

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Anthony L. Mattison,)	Case No. 2013-000585
Petitioner)	
)	
V.)	PETITIONER'S DESIGNATED
)	MATTERS TO BE INCLUDED
)	FOR REVIEW
State of South Carolina,)	
<u>Respondent.</u>)	

Comes now the Petitioner in the above entitled case designating matters to be included for review on Petitioner's Pro-Se Writ of Certiorari.

The following documents to be designated for review are as follows:

- 1). Petitioner's Affidavit
- 2). Petitioner's PCR issues and arguments
- 3). PCR orders of Dismissal
- 4). Order denying Motion to Alter or Amend
- 5). Order for Destruction of Arrest Record
- 6). Motion to Alter or Amend Judgement

These designated matters will show this Court that the Trial Court and the PCR Court based their decisions on an unreasonable determination of the facts and evidence presented.

The PCR Judge went contrary to the U.S. Supreme Court precedent and applied legal context that should not have been applied and his decision was objectively unreasonable.

I, Anthony L. Mattison, certify and verify under the penalty of perjury that the foregoing is true and correct.

/s/ Anthony L. Mattison
Anthony L. Mattison

2). Petitioner filed a PCR Application against the above attorneys alleging Ineffective Assistance of Counsel.

3.) Neither attorney was present at the Petitioner's PCR Hearing to refute his allegations.

4). Petitioner did not get a full bite of the apple in his PCR hearing, which is a guaranteed right.

5). Petitioner's probable cause issue that he raised was not addressed in the PCR Court's Order. Petitioner filed a 59(e) Motion to preserve this issue, but to no avail.

I, Anthony L. Mattison, certify and verify under the penalty of perjury that the foregoing is true and correct.

/s/ Anthony L. Mattison
Anthony L. Mattison

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ANDERSON COUNTY
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

Anthony L. Mattison.....Petitioner

V.

State of South Carolina.....Respondent

Appellate Case No. 2013-000585

PETITIONER'S PRO-SE PETITION FOR
WRIT OF CERTIORARI

Anthony L. Mattison
PCI 430 Oaklawn Road
Pelzer, SC 29669
Pro-Se

INDEX

Index.....1

Issues Presented.....2

Statement.....4

Argument(s).....5

Conclusion.....19

ISSUES PRESENTED

1). Did the PCR Court violate Applicant's due process rights by not requiring Trial Counsel to testify in Applicant's PCR Hearing?

2). Did the PCR Court abuse his discretion when he allowed the case to go forward without testimony from Applicant's Trial Counsel?

3). Did the PCR Judge err by not affording the Applicant a full bite of the apple as mandated with all the PCR Rules of Protection?

4). Was the PCR Court's decision an unreasonable determination of the facts in light of the evidence presented?

5). Was the PCR Court's decision an unreasonable determination contrary to the U.S. Supreme Court's precedent and by applying a legal context that should not have applied and decisions that were objectively unreasonable?

6). Did the PCR Court err by dismissing Applicant's Motion to Alter/Amend Judgement?

7). Did Applicant's Trial Attorney violate his Sixth Amendment right to the effective assistance of counsel when he conceded during the closing argument without Petitioner's knowledge or approval, and despite Petitioner taking a jury trial and clothing himself with the role of innocence?

Applicant contended that his attorney argued to the jury in closing argument without Petitioner's knowledge or consent.

8). Was Counsel ineffective for failure to put the State's case through adversarial testing?

Counsel failed to renew Motion for Probable Cause to preserve

for appellate review.

9). Did the Trial Court lack Subject Matter Jurisdiction to convict Applicant for an offense when there was no indictment charging him with that offense at the time jury was sworn?

Counsel should have objected to indictment.

10). Was Counsel ineffective for allowing Trial Court to amend Indictment #2007-GS-04-1889?

11). Did the Trial Judge err in refusing to suppress all evidence based on unlawful arrest and search of Defendant?

12). Was Counsel ineffective for failure to review my Probable Cause Motion?

Counsel failed to argue Probable Cause properly.

13). Was Counsel ineffective for failure to challenge the admissibility of the alleged drugs?

14). Was Counsel ineffective for failure to object to the reasonable doubt charge?

15). Was Counsel ineffective for failure to object to "pitting" of witness?

STATEMENT

In June of 2007, the Anderson Country Grand Jury indicted Anthony L. Mattison for Possession With Intent To Distribute Crack Cocaine (PWID), Indictment #2007-GS-04-1889. On January 14, 2010, Mattison was found guilty by a jury before the Honorable R. Lawton McIntosh. Mattison was represented by Kurt Tavernier and the State was represented by Lauren Sutton Hogan and Al Means. Mattison was sentenced to twenty-five (25) years. A timely Notice of Appeal was served on January 21, 2010. The Office of Appellate Defense filed an Anders Brief, which was dismissed by the S.C. Court of Appeals. State V. Mattison, Op. No. 2012-UP-084 (Ct. App. filed February 22, 2012).

On March 21, 2012, Mattison filed an Application for PCR and an evidentiary hearing was held on October 3, 2012 before the Honorable Clifton Newman. Trial Counsel, Kurt Tavernier, was absent from the PCR Hearing for unknown reasons. Mattison was represented by Daniel Draisen and the State was represented by Karen Ratigen. Judge Newman denied Mattison's PCR Application on November 25, 2012. Mattison filed a Motion to Alter/Amend Judgement on December 17, 2012, which was denied on May 7, 2013 (See: Attachments). Mattison's Attorney filed a Notice of Appeal.

