

NOV 07 2013

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. SUPREME COURT

Clarence Harrison, Appellant,.....Appellant,

v.

State of South Carolina,.....Respondent.

APPELLANT'S FORTY-FIVE DAY RESPONSE ORDER BY THE  
SOUTH CAROLINA SUPREME COURT'S TO THE JOHNSON  
PETITION FILED BY ATTORNEY JENNINGS ANDERSON, OF  
THE SOUTH CAROLINA OFFICE OF APPELLANT DEFENSE

Precedural History

Appellant is presently incarcerated by the South Carolina Department of Corrections. He was indicted in March 2006 for assault and battery with the intent to kill, attempted armed robbery and possession of a weapon during the commission of a violent crime. He was found guilty at jury trial held on March 20-23, 2006, and subsequently sentenced by the Honorable Roger Couch to a period of twenty (20) years for both ABWIK and attempted armed robbery, and five (5) years for the weapon possession charge, all concurrent.

The Applicant filed a timely Noticed of Appeal. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Harrison, Op. No. 2009-UP-079 (Ct. App. Filed Feb. 11, 2009).

The Appellant filed an application for Post-Conviction relief on December 16, 2010, which application was subsequently amended twice (on April 25, 2011 and May 29, 2012) in which he argued that trial counsel was ineffective for multiple reasons.

The appellant was allowed an evidentiary hearing on June 7, 2012, following which the Honorable Thomas A. Russe issued an Order of Dismissal with prejudice dismissing the application for PCR for "failing to establish any constitutional violations or deprivations that would require this court to grant his application. Appellant timely filed a Notice of Appeal from the denial of the PCR, and this appeal follows:

## ARGUMENT

Appellant contends that trial counsel was ineffective in failing to call Monroe Thompson an essential witness to appellants. Counsel's failure to call Mr. Thompson a subpoenaed witness who had vital information to help his defense against the alleged allegation made by Torey Brown was highly prejudicial.

Although prejudice from trial counsel's failure to call Mr. Thompson cannot be shown where a witness does not testify at post-conviction relief hearing, it is even worse when appellants' trial lawyer committed.

Appellant was prejudiced by both parties' trial counsel and PCR counsel. By PCR counsel advising him to abandon a very important issue that needed to be addressed, he denied him ineffective assistance by both parties.

Mr. Thompson was a very close friend to appellant's accuser and should have been called to the stand to give testimony that would have refuted Torey Brown's initial statement and his involvement in the case at hand. Counsel's failure to call Mr. Thompson as a witness blatantly shows the incompetence on counsel's behalf as stated by counsel Grose that, and—and that evidence would, I think, be entirely relevant to our defense and would have proven that—pretty conclusively, if believed by the jury—that the allegations made by Mr.—Wells, that these statements made by Mr. Brown—Torey Brown were being introduced by him that he—because—because the testimony at trial was—is that Mr. Brown was in the house—or in the apartment in the bedroom when all of this happened at his—at his girl friend's house. You know she was a witness.

But, you know if—if Torey Brown, who wasn't a witness was actually telling the victim what had happened that—that would've been significant evidence. App. 43, 14-25, 44, 1.

Trial counsel deprived the Appellant of due process of right to assist in his defense was prejudicial and ineffective on his behalf as well as PCR counsel advising appellant to exclude trial counsel Buergey preventing him the opportunity to address this issue.

Applicant contends that the PCR Judge erred in not granting his PCR Application and asks the Honorable Court to grant him a new trial.

Applicant contends that his trial counsel was ineffective because he failed to object to inflammatory language in indictment alleging that Applicant had prior crimes of like nature of that in which he was on trial for.

Although an indictment is only a instrument used to let Appellant know what he is being charged for, an indictment that allege inflammatory language that he had already been convicted of the same charges was highly prejudicial to the appellant by giving the Voir Dire the notion that he was once convicted of the same charges. Trial counsel was ineffective when he failed to object to the language of the indictment that was read to the jury panel before trial, in which one potential juror spoke out stating: I done got the judged already and I don't even know nothing about it.

