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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Robert J. Bonds, Circuit Court Judge

App. Case No. 2023-001432

Tyrone D. Ellison,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING
AND FOR REHEARING *EN BANC*

Tricia A. Blanchette
Post Office Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Petitioner

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STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Dorchester County Clerk of Court. Petitioner was indicted at the December 2013 term of the Dorchester County Grand Jury for entering a bank, depository, or building and loan association with intent to steal (2013-GS-18-1271). Petitioner was also indicted at the April 2014 term of the Dorchester County Grand Jury for armed robbery (2014-GS-18-0325). The indictments stemmed from a robbery of a Suntrust bank on April 1, 2013.

On August 4, 2014, Petitioner appeared in front of the Honorable R. Knox McMahon at the Dorchester County Courthouse for a trial on Indictment No. 2013-GS-18-1271 and 2014-GS-18-0325. Petitioner was represented by Michael Tommy Bolus, Esquire. Assistant Solicitors Don Sorenson, Esquire, and Phil Giese, Esquire, represented the State. After hearing a pre-trial matter regarding DNA, the trial was continued to allow for DNA testing by Petitioner's expert.

On October 20-24, 2016, Petitioner proceeded to trial in front of the Honorable D. Craig Brown and a jury. Petitioner was present and represented by James K. Falk, Esquire. Assistant Solicitors Don Sorenson and Phil Giese represented the State. Petitioner was found guilty as indicted, and he was sentenced to life imprisonment for Indictment No. 2014-GS-18-0325 and a concurrent thirty years for Indictment No. 2013-GS-18-1271.

A timely notice of appeal was filed and David Alexander, Esquire, perfected the appeal. On January 11, 2017, the South Carolina Court of Appeals affirmed. *State v.*

Ellison, 2017-UP-014 (S.C. Ct. App. filed January 11, 2017). The Remittitur was issued on February 7, 2017.

On January 11, 2018, an Application for Post Conviction Relief was filed. The State submitted a Return on April 23, 2018. On May 8, 2018, Petitioner filed a Motion for Consolidation and Discovery, which also addressed Petitioner's Post Conviction Relief Application stemming from the entry of a guilty plea (Docket No. 2016-CP-18-0017).¹ A motion hearing was conducted at the Dorchester County Courthouse on July 12, 2018 in front of the Honorable Robin B. Stilwell. On July 23, 2018, an Order for Consolidation and Discovery was filed on July 26, 2018.

On July 26, 2021, Petitioner filed an Amendment, which alleged the following:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during counsel's representation that culminated in trial, conviction and subsequent guilty plea. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate:

1. Failure to properly prepare prior to trial and advise Applicant regarding strength of the State's evidence and the available defenses, which resulted in counsel's failure to effectively negotiate a guilty plea and the following matters that arose prior to and during trial:
 - a. Utilization of a defense strategy that had been fully discussed on recorded phone calls provided to the defense in discovery.
 - b. Utilization of Applicant's mother as a defense witness to support said defense, with knowledge that she was subject to questioning regarding her audio interview with law enforcement whereby she identified Applicant, in part, and her recorded phone calls regarding the defense offered.

¹ On January 7, 2016, Petitioner filed an Application for Post Conviction Relief in Dorchester County (Docket No. 2016-CP-18-0017) stemming from the entry of a negotiated guilty plea in front of the Honorable Edgar W. Dickson and representation provided by James K. Falk, Esquire. As a result of the consolidated evidentiary hearing, the lower court had a copy of the records from the guilty plea and resulting PCR Application and took such into consideration. This Application is the subject of Appellate Case No. 2023-001429.

- c. Utilization of an expert that bolstered the State's case and failed to offer an opinion advantageous to Applicant.
 - d. Utilization of defense witnesses regarding Applicant's employment and/or alibi, when it was known that the State could refute said witnesses.
 - e. Failure to address with Applicant, make an argument and/or motion regarding double jeopardy.
2. Failure to address the following matters at trial:
- a. The Court's prohibited and burden shifting statements to "search for the truth in an effort to make sure that justice is done between the parties" and that both the State and Defendant get a fair and impartial trial. Transcript p. 90, lns. 21-23, p. 601, ln. 25 – p. 602, ln. 5.
 - b. The Court's failure to question the jurors individually on the matters involving witness intimidation. Transcript pp. 534-536.
3. Ineffective assistance of Appellate Counsel for failure to raise the motion made regarding the suppression of the gloves.