ARGUMENTS

This Pro Se Petition alleges the following:

1). Did the PCR Court violated Petitioner's Due Process rights by not requiring Trial Counsel to testify in his defense in the Petitioner's PCR Hearing?

2). Did the PCR Court abuse his discretion when he allowed the Petitioner's case to go forward without testimony from Petitioner's Trial Counsel?

3). Did the PCR Judge err by not affording the Petitioner the full bite of the apple as mandated by the PCR Rules of Protection?

The Petitioner is asserting a 5th, 6th & 14th Amendment violation, which sets forth the Prima Facia violation of my Federal Constitutional rights. Grounds are Constitutional in dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure.

This Honorable Court will commit a manifest abuse of discretion that would amount to an error of law if the Petitioner is denied relief.

The Uniform Post-Conviction Act provides for the making of a record which fully and carefully record the proceedings so that the evidentiary basis for findings of each fact will be available on review. The Petitioner has shown that the evidence of material facts presented and heard in his PCR Hearing require vacation of his conviction and sentence.

The allegations in Petitioner's Application for Post-Conviction Relief must be deemed true until those allegations are controverted by Trial Counsel and Appellate Counsel, who were not present during the PCR Hearing. Until allegations contained in verified Application for Post-Conviction Relief are controverted by the Trial Counsel and Appellate Counsel they are deemed to be true for purpose of relief. Confrontation rights have been violated by the State.

The Petitioner questions whether he effectively waived his right to confront and cross-examine witnesses by entering through Counsel a stipulation of facts which comprised the State's case. Petitioner has shown that the stipulation was against his will and that he had no knowledge, however acquired, of his right to confrontation of witnesses against him.

The Petitioner's allegations for PCR are premised on fundamental and statutory rights. The PCR Court must assume facts presented by Petitioner are

true and view those facts in light most favorable to the Petitioner; Wilson V. State, 559 S.E. 2d 581.

PCR Counsel cannot waive confronting Trial Counsel because the PCR statute consists of claims of ineffective assistance of Trial Counsel and Appellate Counsel. Each attorney failed to give testimony or rebut the Petitioner's claims for relief during his PCR Hearing, thereby denying Petitioner a full bite of the apple. See: Transcripts Pg. #12.

4). Was the PCR Court's decision an unreasonable determination of the facts in light of the evidence presented?

On April 10, 2007, Narcotics Investigator, Casey Fouts of the Anderson Police Department, was investigating drug activity in the area of the Carolina Inn, which is a misrepresentation of the facts. See: Trial Transcript Pg. #12, Lines 8-25 and Pg. #13, Lines 1-14. "We will not be mentioning anything regarding a C.I. We will be saying that the officer was there for an ongoing criminal investigation and so, not involving Mr. Mattison, involving a C.I. or anything related to that. He then saw Mr. Mattison exit the Cadillac from the driver's seat with a blue plastic drinking cup. When Mattison saw police officers, he discarded the cup which had a liquid in it was spilled on the ground."

Investigator Fouts approached and smelled alcohol from the cup. Mattison was then arrested for having an open container of alcohol. App. 64, 11-App. 67, 11.3. See: Expunged Order Attached. Open container of alcohol charge was expunged, which gave the State no probable cause for arrest.

In a Pre-Trial Motion, Defense Counsel moved to suppress the drugs based on the fact that he was arrested for having an open container of alcohol, but the cup was not tested to verify that it contained alcohol. This sole basis for his arrest led to the "sequence of events which gave rise to the discovery of the alleged drugs". Counsel moved to have all the evidence thrown out, but the Judge ruled that it was not necessary to establish the presence of alcohol. He ruled that the officer's experience was enough to prove the presence of alcohol. Defense Counsel produced no further argument or objection App. 21, 11; 1-22 or evidence at trial. See: Petitioner's 59(e) Motion to Alter/Amend

Judgement.

Trial Counsel did not have the contents of the cup tested and did not produce any evidence to challenge the officer's testimony of the smell of alcohol because the open container charge was expunged.

The PCR Judge ruled that the PCR Court could not speculate what the result of the test of the cup would have been, but he should have granted relief because of the fruit of the poisonous tree doctrine. Since there was no probable cause from the C.I. to establish probable cause, which was ruled upon by the Trial Court, the open container charge was expunged. All evidence should have been suppressed.

Trial Counsel was ineffective for failure to present evidence which would have altered the probable outcome of the trial and PCR. Hicks V. State, 443 S.E. 2d 907. The PCR Court's decision was an unreasonable determination of the facts in light of the evidence presented.

The PCR Court's decision was based on an unreasonable determination of the facts in light of the evidence presented at the PCR Hearing because Trial Counsel inadequately argued the fruit of the poisonous tree doctrine.

The PCR Judge's decision went contrary to the U.S. Supreme Court precedent and applied a legal context that should not have applied and his decision was objectively unreasonable. See: Attached Order.

The Fourth Amendment guarantees the right to be secure from unreasonable searches and seizures. U.S. Constitutional Amendment IV. The S.C. Constitution provides similar protections against unlawful searches and seizures. S.C. Constitution Article I § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible and subject to suppression by the Trial Court. See: Pennsylvania V. Mimms, 434 U.S. 106 (1977), Ohio V. Robinette, 519 U.S. 33 (1996), State V. Williams, 571 S.E. 2d 703, Also State V. Pichardo, 623 S.E. 2d 840.

