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RE: PETITION FOR WRIT OF CERTIORARI, FILING

Case No. 2013-000392

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S.C. SUPREME COURT

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Respectfully submitted,

October 22, 2013

(S) Daniel Hudgens

Petitioner Prose

Fardarrel L. Hudgens #250464
W-415B
Walden Correctional Institution
4340 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

certiorary to Greenville County
Edward W. Miller, Circuit Court Judge

Fardarrel L. Hudgens,
Petitioner,

v.

State of South Carolina,
Respondent

APPELLATE CASE NO. 2013-000392

Pro se Pe Petition

For Writ of Certiorari

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OCT 23 2013

S.C. SUPREME COURT

Table of Contents

	Pages:
Table of contents;	1
Table of Authorities:	2
Issue presented:	3
Statement of the case:	4
Issue A: Argument:	5
Conclusion:	10

STATEMENT

In December 2010, the Greenville County Grand Jury indicted Fardarrel L. Hudgens on the charges of "Possession with intent to distribute cocaine base(PWID)" and " Possession with intent to distribute marijuana". On March 8, 2011, Petitioner Hudgens appeared before the Honorable Judge D. Garrison Hill and entered a guilty plea to both charges. He was represented by Ms. Dorothy A. Manigault, and the state was represented by Jenny L. Barwick. Judge Hill sentenced Hudgens to the minimum sentence of ten years on each charge to run concurrently. App. 14, 11. 1-9 Hudgens did not appeal his convictions or sentences.

On April 14, 2011, Hudgens filed an application for "Post-conviction Relief"(PCR). The state filed a return on June 27th, 2011. An "evidentiary hearing" was held on December 19th, 2012 before the Honorable Edward W. Miller. Hudgens was represented by Scarlet E. Moore, and the state was represented by Karen C. Ratican. Judge Miller issued an order on January 10, 2013 denying Hudgens' PCR application and dismissing it with prejudice. App. 114-121. Hudgens filed a "Notice of Appeal". This petition follows.

ISSUE PRESENTED

ISSUE A: Was Trial Counsel ineffective for failing to motion to suppress the cocaine as "Fruit of unlawful traffic stop"?

TABLE OF AUTHORITIES

<u>CASES</u>	Pages
<u>Whren vs. U.S.</u> ; 517 U.S.. 806, 116 S.Ct 1769, 135 LEd. 89 (1996)	5
<u>State vs. Robinson</u> , 306 S.C. 399, 412 S.E.2d 411 (S.C. 1991)	5, 6
<u>State vs. Lesley</u> , 326 S.C. 641, 486 S.E2d 276 (S.C. App. (1997)	5, 8
<u>State vs. Culbreath</u> , 300 S.C. 232, 387 S.E.2d 255 (S.C. 1990)	8
<u>Knight vs.State</u> , 284 S.C. 138 325 S.E.2d 535 (S.C. 1985)	8
<u>State vs. Gilbert</u> , 273 s.C. 690, 258 S.E.2d 890 (S.C. 1979)	8
<u>State vs. Lesley</u> , 326 S.C. 641, 486 S.E.2d 276	8
<u>State vs. Morris</u> , 312 S.C. 116, 439 S.E.2d 291 (S.C. App. 1993)	8
<u>State vs. Alexander</u> , 309 S.C. 495, 424 S.E.2d 526 (S.C. App. 1992)	9
<u>Sikes vs. State</u> , 323 S.C. 28, 448 S.E.2d 560 (S.C. 1994)	

STATUTES

Section 56-3-210, Code of Laws of South Carolina, 1976, as amended.

ARGUMENT

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of this provision.

Whren vs. U.S., 517 U.S. 806, 116 S. Ct. 1769, 135 LEd. 2d 89 (1996). To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity. State vs. Robinson, 306 S.C. 399, 412 S.E. 2d 411 (S.C. 1991). This suspicion must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. State vs. Lesley, 326 S.C. 641, 486 S.E. 2d 276 (S.C. App. 1997).

In the present case, Appellant was stopped by Greenville County Public Safety Officer CC Johnson, and stopped for a tag violation and a search of Appellant vehicle revealed cocaine and marijuana. Appellant was charged with Possession of drugs.