Applicant submits that these allegations as addressed at a consolidated evidentiary hearing will show that counsel's representation fell below an objective standard of reasonableness and that counsel's deficiency prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117–18, *See Strickland v. Washington*, 466 U.S. 668 (1984). Additionally, Applicant submits that these allegations as addressed at a consolidated evidentiary hearing will show a complete breakdown in the adversarial process and a systematic failure whereby prejudice must be presumed. *See United States v. Chronic*, 466 U.S. 648, 104 S.Ct. 2039 (1984).

On May 20, 2022, an evidentiary hearing was conducted at the Orangeburg County Courthouse in front of the Honorable Robert J. Bonds. Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Samantha J. Weidauer, Assistant Attorney General. At the beginning of the hearing the matter of consolidation was addressed, and the court proceeded with a consolidated hearing. At the conclusion of the hearing, the court requested that the parties submit proposed orders. An

Order of Dismissal was issued on October 3, 2022 and filed on October 6, 2022.

Petitioner filed a Rule 59, SCRCR, Motion on October 28, 2022. After conducting a hearing on December 8, 2022, the lower court issued an Order Denying Applicant's Rule 59(a) & (e) Motion on December 8, 2022, which was filed on August 4, 2023.

Petitioner, through counsel, filed a Notice of Appeal on September 12, 2023. On March 25, 2024, an Amended Petition for Writ of Certiorari and Appendix were filed. The Return was filed on July 12, 2024, and the appeal was transferred to the South Carolina Court of Appeals on August 7, 2024. On September 30, 2025, the South Carolina Court of Appeals issued an Order denying certiorari, from which this Petition for Rehearing and Petition for Rehearing *En Banc* follows.

ARGUMENT

Pursuant to Rule 221, SCACR, Petitioner respectfully petitions this Court for rehearing and for rehearing *en banc*. Petitioner would respectfully request that the panel and entire Court review the Amended Petition for Writ of Certiorari (Petition) and the entirety of the arguments contained therein. Petitioner would further request that the panel and the entire Court review the record contained in the filed Appendix.

By way of the Petition, the following arguments were made:

1. The lower court erred by failing to properly address the matters raised in the Rule 59, SCRCR, Motion; therefore, a remand is necessary to ensure that specific findings of fact and conclusions of law were entered on each issue raised and that the record before the court and the testimony of each witness was properly addressed.
2. The lower court erred by not finding that counsel failed to properly prepare prior to trial and advise Petitioner regarding the strength of the State's evidence and the available defenses, which resulted in counsel's failure to effectively negotiate a guilty plea, a guilty plea not being entered and ineffective assistance at trial. The following that arose prior to and during trial demonstrate counsel's ineffective assistance: a) utilization of a defense strategy that had been fully discussed on

recorded phone calls provided to the defense in discovery; b) utilization of Petitioner's mother as a defense witness to support said defense, with knowledge that she was subject to questioning regarding her audio interviews and recorded phone calls; c) utilization of an expert that bolstered the State's case and failed to offer an advantageous opinion; d) utilization of defense witnesses regarding employment and/or alibi, when it was known that the State could refute said witnesses; and e) failure to consider or address the matter of double jeopardy.

- A. The lower court erred since trial counsel failed to properly prepare prior to trial and advise Petitioner regarding the strength of the State's evidence and the available defenses, which resulted in counsel failing to effectively negotiate a guilty plea and a guilty plea not being entered.
 - B. The lower court must be reversed since counsel failed to properly prepare prior to trial and advise Petitioner regarding the strength of the State's evidence and the available defenses. The following that arose prior to and during trial demonstrate counsel's ineffective assistance: a) utilization of a defense strategy that had been fully discussed on recorded phone calls provided to the defense in discovery; b) utilization of Petitioner's mother as a defense witness to support said defense, with knowledge that she was subject to questioning regarding her audio interviews and recorded phone calls; c) utilization of an expert that bolstered the State's case and failed to offer an advantageous opinion; d) utilization of defense witnesses regarding employment and/or alibi, when it was known that the State could refute said witnesses; and e) failure to consider or address the matter of double jeopardy.
3. The lower court erred for failing to find that relief is required under *Cronic* due to a complete breakdown in the adversarial process.