The Petitioner challenges the State Court's finding based entirely upon the State Record because the findings by the State

Court are unsupported by sufficient evidence. See: Wiggins V. Smith, 539 U.S. 510, Ward V. Sternes, 334 F. 3d 696 that the process employed by the State Court is defective. See: Nunes V. Mueller, 350 F. 3d 1045, Valdez V. Cockrell, 274 F. 3d 941 and that no actual true finding by the PCR Court was made at all. The PCR Court's findings are dressed in a presumption of correctness. AEDPA spells out what this presumption means. State Court fact finding should be overturned based on new evidence presented for the first time in Federal Court only if such evidence amounts to clear and convincing proof that the State Court (PCR) finding is in error. The simplest is the situation as in the case at bar. The PCR Court should have made a finding of fact, but neglected to do so in its Order. In that situation, the PCR Court's factual determination is perforce unreasonable and there is nothing to which the presumption of correction can attach. See: Wiggins, 123 S. Ct. at 2539-40. A somewhat different set of consideration applies where the PCR does make factual findings, but does so under a misapprehension as to the correct legal standard. Ciliendo V. Warden, 365 F. 3d 691.

Where the Trial Court and the PCR Court plainly misapprehended or mistake the record in making their findings, and the misapprehension goes to a material factual issue that is central to Petitioner's claims, that misapprehension can fatally undermine the fact finding process, rendering the resulting fact finding unreasonable. See: PCR Court's Order. Wiggins, 123 S. Ct. at 2538-39. As the Supreme Court noted in Miller-El the PCR fact finding process is undermined where the PCR Court has before it, yet apparently ignores, evidence that supports Petitioner's claim. Miller-El, 537 U.S. at 346. See: Petitioner's Affidavit.

Petitioner's concerns are amplified by the fact that the PCR Court also had before it, and apparently ignored, testimony demonstrating that the officer did not have probable cause to search the Petitioner based upon a misdemeanor which was invalid. Failure to consider key aspects of the record is a defect in the fact finding process.

5). Was the PCR Court's decision contrary to the U.S.

Supreme Court's precedent by applying a legal context that should not have applied and by decisions that were objectively unreasonable?

The Petitioner challenged specific facts in his PCR Application and Motion to Alter/Amend Judgement of PCR Court's Order of Dismissal.

The PCR Court adopted the Respondent's proposed order. The Attorney General was the sole author of the order denying Petitioner's Post-Conviction Relief and, as such, the State PCR Court abdicated its duty to exercise independent judgement in this case. The argument further asserts the mere adoption of a proposed order submitted by one party renders the PCR Court's determination contrary because the PCR Court should review all claims for relief de novo. See: PCR Court's Order of Dismissal.

Petitioner requests that this argument be construed liberally, citing Harnes V. Kerner, 92 S. Ct. 594. The Petitioner has presented clear and convincing evidence to grant Post-Conviction Relief by rebutting the State Court's factual findings. After a de novo review of the entire record, this Honorable Court should find that the PCR Judge did not fairly and accurately summarize the facts and apply the correct principles of law.

6). Did the PCR Court err by dismissing Applicant's Motion to Alter/Amend Judgement?

See: Attached Motion to Amend/Alter Judgement. The PCR Court's Order did not address the fact that Trial Counsel, Kurt Tavenier, who represented the Applicant in his jury trial, was not present at the PCR hearing on October 3, 2012. Nor was appellate Attorney K. Hudgins present. The S.C. Supreme Court held that if opposing Counsel is not present for testimony, the PCR Court cannot and did not articulate a strategy because he did not testify. The State did not make or offer any evidence to the contrary and the State failed to provide the testimony of Trial Counsel. The PCR

Court did not have an opportunity to review the trial transcript or expungement sheet because neither party presented it to the Court. Allegations contained in verified Application for Post-Conviction Relief are controverted by the State, they are deemed to be true for purpose of determining whether relief should be granted. See also: Order of Dismissal.

7). Did Applicant's Trial Attorney violate his Sixth Amendment right to the effective assistance of counsel when he conceded during the closing argument without Petitioner's knowledge or approval, and despite Petitioner's taking a jury trial and clothing himself with the role of innocence?

Applicant contended that his attorney argued to the jury in closing argument without Petitioner's knowledge or consent.

Not even a prosecutor can express such a personal opinion as to the Defendant's guilt. Francis V. Spraggins, 720 F. 2d 1190, citing U.S. V. Morris, 568 F. 2d 396, 401.

What was presented to the jurors, and the Court, as an admission of Petitioner's guilt was in fact nothing more than the Defense Counsel's opinion of the case. See: canon 7 (EC 7-24) of Code of Professional Responsibility of the American Bar Association, which provides: The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.

Counsel violated the Code of Professional Responsibility and breached the duty of loyalty that she owed Petitioner when, despite Petitioner taking a jury trial and claiming his innocence, his Counsel expressed her opinion to the jury that the Petitioner had possessed drugs.

While law tradition allocates to counsel the right to make binding decisions of trial strategy in many areas, Foretto V. California, 422 U.S. 806, 95 S. Ct. 2525 (1975), the accused retains the ultimate authority to make certain fundamental

decisions regarding the case, such as whether to plead guilty, to testify in his own behalf, or take an appeal. Jones V. Barnes, 463 U.S. 745.