However, where a police officer is without reason to believe that a driver is involved in any criminal activity, a vehicle stop is not permissible, and evidence seized during a subsequent search should be suppressed. State v. Robinson, 306, S.C. 412 S.E.2d 411 (S.C. 1991). In Robinson, SLED officers received a tip that cocaine was being sold from an "Econo Lodge" by a black male, owner of a white Mazda truck. The officers later witnessed three black males leaving one of the motel with a suitcase and a duffel bag, which was placed into the Mazda truck. Two of the individuals began to drive off in a separate automobile, and were stopped by the officers. At a suppression hearing, the officer testified that he had no reason to believe that the individuals in the separate automobile were involved in any crime or criminal activity. Based upon this testimony, the Court held the stop to be unlawful, and held that the seized evidence should have been suppressed as fruit of the unlawful stop.

Further, the Supreme Court of South Carolina has held that a vehicle being operated with paper dealer tags in a high crime neighborhood was not reasonable suspicion to seize or question the car's passenger. Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (S.C. 1994). The arresting officer in Sikes admitted the only reason they stopped the car was because vehicles with paper tags are often stolen or lack insurance.

In the present case, Appellant argues that the stop of his vehicle was unlawful as it was based solely on paper dealer tags. In addition, it is undisputed that Appellant's vehicle was not located in a "high crime" neighborhood. The only argument to be made that Sikes should not be applied in the present case is that

Sikes dealt with a passenger instead of the operator of the vehicle, and that suspicion of a stolen vehicle aroused by a vehicle displaying paper tags would only implicate the operator in criminal activity. However, this argument is flawed. In the event that an officer's hunch was confirmed that a vehicle with paper tags was stolen, a passenger could be arrested for possession of a stolen vehicle as well as the operator. As such, if the facts of Sikes do not justify a seizure of a passenger, these facts should as well not justify a seizure of the operator.

Finally, since in the present case the sole reason for the stop was based upon paper dealer tags, it is important to note that the presence of paper dealer tags, with no other accompanying facts or circumstances, does not deviate from the law of this State. Infact, Section 56-3-210, Code of Laws of South Carolina, 1976, as amended, provides drivers forty five days grace period within which to officially register and license vehicles after purchase. Further, no criminal in this State prohibits a vehicle driving with a paper tag. An assumption by an officer that a vehicle with a paper tag is not registered, not insured or stolen, without more, is not reasonable.

Therefore, since in the present case the arresting officer could not point to a specific and articulable fact giving rise to "reasonable" suspicion that Appellant was committing a traffic violation or engaged in criminal activity, the stop of Appellant's vehicle was unlawful.

A review of South Carolina case law demonstrates what is required for a vehicle stop. State vs. Culbreath, 300 S.C. 232, 387 S.E.2d 255 (S.C. 1990)(approach of vehicle permissible where vehicle has been parked in driveway with it's engine running for two hours on a cold night, and officer's supervisor had told police officer that asphyxiation or carbon monoxide poisoning could have occurred and that officer should check to make sure that any occupants were alright); Knight vs. State, 284 S.C. 138, 325 S.E.2d 535 (S.C. 1985) (vehicle stop justified where officer responding to report of suspicious parked in driveway of a vacant house and spotted car being driven with it's headlights turned off); State vs. Gilbert, 273 S.C. 690, 258 S.E.2d 890 (S.C. 1979)(police officer had articulable and reasonable suspicion to stop and investigate Lincoln Continental with blue bottom and white top, occupied by four black males, when acting on an all-points bulletin which described suspect vehicle as a Lincoln Continental with a blue bottom and white top, occupied by two black males);State vs. Lesley, 326 S.C. 641, 486 S.E.2d. 276(S.C. App. 1997)(police officer had reasonable suspicion to stop motor vehicle where officer overheard dispatcher telling another officer that complainant, who two days earlier had reported shooting incident to police, had seen two black males in separate cars drive past her house and make threatening gestures, and officer spotted vehicle matching description of suspect's car, including color, make, and particular dealer's paper tag, and driven by black in area near complainant's residence). State vs. Morris, 312 S.C. 116, 439 S.E. 2d. 291 (S.C. App. 1993)

(police officer had reasonable suspicion to make investigory stop of vehicle where witness reported kidnapping committed by person with defendant's nickname and police officer was aware of defendant's vehicle type and license plate number); State vs. Alexander, 309 S.C. 495, 424 S.E.2d. 525(S.C. App. 1992)(reasonable basis for stop existed where city police policy required police to stop vehicles with Florida license plates in area known for drug dealing; stopped vehicle had Florida license plates, third party pointed out vehicle before stop, and occupants of vehicle kept turning around to watch police as police followed car).