Petitioner submits that this Court has overlooked and/or misapprehended the entirety of his arguments and cannot specify certain portions as the Court did not issue an Order making any form of analysis of the issues raised. Petitioner urges this Court to reconsider the denial of certiorari because the lower court's finding that trial counsel provided effective assistance is not supported by the record or the law; therefore, reversal is absolutely necessary. See *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984), *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

As is addressed in the Petition, Petitioner took the stand and offered testimony in support of his allegations at the evidentiary hearing. Petitioner also called James K. Falk, Esquire, to the stand. Petitioner would urge this Court to review the entire record and find that it supports a granting of relief due to counsel's ineffective assistance and failure to make the adversarial process work.

Petitioner hereby incorporates the detailed arguments made in the Petition, and urges this Court to find that counsel's ineffective representation resulted in Petitioner not entering a guilty plea and proceeding to trial with a much less favorable outcome. Petitioner testified that he would have accepted a guilty plea and not proceeded to trial if counsel had properly prepared and advised him prior to trial. Here, effective representation would at a minimum require Attorney Falk to ensure that he had all the evidence, reviewed it and properly advised Petitioner regarding proceeding to trial or pursuing a guilty plea. Here, Attorney Falk completely failed in his preparation and in the advice given to Petitioner. He candidly admitted that he did not have all the discovery, did not review it with Petitioner, and the only investigation conducted was reviewing what prior counsel had put together. App. pp. 946, 964-965, 985-986. Additionally, the record shows that Petitioner was not properly advised regarding the purpose and potential impact of calling his expert or lay witnesses nor was he advised regarding the strength of the State's case or available defense as is addressed in detail in the Petition.

Petitioner asks this Court to not overlook that the record supports a finding of ineffective assistance as the representation offered by Attorney Falk did not meet prevailing professional norms that make the adversarial process work. *See Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). Here, Attorney Falk failed to ensure any form of a

meaningful adversarial process. Therefore, as argued in the Petition, Petitioner urges this Court to find that counsel's representation was ineffective under the analysis set forth in *Strickland v. Washington*, 466 U.S.668 (1984).

Petitioner also urges this Court to find that counsel's representation violates the Constitutional guarantee of assistance of counsel as explained in *United States v. Cronin*, 466 U.S. 648, 656 (1984), as follows:

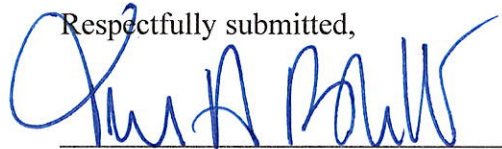
Thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." *Anders v. California*, 386 U.S. 738, 743, 87 S.Ct. 1396 1399, 18 L.Ed.2d 493 (1967). The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.

Based upon the foregoing and the entirety of the filed Petition and Appendix, Petitioner would urge this Court rehear and/or reconsider the arguments raised in the Petition, which are supported by the record, and addressed herein. Petitioner would respectfully ask this Court to allow the arguments to be further addressed by granting certiorari or whatever step this Court deems proper.

CONCLUSION

In consideration of the arguments contained in the Petition and the above stated arguments, Petitioner respectfully requests that the Court conduct a full review of the previously submitted Petition for Writ of Certiorari and Appendix. Petitioner would further urge this Court to reverse the Order filed on September 30, 2025 and allow Petitioner to brief the arguments or reverse the lower court and grant a new trial.

Respectfully submitted,



Tricia A. Blanchette
Bar No. 74904
Post Office Box 2147
Leesville, South Carolina 29070
(803) 908-3266
ATTORNEY FOR PETITIONER

This 8 day of October 2025.

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Tyrone D. Ellison,

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CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I served this 8th day of October 2025 a copy of a Petition for Rehearing and for Rehearing *En Banc* on Bryan T. Hall, Assistant Attorney General, by sending via email pursuant to Rule 262, SCACR, to his following registered email address: Bryanhall@scag.gov.



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Petitioner

October 8, 2025

TB
LAW OFFICE OF
TRICIA A. BLANCHETTE

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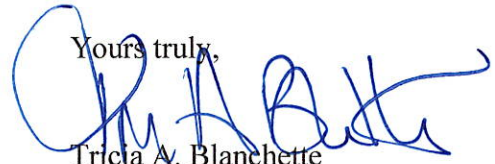
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

RE: Tyrone D. Ellison v. State; App. Case No. 2023-001432

Dear Ms. Kitchings:

For filing, I have attached a Petition for Rehearing and for Rehearing En Banc, with Certificate of Service attached. I appreciate your assistance with this filing. Please let me know if anything further is needed.

Yours truly,



Tricia A. Blanchette
Attorney at Law

cc: Bryan T. Hall, Senior Assistant Deputy Attorney General (via email)
Tyrone D. Ellison