When a lawyer concedes a client's guilt during the guilt-innocence phase of trial in spite of their client's plea of not guilty (jury trial request) and without the defendant's consent, counsel provides ineffective assistance of counsel regardless of the weight of evidence against the defendant or the wisdom of counsel's credibility approach strategy. See: Francis V. Spraggins, 720 F. 2d 1190; Wiley V. Sowders, 647 F. 2d 642; N. Carolina V. Harbison, 315 N.C. 175 (1985).

The Gravity of the consequences of a decision to plead or to admit one's guilt demands that the decision remains in the defendant's hands. An attorney cannot deprive his or her client of the right to have an issue of guilt or innocence presented to the jury as an adversarial issue on which the State bears the burden of proof without committing ineffective assistance of counsel. See: U.S. V. Cronie, 466 U.S. 648. The due process clause does not permit the attorney to enter a guilty plea or admit facts that amount to a guilty plea without the client's consent. See: Bookhart V. Jarvis, 348 U.S. 1, 86 S. Ct. 1245.

Clearly trial record void of Petitioner's permission for his Trial Lawyer to concede his guilt to any of the charges he was on trial for cannot be valid. Only a defendant can plead himself guilty, not his lawyer. So when a lawyer's admission of their client's guilt amounts to a guilty plea the record must support that petitioner wanted to plead guilty and in fact consented to pleading guilty. See: Bookhart Supra and Boykin V. Alabama, 395 U.S. 239.

The United States of America Justice System Court on the adversarial process to procedure just results. Petitioner contended that his Counsel acted less like an adversary and more like an advocate for the State when she made his unsolicited and unassisting to declaration of Defendant's guilt. By effectively assisting the State in convincing the jury that Petitioner was guilty of the charge he was on trial for (admitted guilt without

consent), Counsel caused a breakdown in the adversarial process that rendered the outcome of the trial unreliable and thereby violated Petitioner's 6th Amendment right to effective assistance of counsel.

Admission of guilt constituted ineffective assistance of counsel in violation of his right to a fair trial under the Sixth and Fourteenth Amendments to the Constitution of the United States. See: Wiley V. Sowders, 647 F. 2d 642.

When a defendant enters a plea of not guilty he preserves two fundamental rights:

1). He preserves the right to a fair trial as provided by the Sixth Amendment;

2). He preserves the right to hold the government to proof beyond a reasonable doubt. See: Wiley Supra.

An attorney may not stipulate to facts which amount to the functional equivalent of a guilty plea. U.S. V. Brown, 428 F. 2d 1100 (D.C. Cir. 1970) See: Transcript Pg. 26, Lines 3-4, Pg. 27, Line 5, Pg. 63, Lines 15-20, Pg. 64, Lines 1-9, Pg. #170, Lines 4-5, Pg. 174, Lines 5-6, Pg. 184, Lines 9-10.

8). Was Counsel ineffective for failure to put the State's case through adversarial testing? Counsel failed to renew Motion for Probable Cause to preserve for appellate review.

Nervousness is generally included as one of several grounds for finding reasonable suspicion and not a ground sufficient in and of itself. Counsel failed to challenge the State's case. U.S. V. Hernandez-Alvarado, 891 F. 2d 1414 a defendant's alleged nervousness is insufficient to create reasonable suspicions. See: U.S. V. Saperstein, 723 F. 2d 1221, 1228 (nervousness is inherently unsuspecting behavior trait).

A hunch may provide the basis for solid police work; it may trigger an investigation that uncovers facts that establish reasonable suspicion, probable cause, or even grounds for conviction. A hunch, however, is not a substitute for the necessary specific articulable facts required to justify a Fourth

Amendment intrusion.

Because the search violated the 4th Amendment, Trial Court was required to suppress the evidence that resulted from the search as the fruit of the poisonous tree. Wong Sun V. United States, 371 U.S. 471, 484-85. The fruit of the poisonous tree doctrine hold that where evidence would not have come to light but for the illegal actions of the police, and said evidence has been obtained by the exploitation of that illegality, evidence must be excluded. See: State V. Plath, 284 S.E. 2d 221.

9). Did the Trial Court lack Subject Matter Jurisdiction to convict Applicant for an offense when there was no indictment charging him with that offense at the time jury was sworn?

Counsel should have objected to indictment.

A defendant in a criminal case is entitled to be tried only on the charges set forth in the indictment. S.C. Ann § 17-19-10 (1976). The test of sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to defend. S.C. Code Ann. § 17-19-20.

However, a reference to the statute in the caption does not validate an invalid indictment. The caption of an indictment is not a part of the finding of the grand jury. State V. Lark, 42 S.E. 175, 176-77. Rather, it is the body of the indictment that is controlling. If the body specifically states the essential elements of the crime and is otherwise free from defect, a defect in the caption will not invalidate the indictment. Tate V. State, 549 S.E. 2d 601. See: Indictment.

10). Was Counsel ineffective for allowing Trial Court to amend Indictment #2007-GS-04-1889?

Where an amendment to an indictment charges an offense to one with increased punishment, the circuit court is deprived of

subject matter jurisdiction. See: S.C. Code Ann. § 17-19-100; See also: State V. Lynch, 545 S.E. 2d 511, Hopkins V. State, 317 S.C. 7, 451 S.E. 2d 389, and State V. Riddle, 301 S.C. 211, 391 S.E. 2d 253.