CONCLUSION

Based upon the foregoing, Appellant submits that the arresting officer's stop in the present case was unlawful, that the evidence seized in the present case should have been suppressed, and Appellant's conviction should be reversed.

Respectfully submitted

TABLE OF CONTENTS

	Pages:
Table of Contents	1
Table of Authorities	2
Issue Presented	3
Statement of the Case	4
Issue B: Argument	5
Conclusion	15

TABLE OF AUTHORITIES

Cases:

	Pages
<u>State vs. Turner</u> , 641 S.E.2d 436(2007)	6
<u>State vs. Pichardo</u> , 623 S.E.2d 840 (2005)	7 15
<u>State vs. Weaver</u> , 374 S.C. 313,649 S.E.2d 479 (2007)	11, 6
<u>Arizona vs. Gant</u> , 129 S.Ct 1710 (2009)	12
<u>Chimel vs. California</u> , 395 U.S. 752 (1969)	11, 12
<u>Knowles vs. Iowa</u> , 525 U.S. 113 (1998)	15
<u>New York vs. Belton</u> , 453 U.S. 454 (1981)	10
<u>State vs. Forrester</u> , 343 S.C. 637, 541 S.E2d 837 (2001)	15
<u>Thornton vs. United States</u> , 541 U.S. 6156 (2004)	7
<u>Virginia vs. Moore</u> , 553 U.S. ___ (2008) (2008) WL 1805745)	
<u>Wong Sun v. United States</u> , 371 U.S. 471 (1963)	

Statutes:

S.C. Code Ann. § 17-13-14 (1976)

Constitutional Provisions:

Article I, § 10

ISSUE PRESENTED

ISSUE B: Was trial counsel ineffective in failure to argue that Belton was not authorized to the search incident to occupant's arrest, and that the police officer went on a mere fishing expedition when he searched plastic that was contained behind the radio pulled over for a tag violation; and failed to move to suppress evidence obtained as a result of an illegal search?

STATEMENT

In December 2010, the Greenville County Grand Jury indicted Fardarrel L. Hudgens on the charges of "Possession with intent to distribute marijuana". On March 8, 2011, Petitioner Hudgens appeared before the Honorable D. Garrison Hill and entered a guilty plea to both charges. He was represented by Dorothy A. Manigault, and the state was represented by Jenny L. Barwick. Judge Hill sentenced Hudgens to the minimum sentence of ten years on each charge to run concurrently. App. 14, 11. 1-9. Hudgens did not appeal his convictions or sentences.

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ARGUMENT

Counsel was ineffective for failing to argue that the police officer went on a mere fishing expedition when he searched a plastic that was contained behind the radio pulled over for tag violations. Counsel failed to move to suppress evidence obtained as a result of an illegal search. "Riding" home on Laurens Road on January 5, 2010, approximately 9:09 pm at night. CC Johnson, an officer with the Greenville Public Safety Department caught sight of applicant's vehicle with a dealer tag writing was not normal dealer practice. CC Johnson pulled the car over to investigate, after approaching the driver window asking for drivers license, insurance and his "Bill of Sale" for the vehicle. he occupant advised me that he did'nt have a "Bill of sale" nor insurance for the vehicle. CC Johnson called back-up officer. T. Calhoun responded to the "Old Time Pottery" parking lot to backup officer Johnson. CC Johnson advised that the occupant did'nt have any insurance and was a felon with a violent history. Officer Johnson asked the occupant to step out of the vehicle. He performed a "Terry" frisk for weapons. T. Calhoun with Greenville Public safety informed the occupant that his car is going to be towed and that they were going to do an inventory of the vehicle and asked if there was anything thing that we need to know about (weapons or drugs) . He advised that there was nothing in the vehicle. Officer Johnson searched the vehicle and observed a clear plastic showing between the radio face plate in the dashboard. he pulled on the dashboard trim and it was

