for PLR Counsel to deprive me of the opportunity to subpoena witnesses at my PLR hearing deprived me of my one bite of apple.

"[Trial] courts must yield consideration to the fact that ... pro se litigants are untrained in the law." Smith-Bey v. Cripe, 852 F.2d 592 (D.C. Cir. 1988). "Moreover, as [the courts] have frequently held, the endeavors of lay litigants are not to be scrutinized for the precision expected of members of the bar." Alley v. Podge Hotel, 501 F. 2d 880, 883. Furthermore, "the submission of a pro se litigant must be construed liberally and interpreted 'to raise the strongest arguments that they suggest.'" Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (quotation omitted; emphasis original). "[W]hen reviewing

pro se objections to a [PCR Court's] recommendation, district courts must review de novo any articulated grounds to which the litigant appears to take issue." Elijah v. Dunbar, 66 F.4th 454, 461 (4th Cir. April 21, 2023). "[L]iberal construction allows courts to recognize claims despite various formal deficiencies, such as incorrect labels or lack of cited legal authority." Wall v. Resnick, 42 F.4th 214, 218 (4th Cir. 2022) (citing Castro v. United States, 540 U.S. 375, 381-82 (2003).

9. Issue 4 - The PCR Court erred by ruling that trial counsel was not ineffective for failure to investigate the victim's mother being under investigation by DSS.

The PCR contends that during the testimony, counsel Williams testified that he was aware of the DSS investigations, that he had reviewed the DSS complaints and determined they were not about spanking - the operative potential issue in this matter due to the fatal injury caused to the victim's buttocks. That counsel brought out the existence of the recent complaint during his own examination. Tr. p. 226, 534-535, 549. That I presented no additional evidence in this proceeding which would show that counsel acted neglectful in his investigation and preparation

concerning the DSS matter. That I made no showing other than the fact that counsel was aware of DSS investigation.

10. I assert that trial counsel and PCR counsel was ineffective pursuant to Rule 1.1, 1.2, 1.3, & 1.4 of the South Carolina Rules of Professional Conduct, Sixth Amendment, Fouteent Amendment, S.C. Const. art. 1 § 3 & art. 1 § 14. Rule 1.2 (a) comment states: "a lawyer..., as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Trial counsel admitted that he chose not to further pursue the DSS investigation and/or ~~present~~ investigate the prior DSS investigation. This error prevented me from discovering how long the victim's mother has been on investigation by DSS, the name(s) and contact(s) of witnesses who have firsthand knowledge of the type of abuse the Minor has been suffering/experiencing abuse by the mother, and this would have produced facts sufficient to prove my innocence. PCR counsel failed to consult with me or prepare me for my evidentiary hearing. He failed to ensure that I present additional evidence at ~~any~~ PCR hearing which would have ensured that counsel acted negligent in his investigation and preparation concerning the DSS matter. This prejudiced me because the PCR Court denied me relief. This constitutes ineffective assistance under Strickland

v. Washington, 466 U.S. 668 (1984).

PCR is Civil in nature. The South Carolina Rules of Civil Procedure "governs the procedure in all South Carolina courts in all suits of a civil nature...." Rule 1, SCRCP (emphasis added). Furthermore, the South Carolina Rules of Civil Procedure apply to PCR actions." to the extent that they are not [redacted] inconsistent with the act." Rule 71.1(a), SCRCP. Rule 71.1(e) states: "The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP. When interpreting language of a court rule, the same rules of construction employed in interpreting statutes apply. State v. Brown, 344 S.C. 302, 307, 543 S.E.2d 568, 571 (Ct. App. 2001) "Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Id. (internal quotations and citations omitted). Since trial counsel and PCR counsel failed to abide by [redacted] and follow the rules outlined in Rules 1.1, 1.2, 1.3, & 1.4 of the South Carolina Rules Professional Conduct, Rule 407, then I should be allowed another evidentiary hearing to conduct discovery so I can further develop additional facts to present to the PCR Court. In Aice v. State, the Supreme Court held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." 305 S.C. 448, 409 S.E.2d 392 (1991).

I submit that I had NO control, say-so, or influence during the plea process, pre-trial, and/or trial tactics; motions, or decisions. I further attest that PCR was ineffective pursuant to the Supreme Court's holding in Martinez v. Ryan, 566 U.S. 1 (2012) ~~because~~ by failing to effectively litigate my ineffective assistance of counsel claims at my evidentiary hearing. If this Honorable Court decides that one or two issues by itself does not warrant a constitutional violation, then I request that this Court considers all of my allegations under the cumulative effect doctrine.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Conclusion

Wherefore, based on the above-mentioned facts, I respectfully request for this Honorable Court grant me a new trial. Or, in the alternative, that I be granted a new PCR evidentiary hearing.

Bishopville, South Carolina

Dated: May 16, 2025

Respectfully,

s/ Joshua W. Hopkins