The amendment of the Indictment #2007-GS-04-1889 substituted an entirely different [offense] for the one charged. Sowell, 85 S.C. at 284, 677 S.E. at 318. The amendment was a material charge which modified what the defendant was called upon to answer. Browning, 320 S.C. at 368, 465 S.E. 2d at 359, which produced being convicted and sentenced to an illegal sentence. See: Indictment & Sentence Sheet and Pg. #62, Lines 2-3, Pg. #96, Lines 1-5.

However, because the caption is not part of the indictment, a designation in the caption cannot enlarge or diminish the offense charged in the body of the indictment. See: State V. Wilkes, 346 S.C. 67, 70, 550 S.E. 2d 332 (Ct. App. 2001)(citing 42 C.J.S. Indictments and Informations § 113 (1991)). The references to the statute in the caption does not make the indictment sufficient.

REFERENCES

11). Did the Trial Judge err in refusing to suppress all evidence based on unlawful arrest and search of Defendant?

Prior to trial, Mattison moved to suppress all evidence discovered pursuant to a search incident to arrest for open container. See: Transcript Pg. #19, Lines 14-18. The substance in blue Solo cup was never identified since Mattison poured out the substance, however, the officer claims in the incident report to have smelled the beverage and detected an odor of alcohol. However, based on all reports and discovery items, the beverage which was located in the cup has not been tested, in fact, to verify that it was, in fact, an alcoholic beverage, which is the basis for Mattison's arrest and subsequent search of Mattison while in custody. See: Transcript Pg. #19, Lines 20-25, Pg. #20, Lines 1-5.

Mr. Hogan testified that there was a bottle of wine in the trunk of the car, so I believe that the officer has probable cause and a reason to believe that it was an alcoholic beverage. See: Transcript Pg. # , Lines 13-21. Defense Counsel argued that there is no proof that the beverage in the blue Solo cup is the same beverage in the trunk. See: Transcript Pg. #20, Lines 22-25, Pg. #21, Lines 1-2. The open container charge is still pending.

In a criminal case, an Appellate Court sits to review errors of law only. Therefore, an Appellate Court is bound by the Trial Court's factual findings unless they are clearly erroneous. State V. Baccus, 367 S.C. 41, 48, 625 S.E. 2d 216, 220 (2006). The same standard of review applies to preliminary factual finding in determining the admissibility of certain evidence in criminal cases. State V. Wilson, 345 S.C. 1, 5-6, 545 S.E. 2d 827, 829 (2001). See: Transcripts Pg. #21, Lines 3-15.

The police, however, may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity. State V. Butler, 343 S.C. 198, 201, 539 S.E. 2d 414, 416 (Ct. App. 2000). See: Transcript Pg. #20, Lines 17-21. "Reasonable Suspicion" requires a "particularized and objective basis that would lead one to suspect another of criminal activity". State V. Khingratsaiphon, 352 S.C. 62, 572 S.E. 2d 456, 459 (2002)(quoting) United States V. Cortez, 449 U.S. 411, 418 (1981). In determining whether reasonable suspicion exists, the Court must consider the totality of the circumstances. State V. Rogers, 368 S.C. 529, 534, 629 S.E. 2d 679, 682 (Ct. App. 2006). Reasonable suspicion is more than a general hunch but less than what is required for probable cause. Butler, 343 S.C. at 202, 539 S.E. 2d at 416.

The Judge erred in refusing to suppress all evidence based on unlawful arrest and search of Defendant.

12). Was Counsel ineffective for failure to review my Probable Cause Motion?

Counsel failed to argue Probable Cause properly.

A determination as to whether Mattison was prejudiced under Strickland by Counsel's failure to file a Motion to Suppress the relevant evidence involves an examination of two questions:

1). Was there a meritorious Fourth Amendment claim that necessitated the filing of such a motion?

If there was a valid Fourth Amendment claim that Counsel should have raised in a Motion to Suppress, then...

2). Was the evidence that should have been excluded at trial so critical that, but for Counsel's failure to file the suppression motion, is there a reasonable probability that the verdict would have been different?

On street questioning, even though no probable cause exists for an arrest, does not include a trip to the police station. In Davis V. Mississippi, 394 U.S. 721, the court held that a rape suspect who was taken into custody as part of a dragnet investigation without probable cause was illegally detained so that fingerprints obtained as a result of the unlawful detention could not be used against him. Same analogy as the case at bar. The State's case relied on a faulty open container charge. All evidence to prosecute that misdemeanor had been unlawfully obtained.

It is held that where Defense Counsel's failure to articulate a Fourth Amendment claim on Motion to Suppress completely is a principle allegation of ineffectiveness. Applicant's Fourth Amendment claim is meritorious and the result would have been different, absent evidence that should have been excluded. Sikes, 448 S.E. 2d 560. Kimmelman V. Morrison, 477 U.S. 365, 106 S. Ct. 2574.

Counsel failed to articulate on the Fourth Amendment issues and back them with precedent case law that would have clearly proven the drug evidence seized should have been suppressed. There is a reasonable probability that the outcome would have been different. See: Wong Sun Supra, Counsel failed to argue the fruit of the poisonous tree doctrine.

13). Was Counsel ineffective for failure to challenge the admissibility of the alleged drugs?

Counsel failed to challenge the chain of custody, Benton V. Pellum, 100 S.E. 2d 534, while proof need not negate all possibility of tampering, it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed.