Johnson's prime motivation for searching the radio was not related to his safety concerns; and his search was not to prevent the destruction of evidence. These factors, ofcourse, are the fundamental basis for allowing the temporary exception to the Fourth Amendment's prohibition against warrantless searches and seizures as contemplated by the United States Supreme Court in Chimel v. California, 395 U.S. 752 (1969) and New York v. Belton, 453 U.S. 454 (1981). And the undersigned calls to this Court's attention the case Arizona v. Gant 129 S.Ct. 1710 (2009) was currently before the United States Supreme Court. The U.S. Supreme Court April 21, overturned nearly three decades of lower-court caselaw by holding the Fourth Amendment's search incident to arrests doctrine does not allow law enforcement officers to conduct a warrantless search of an arrestee's automobile after the arrestee has been handcuffed or otherwise prevented from regaining access to the car. And under the possible existence of evidence in the arrestee's automobile will justify a warrantless search only if the evidence relates to the offense of the arrest. Arizona v. Gant, No. 07-542, April 21, 2009. An individual does not have a reasonable expectation of privacy while being held in a police vehicle State v. Turner, 641 S.E.2d 436 (2007). Officer T. Calhoun's justification to carry out the search was justified when applicant was securely placed in Officer Johnson's patrol car and could not access the interior of the "vehicle".

removed, revealing a clear plastic bag containing seven(7) individually packaged clear plastic bag of green leafy substance which I determined through my training and experience to be marijuana. At that time officer Johnson advised me to detain the occupant. I placed the occupant in handcuffs . Search incident to arrest revealed a black scale in the above occupant left front pants pocket and approximately \$200.00 in cash. And asked him what was behind the radio? At first he would'nt say but then he advised that there was marijuana behind the radio. CC Johnson placed the marijuana on the roof. I then placed the occupant in officer Johnson's patrol car. I then searched the vehicle and found a white plastic baggy with a beige rock-like substance known as crack cocaine in the baggy. There were several pieces. I informed officer Johnson of the findings and handed the substance over to officer Johnson. In the trunk was a box of Glad sandwich bags that were found. Duty was notified and responded and towed the vehicle.

Hudgens was subjected to an "illegal search", and the fruits of that search should have been suppressed as "Fruits of the poisonous tree". Wong Sun v. United States, 371 U.S. 471 (1963).

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures;" shall not be violated... U.S. Const. 4th Amend. Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose constitutes a "seizure" of "persons" within the meaning of this provision. State v. Pichardo , 623 S.E.2d 840 (2005).

THE SEARCHES

There are three (3) distinct searches present in this case, (1) removing the dashboard trim from the radio, (2) searching behind the radio, and (3) searching the plastic located back behind the radio. Each search should be analyzed separately to determine whether Johnson's actions in this case were justified. Additionally, no South Carolina search and seizure case is properly analyzed without reference to our independent state grounds as embodied under Article I, § 10 of the South Carolina Constitution. Thus, the counsel's decision to challenge the search was erroneous for two reasons: (1) By failing to conclude that Belton was not applicable to the search and thereby failing to consider and separately analyze three separate searches, and (2) By failing to analyze the conduct under South Carolina law why Belton does not apply.

As an initial matter, the seminal search incident to arrest case for automobiles does not apply in this particular case for two reasons: (1) there were no exigent circumstances present, and (2) there was no nexus between the cause of arrest and the search of the radio. Belton is clearly distinguishable.

In Belton, the officer pulled over a car with four occupants. Immediately upon approaching the car, the officer smelled burned marijuana. He then removed the occupants from the car and arrested them for unlawful possession of marijuana. He patted them down. Then he entered the car. At the time he smelled marijuana, the officer had probable cause to arrest them for that

offense. He also had probable cause to believe there were drugs in the car because he smelled the burning marijuana. In Belton, there was a clear exigency present that justified the search—the possible destruction of evidence. In this case, there were no exigent circumstances.