Court: Well I asked you if there was any reason why you cannot be fair and impartial to either of the parties in this case.

Potential Juror: Well I've just been sitting here and I don't even know the people but, you know, I hate a thief and hate people that act like that.

The Court: Well now, wait a second you don't need to go into any editorials, I'm asking you if you can be fair and impartial to either-

Potential Juror: No, sir because I done got them judged guilty right now. This is a clear indication of the effect of the inflammatory and prejudicial language in the indictment.

Trial counsel was ineffective in failing to object to the prejudicial language imposed in the indictment.

Applicant contend that the PCR Judge erred in finding that trial counsel was not ineffective for entering statements from state's witness Torey Brown that denied him a right to confront his accuser.

During trial, counsel asserted a trial strategy that violated his 6th Amendment right to confront his accuser when he entered prejudicial statements from a witness that investigator John Smith used to get arrest warrants for Appellants arrest. Tr: 384, 4-6. 418, 5-11. It is stated in Crawford v. Washington, 541 U.S. 36 (2004) that the Crawford rule has no application outside the scope of testimonial hearsay. Although the statements was entered for the credibility of the witness that had already testified the statement as a form became a form of impeaching the state witnesses credibility. Through Torey Brown's statement that was testified to by Det. John Smith. (Tr. 423, 8-13).

Trial counsel was ineffective for employing the prejudicial trial strategy by entering prejudicial statements that directly presented criminal activity against the Appellant. Counsel Grose stated that he was offering Torey Brown's statement to prove that when they got that

information that that information was false, that that information became the basis of that arrest, Tr. 408, 10-12. Counsel Grose in fact offered Torey Brown's statement to prove that the statements was false, the said statements were offered to prove a fact. The fact that Counsel Grose was trying to prove goes toward the truth of the matter asserted.

Appellant contends that trial counsel was ineffective by depriving him a constitutional right to confront his accuser.

During trial, counsel ascertained a trial strategy that violated his 6th Amendment right to confront his accuser when he entered prejudicial statements from a witness that the head investigator used to arrest warrants for Appellant's arrest. Although the statements was entered for the credibility of the witness that had already testified as a form of impeaching the state witnesses credibility, the statements of Torey Brown was entered to show the state of mind of the investigating officer in which the investigator state of mind had no relevance to the guilt or innocence of the Appellant.

In bringing in these prejudicial statements the jury was instructed by the Trial Court that any statements given that they could believe all of the statement, part of the statement, or none of the statements, giving the jury the option to believe the prejudicial statement made by Torey Brown who did not testify, but his statement was testified to by Det. John Smith. This in fact violates United State and South Carolina Supreme Court Law.

Appellant was denied his constitutional right to confront Torey Brown as stated in Crawford v. Washington, that a statement that could be used to prosecute a defendant, used in an interrogational form, or a witness accusing a defendant of a crime mandates confrontation of accuser. Trial counsel was ineffective and the PCR Judge erred in not granting Appellant relief.

Appellant asked that he be granted a new trial because of trial counsel's ineffective assistance.

CONCLUSION

Appellant's application for Post-Conviction relief should not have been denied, and Appellant should have been granted a new trial, based on Appellant's counsel was ineffective for failing to call Monroe Thompson an essential witness to Appellant, because he failed to object to inflammatory language in indictment alleging that Applicant had prior crime of like nature of that in which he was on trial for, Appellant trial counsel was ineffective by depriving him a constitutional right to confront his accuser, and Appellant's trial counsel was ineffective for employing the prejudicial trial strategy by entering prejudicial statements that directly presented criminal activity against the Appellant.

Respectfully,

Clarence Harrison  
Clarence Harrison

SwORN to AND subscribed before me this 4<sup>th</sup>  
Day of November 2013

Nancy C. Merchant (L.S)  
NOTARY Public

My Commission Expires 1-23-2023

**RECEIVED**

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**S.C. SUPREME COURT**