As stated in Rogers V. Commonwealth, 197 Va. 527, 90 S.E. 2d 257, 260, where the substance analyzed has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. See also: State V. Chisolmn, 584 S.E. 2d 401; See: Pages # _____

In the case at bar, evidence was tampered with and an illegal notary signature was not argued. See: Transcript Pg. #15-17. The evidence is unaccounted for between the 11th and 15th.

In State V. Jones, 536 S.E. 2d 675, the court found that a false affidavit in support of a search warrant required suppression of evidence found pursuant to that search warrant. The notarization error in the present case should be treated in the same way that the false affidavit in support of the search warrant was treated in Jones. The Judge erred in refusing to suppress the drugs based on the notarization error.

14). Was Counsel ineffective for failure to object to the reasonable doubt charge?

Trial Court, when defining reasonable doubt for jury, should give no further instructions than that "reasonable doubt" is the kind of doubt that would cause a reasonable person to hesitate to act.

Trial Counsel's failure to object to Trial Judge's comments which invited jury to prematurely discuss case not strategic.

A jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged. State V. Pierce, 346 S.E. 2d 707; State V. Joyner, 346 S.E. 2d 711. Jurors should be admonished not to discuss the case with anyone, including each other, prior to the submission of the case to them. See: McGuire, 253 S.E. 2d 103, 105. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation. See: Transcript Pg. #60, Line 7, Pg. #61, Lines 10-11, Pg. #161, Lines 1-3, Pg. #185, Line 3.

15). Was Counsel ineffective for failure to object to "pitting" of witness?

Burgess V. State, 91 S.E. 2d 245, 495 S.E. 2d 445. No matter how a question is worded, anytime a solicitor asks a defendant in a trial, such as myself, to comment on the truthfulness or explain the testimony of an adverse witness, the defendant, such as myself, is, in effect, being pitted against the adverse witness and alleged co-defendant. See: questions asked by Solicitor, Transcript Pg. #155, Lines 12-23, Pg. 177, Lines 16-21. This kind of argumentative questioning is improper. See: State V. Bryant, 316 S.C. 216, 447 S.E. 2d 852; State V. Brown, 297 S.C. 27, 374 S.E. 2d 669; State V. Sapps, 295 S.C. 484, 369 S.E. 2d 145.

Counsel failed to object to the Solicitor's questioning. Particularly when credibility is the crucial issue in a case, such as the case at bar, improper pitting of witnesses is prejudicial and cannot be deemed harmless. See: Sapp & Brown Supra.

A Defendant's knowing and voluntary waiver of Statutory or Constitutional Rights must be established by a complete record, and may be accomplished by a Colloguy between the Court and Defendant's Counsel, or both.

Ruddy V. State, 528.5 E. 2d 418, 421

Florida V. Nixon, 125.5 Ct. 551

Moore V. State, 732 SC 2d 871

CONCLUSION

Based on the above exhausted issues presented at PCR Hearing and Motion to Alter/Amend Judgement, certiorari should be granted, and Petitioner's conviction and sentence reversed/vacated, and the case remanded for a new Post-Conviction Hearing or a New Trial, or whatever relief this Court deems necessary and appropriate.

Respectfully,

/s/ Anthony L. Mattison
Anthony L. Mattison

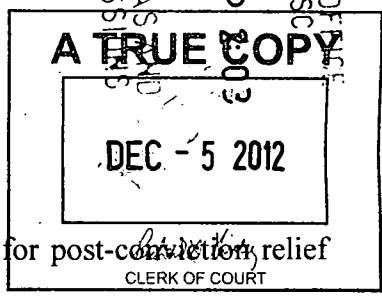
STATE OF SOUTH CAROLINA)
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 COUNTY OF ANDERSON)
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 Anthony Mattison,)
 S.C.D.C. No. 270904,)
)
 Applicant,)
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 v.)
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 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-04-0335

ORDER OF DISMISSAL

FILED - CLERK'S OFFICE
 ANDERSON SC
 2012 DEC - 3 P 2:03
 COMMON PLEAS AND
 GENERAL SESSIONS



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 21, 2012. The Respondent made its return on May 22, 2012. An evidentiary hearing into the matter was held on October 3, 2012 at the Anderson County Courthouse. The Applicant was present at the hearing and represented by Daniel L. Draisen, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Court had before it the trial transcript, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. The Applicant was indicted at the July 2007 term of the Anderson County Grand Jury for possession with intent to distribute (PWID) crack cocaine (2007-GS-04-1889). He was represented by Kurt Tavernier, Esquire.

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After the State called the case to trial, the Applicant was found guilty. On January 14, 2010, the Applicant was sentenced by the Honorable R. Lawton McIntosh to twenty-five years for PWID crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The South Carolina Court of Appeals dismissed the appeal. State v. Mattison, Op. No. 2012-UP-084 (S.C. Ct. App. filed February 22, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. The “conviction and sentence was in violation of the Constitution of the United States and the Constitution and laws of this state.”
2. Ineffective assistance of trial counsel:
 - a. Failed to object to defective indictment.
 - b. Conceded the Applicant’s guilt.
 - c. Failed to put the State’s case through adversarial testing.
 - d. Failed to challenge the chain of custody and admissibility of the drugs.
 - e. Failed to object to the reasonable doubt charge.
 - f. Failed to object to the trial judge’s comments that invited the jury to prematurely discuss the case.
 - g. Failed to object to pitting of witnesses.
 - h. Denied the Applicant “a full and fair consideration of his Fourth Amendment claims.”
 - i. Vouched for a police officer.
 - j. Failed to object to the solicitor’s bolstering of Captain Marsee.
3. Ineffective assistance of appellate counsel:
 - a. Failed to raise the issue of an amended indictment.
 - b. Failed to raise the issue of an “illegal and excessive sentence.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