The language in the Belton decision, supra, makes it quite clear that it is an extension of law as propounded in Chimel, supra. Holding today does no more than determine the meaning of Chimel's principles in this particular and problematic context. It in no way alters the fundamental principles established in the Chimel case regarding the basic scope of searches incident to lawful custodial arrest." Belton, n. 3.

In Chimel, searches incident to arrest are limited by the existence of exigent circumstances. Without this limiting factor, "Fourth Amendment Protection in this area would approach the evaporation point." *Id.* at 765 These exigent circumstances are (1) officer safety, and (2) destruction of evidence.

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or affect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent his concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule...

There is a simple justification, therefore, for a search of the arrestee's person and the area within his immediate control... construing that phrase to mean the area from within he might gain possession of a weapon or destructible evidence. Id., at 762-63.

Without exigent circumstance, a warrantless search is presumptively unreasonable under the Fourth Amendment of the federal Constitution and our State constitution and Laws. See S.C. Code Ann. & 17-13-14 (1976) (search warrant statute), and Article I, & 10 of South Carolina Constitution. In the case of sub judice, the officer had probable cause to arrest Applicant for a tag violation and no insurance but he did not have any reasonable belief as to any other illegal activity. There was no smell of drugs, for example; There was nothing to give rise to the belief that there were drugs in the back of the radio because a plastic showing between the radio because a plastic bag showing between the radio. If Hudgens had plastic showing between the radio, that would'nt have been a crime and there were no safety concerns. That Johnson had no concern for his safety evidenced by the fact that he allowed officer T. Calhoun to secure Hudgens throughout the entirety of this transaction. As Justice Scalia points out in his concurrence in Thornton v. United States, 541 U.S. 615 (2004): Indeed, if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable precisely because the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedure." Id. at 627 (emphasis in original). Applicant did'nt have any suspicious

actions to justify the search of applicant's property when Applicant was detained with an officer at the time of the search.

A second reason why this case falls beyond the purview of Belton is that there was no nexus between the cause of the arrest and the radio, see Footnote 4. (Footnote 4): Limiting a search for evidence relevant to the crime that precipitated the arrest ("the nexus") was advanced by Justice Scalia in his concurrence in Thorton, supra: "In Chimel v. California, we held that a search incident to arrest was justified only as a means to find weapons the arrestee might use or the evidence he might conceal or destroy. We accordingly limited such searches to the area within the suspect's "immediate control" are into which an arrestee might reach in order to grab a weapon or evidentiary item." In New York v. Belton, we set forth a bright-line rule for arrests of automobile occupants, holding that, because the vehicles entire passenger compartment is "in fact generally, even if not inevitably", within the arrestee's immediate control, a search of the whole compartment is justified in every case.) In Appellate's case, Johnson had no reason to believe that evidence relative to the traffic infraction was contained in the radio. The traffic violation was that Appellate had a tag violation and no insurance while being pulled over in the vehicle. As noted earlier, even if Appellate had plastic behind the radio, this would not have been relevant to his tag violation charge as it would not have been illegal.

When Appellate's car was searched in this case, he was neither in, nor anywhere near the passenger compartment of his vehicle. Rather, he was secured with officer T. Calhoun back by officer T

Calhoun's squad car. The risk that he would nevertheless "grab a weapon or evidentiary item" from his car was remote in the extreme. The counsel's effort not to apply the current doctrine to this search stretches it beyond its breaking point..."(citations omitted). *Id* at 625.

"If Belton searches are justifiable, it is not because the arrestee might grab a weapon or evidentiary item from his car, but simply because the car might contain evidence relevant to the crime for which he was arrested." *Id* at 629.

Thornton implicitly rejects a claim that all searches incident to arrest, whatever the scope of the search, are subsumed by the reasoning in Belton. All of the evidence necessary to secure a conviction for a tag violation was apparent immediately upon approaching the car. See, Knowles v. Iowa, 525 U.S. 113 (1998):

Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car. *Id* at 113.

Ofcourse, the officer did not even bother to collect the evidence relative to the detention in the first place but in any event, there was no nexus between the crime and the radio.

For these reasons, this case is significantly different from Belton. The search into the radio was unjustified and therefore a

violation of the Fourth Amendment and South Carolina Law.

SEARCH #1: REMOVING THE DASHBOARD TRIM FROM THE RADIO

Officer Johnson had no basis to remove the dashboard trim from the radio. Johnson articulated no reason to believe any illegal activity was afoot, Applicant was secured at the time the dashboard trim was removed. The fundamental basis for a warrant search--officer safety and/or destruction of evidence--were utterly lacking. The state's position would essentially grant officers a general right of entry into any vehicle that commits even the minimis traffic infraction. The Fourth Amendment and the South Carolina Constitution demands more.

SEARCH # 2: GOING INTO THE RADIO OPENING DASHBOARD TRIM FROM THE RADIO

As officer Johnson proceeded to dig deeper and deeper into Applicant's personal belongings, the justifications for the warrantless search still needed to be present. If Johnson was justified in removing the dashboard trim from the radio, he still needed a reason to then pull open the dashboard trim. Arguably, having removed a radio which may have contained a weapon. (Although the officer safety justification would have been dissipated).

By it's removal from the dashboard additionally, by the time the dashboard trim was removed, Applicant was secured with an officer.

SEARCH #3: OPENING THE PLASTIC BAG

The most illustrative fact in support of the claim that officer Johnson was merely fishing for a crime is his rooting through the closed plastic that was contained behind the closed dashboard trim located on the radio in the car pulled because of a tag violation. At this point, any conceivable justifications for conducting a warrantless search were entirely dissipated. Again, the record is devoid of any reasonable belief that criminal activity was afoot, and the radio which may have contained a weapon, was removed from the dashboard from the car and searched. Applicant was still secured with an officer. There is simply no argument available to support the search at this point. If Johnson believed that evidence of a crime was present, he was obligated to contact a magistrate and a warrant. Officer Johnson's search of Applicant's radio was improper, and the fruits of that search should have been suppressed. Wong Sun, supra.

SOUTH CAROLINA ANALYSIS

It has long been acknowledged that state courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the federal Constitution. See, State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007); Virginia v. Moore, 553 U.S. ____ (2008) (2008) WL 1805745). The South Carolina Constitution provides a distinct right to privacy under Article I, & 10. "The South Carolina Constitution with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 841 (2001). Under South Carolina Law, these searches do not pass constitutional muster. Even if this court concludes that the searches were reasonable under federal constitutional law, they fail under the heightened protections afforded South Carolina citizens. Respectfully, applicant asks this court to reverse his conviction.

CONCLUSION

For the preceding reasons, Applicant respectfully ask this court to reverse his conviction.

Respectfully submitted,

TABLE OF CONTENTS

	Pages
Table of Contents	1
Table of Authorities	2
Issue Presented	3
Statement of the Case	4
Issue ^c : Argument	5
Conclusion	9

TABLE OF AUTHORITIES

	Pages
<u>Cases:</u>	
<u>Cherry v. State</u> , 300 S.C. 115, 386 S.E.2d 624 (1989)	7
<u>Cobbs v. State</u> , 3605 S.C. 299, 408 S.E.2d 223 (1991)	8
<u>Frazier v. United States</u> , 18 F.3d 778, 785 (9th Cir. 1994)	7
<u>Kimmelman v. Morrison</u> , 477 U.S. 365, 374 (1986)	6
<u>McMann v. Richardson</u> , 397 U.S. 771 (1970)	6
<u>Murray v. Carrier</u> , 477 U.S. 478 (1986)	7
<u>Strickland v. Washington</u> , 466 U.S. 668, 688-694 (1984)	6, 8
<u>United States Ex. Rel Partee v. Lane</u> , 926 F.2d 694, 702 (7th Cir. 1991)	7
 <u>Statutes:</u>	
S.C. Code Ann. § 17-27-10, et seq.	5
S.C. Code Ann. § 17-27-20 (a)(1)	5
 <u>Constitutional Provisions:</u>	
Article I, § 14	6

ISSUE PRESENTED

Issue A^C: Was trial counsel ineffective during guilty plea in violation of the Sixth Amendment to the United States Constitution when counsel failed to conduct a proper pretrial investigation?