2 of 10

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing and to closely pass upon his credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of trial counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “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, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the indictment in this case. The Applicant argues he was indicted for a first offense but went to trial on a third offense. This Court has examined the PWID crack cocaine indictment and does not find the Applicant was specifically indicted under the statutory section for a first offense. As such, there was no basis for trial counsel to have objected to the

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indictment. To the extent the Applicant is arguing the CDR code for first offense was noted on his indictment, this Court finds CDR codes are administrative designations and do not affect subject matter jurisdiction.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved to suppress the evidence in this case. This Court has examined the trial transcript and finds that trial counsel did, in fact, moved for suppression of the following evidence: the drugs found on the Applicant's person, the items found in the trunk (gun, scales, wine bottle), and the cup the Applicant dropped outside the vehicle. (Trial transcript, p.14; pp.19-21; p.46). The trial judge suppressed the gun and allowed the remaining evidence to be admitted. This Court notes trial counsel renewed his objection several times. The Applicant's argument is without merit.

This Court finds the Applicant failed to meet his burden of proving trial counsel conceded his guilt at trial. The Applicant argued trial counsel told the jury to convict him of simple possession instead of PWID. (Trial transcript, p.184). It is clear from the record that trial counsel's strategy was to argue the 5.54 grams of crack cocaine found on his person was for personal use and not for distribution. This strategy was made clear in his cross-examination of Sergeant Clardy and Captain Marsee, for example. There was no resulting prejudice from trial counsel's comment, as the drugs were found underneath the foreskin of the Applicant's penis while being processed for a lawful arrest on an open container charge. (Trial transcript, p.93).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued the blue cup he dropped at the scene should have been tested. This Court finds, however, that trial counsel argued to the trial judge that – as the open container charge and arrest led to the PWID charge – it should be dismissed because the cup was not tested to verify there

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was alcohol in the cup. (Trial transcript, pp.19-21). Regardless, the Applicant failed to seek a discovery order for an independent test of evidence. As such, this Court cannot speculate as to what the result of such a test of the cup would have been. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the chain of custody of the drug evidence.² This contention is refuted by the trial record. Trial counsel's pre-trial motion for suppression of the drug evidence was based on an argument that an incorrect notarization date tainted the entire chain of custody. (Trial transcript, pp.14-19). Trial counsel renewed this motion at the appropriate time. (Trial transcript, pp.110-11). The Applicant has failed to demonstrate any potential problems with the chain of custody that trial counsel should have investigated. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the reasonable doubt jury charge. (Trial transcript, pp.191-92). This Court notes the Applicant was unable to articulate why he believed the charge was deficient. Regardless, this Court notes this particular jury charge has been found to be adequate. See State v. Simmons, 384 S.C. 145, 178-79, 682 S.E.2d 19, 37 (Ct. App. 2009).

² The Applicant stated it was improper for trial counsel to state his belief that former Investigator Baskin did not tamper with the evidence. (Trial transcript, p.111). This Court notes, however, this statement was made outside the presence of the jury and was in keeping with trial counsel's trial strategy.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected when the trial court “invited he jury to prematurely discuss the case.” This Court notes the Applicant was unable to point to this statement in the trial transcript. As such, he cannot meet his burden of proof on this issue. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding the applicant bears the burden of proving the allegations in their PCR application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the solicitor’s pitting of witnesses. The Applicant argued an objection was necessary because the State called several police officers as witnesses in order to get “the right answer.” Initially, this Court notes the officers’ testimony was consistent. Regardless, this Court finds that, as the Applicant’s contention does not constitute pitting witnesses, it was not error for trial counsel not to have objected. See State v. McKinley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (noting pitting is improper because witnesses are generally not allowed to testify whether another witness is telling the truth).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not make Fourth Amendment objections. This Court finds this issue is refuted by the trial transcript. Trial counsel challenged the State’s decision not to prosecute the open container charge because it led to the discovery of the crack cocaine. (Trial transcript, pp.19-21). Trial counsel also moved to suppress the evidence found in the trunk of the car – which led to the suppression of the gun. (Trial transcript, pp.46-50). The Applicant has failed to articulate what other Fourth Amendment challenges should have been made. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective because he vouched for police officers’ testimony. The Applicant stated trial counsel

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spoke of the officers as if they were experts and did not challenge their testimony. Initially, this Court notes one of the officers – Captain Marsee – was qualified as an expert witness. Regardless, this Court finds the Applicant failed to show trial counsel vouched for State witnesses. While trial counsel may have mentioned that he did not suspect the officers of tampering with the drug evidence, this does not equate to vouching. Cf. Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (“A prosecutor improperly vouches for a witness’ credibility and places the government’s prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.”).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the State bolstering its witness, Captain Marsee.³ This Court notes the Applicant failed to point to a specific point in the record to support his assertion. This Court finds there is no evidence in the record that the State bolstered Marsee. While Marsee may have been qualified (based on his years of experience and training) as an expert witness regarding the distribution and street value of illegal narcotics, this does not constitute either bolstering or vouching for the witness. (Trial transcript, pp.138-41). See id.; see also Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) (“A solicitor may argue the credibility of the State’s witnesses if the argument is based on the record and its reasonable inferences.”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

³ The Applicant also argued trial counsel should not have praised Marsee about his credibility. This Court finds there is no evidence of this in the trial transcript. Rather, the trial record reflects trial counsel aggressively cross-examined Marsee in an effort to demonstrate the drugs on the Applicant’s person were for his personal use and not to be sold. (Trial transcript, pp.150-60).