STATEMENT

In December 2010, the Greenville County grand Jury indicted Fardarrel L. Hudgens on the charges of "Possession with intent to distribute cocaine base(PWID) and "Possession with intent to distribute marijuana". On March 8, 2011, Petitioner Hudgens appeared before the Honorable D. Garrison Hill and entered a guilty plea to both charges. He was represented by Dorothy A. Manigault, and the state was represented by Jenny L. Barwick. Judge Hill sentenced Hudgens to the minimum sentence of ten years on each charge to run concurrently. App. 14, ll. 1-9. Hudgens did not appeal appeal his convictions or sentences.

On April 14, 2011, Hudgens filed an application for post-conviction relief(PCR). The state filed a return on June 27, 2011. An "evidentiary hearing" was held on December 19, 2012 before the Honorable Edward W. Miller. Hudgens was represented by Scarlet B. Moore, and the state was represented by Karen C. Ratigan. Judge Miller issued an order on January 10, 2013 denying Hudgens' PCR application and dismissing it with prejudice. App. 114-121. Hudgens filed a "Notice of Appeal". This petition follows.

STATEMENT OF JURISDICTION

South Carolina law provides an avenue for those whose convictions have been obtained in violation of the Constitution of the United States. The uniform Post-Conviction Procedure Act, S.C. Code § 17-27-10, et seq., provides an avenue for redress of federal constitutional violations in a South Carolina court. A prisoner in custody under sentence of a South Carolina court may challenge his conviction and sentence if such were obtained in violation of the constitution of the United States or the constitution of laws of South Carolina. S.C. Code § 17-27-20 (a)(1). The Applicant feels that his best opportunity to obtain fair and substantial justice regarding his conviction is through this MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF PURSUANT TO THE UNIFORM POST-CONVICTION PROCEDURE ACT, S.C. CODE § 17-27-10, et seq., as the procedural remedy utilized herein has historically served as a safety net for those who have had their constitutional rights violated.

ARGUMENT

In order to succeed in a post-conviction proceeding, the Applicant must show that the adjudication of a claim in South Carolina court resulted in a conviction or sentence that was imposed in violation of the constitution or laws of the United States. S.C. Code § 17-27-20 (a)(1). The constitution, as the framework from which all South Carolina law springs must not be violated as applied to the Applicant.

1. The Applicant received ineffective assistance of counsel during guilty plea in violation of the sixth amendment to the United States constitution when counsel failed to conduct proper pre-trial investigation.

The Applicant submits that he received ineffective assistance of counsel prior to and during his guilty plea. The Sixth Amendment to the United States constitution guarantees that every criminal defendant is entitled to the assistance of counsel in presenting their defense. See also, S.C. Const. Art. I, § 14. the Supreme Court has stated, "[t]he right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." Kimmelman v. Morrison, 477 U.S. 365, 374 (1986). Furthermore, the Supreme Court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 771 (1970).

To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the Sixth Amendment to the constitution, a two prong test must be met. In Strickland v. Washington, 466 U.S. 668, 688-694 (1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

1. Counsel's performance must have fallen below an objective standard of reasonableness; and

2. There must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland standard. See, e.g. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expend every energy, and top every legitimate resource in the exercise of independent professional judgement on behalf of the client and in undertaking representation of the client's interests." Frazier v. United States, 18 F.3d 778, 785 (9th Cir. 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant, keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial to the best of his ability; and, at the bottom, serves as a vigorous and devoted advocate of the defendant's cause." United States Ex. Rel Partee v. Lane, 926 F.2d 694, 702 (7th Cir. 1991).

A. Counsel was ineffective for failing to conduct an adequate pretrial investigation.

As the Supreme Court also recognized in Strickland, "counsel bears a duty to make a 'reasonable' investigation of the law and facts in his clients case." Strickland, 466 U.S. at 691. Additionally, the ABA standards relating to the Administration of Criminal Justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. the duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Cobbs v. State, 3605 S.C. 299, 408 S.E.2d 223 (1991). Pre-trial preparation, principally because it provides a basis

upon which most of the defense case must rest, is, perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

CONCLUSION

For the preceding reasons, Hudgens respectfully ask this court to reverse his conviction.

Respectfully submitted,

Darryl Hudgens, #250464