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that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective Assistance of Appellate Counsel

The Applicant alleges he received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Applicant stated appellate counsel should not have filed an Anders brief. The Applicant stated appellate counsel should have instead raised issues related to his indictment, enhancement of his charge, and denial of the suppression motion. This Court finds the Applicant failed to meet his burden of proving appellate counsel was ineffective. Initially, this Court notes there were no objections at trial to the indictment or enhancement of the PWID charge so they could not have been raised at issues on appeal. See Legge v. State, 349 S.C. 222, 225, 562

S.E.2d 618, 620 (2002) (noting if an issue is not preserved for appeal, then appellate counsel cannot be ineffective for failing to raise the issue). In any event, the result of appellate counsel's decision to file an Anders brief is that the trial court's ruling on the suppression motion was able to be reviewed by the appellate court. See State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002) ("The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that appellate counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that appellate counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by appellate counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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CONCLUSION

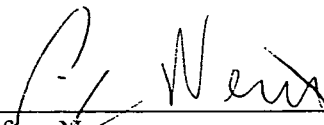
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, or appellate proceedings. Counsel were not deficient and the Applicant was not prejudiced by their representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and ~~dismissed with prejudice; and~~
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25th day of November, 2012.



Clifton Newman
Presiding Judge

Columbia, South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2012 DEC - 3 P 2:04
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED - CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
ANDERSON SC CIVIL ACTION NO.: 2012-CP-04-1045

2013 FEB 15 P 12:09

Anthony Mattison,
S.C.D.C. No. 270904

COMMON PLEAS AND
GENERAL SESSIONS

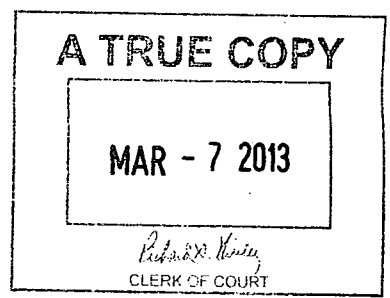
Applicant,

vs.

State of South Carolina,

Respondent.

**ORDER DENYING MOTION
TO ALTER OR AMEND**

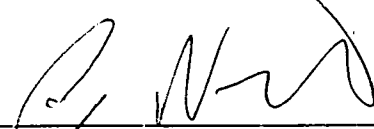


This matter comes before the Court by way of Applicant's Motion to Alter or Amend the Order of Dismissal dated November 25, 2012 and filed December 3, 2012.

Having carefully considered the arguments submitted and applicable law, the Court finds that the Motion to Alter or Amend should be DENIED.

It is therefore ORDERED that the Applicant's Motion to Alter or Amend is DENIED.

AND, IT IS SO ORDERED.



Clifton Newman
Presiding Judge

February 13, 2013
Walterboro, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge

Case No. 2012-CP-04-1045

Anthony L. Mattison, SCDC No. 270904.....Appellant,

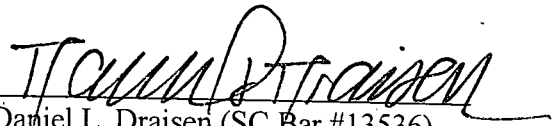
vs.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Anthony L. Mattison hereby appeals the Order of the Honorable Clifton Newman, Circuit Court Judge, presiding in Anderson County, South Carolina, dated November 25, 2012, and filed with the Clerk of Court for Anderson County, South Carolina on December 3, 2012. Appellant promptly filed a Motion to Alter or Amend Judgment on December 17, 2012. Appellant's Motion to Alter or Amend was denied by the Honorable Clifton Newman, Circuit Court Judge, without oral argument on February 13, 2013. The Order was filed with the Clerk of Court on March 7, 2013. Appellant received written notice of the Order Denying Plaintiff's Motion to Alter or Amend on March 12, 2013.

Dated: March 13, 2013


Daniel L. Draisen (SC Bar #13536)
Krause, Moorhead and Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
Court-Appointed Attorney for Appellant

Other Counsel of Record:

Kaelon E. May, Esq.
John Walter Whitmire, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549

THE STATE OF SOUTH CAROLINA

Race B Sex M
DOB 04-01-1965 SSN 250-37-5643

vs.

SID # _____

ANTHONY LEROY MATTISON
Defendant
2032 BOLT DRIVE
Address
ANDERSON, SC 29621

Charges were disposed of in the court indicated below

Magistrate Municipal

COPY

AKA _____

IT APPEARS that, pursuant to Sections 17-22-950 and 17-1-40 of the South Carolina Code of Laws, the defendant is entitled to have all records relating to this offense expunged and destroyed at no cost to the defendant. Summary Court expungements pursuant to S.C. Code of Laws Section 17-22-950 have been preapproved by SLED.

Warrant/Ticket/ Courtesy Summons	<u>15804DT</u>	Date of Arrest/Service	<u>04-10-07</u>	Place of Arrest/Service	<u>ANDERSON</u> County, S.C
Warrant/Ticket/ Courtesy Summons	_____	Date of Arrest/Service	_____	Place of Arrest/Service	_____ County, S.C

Charge(s) OPEN CONTAINER/VEHICLE

The above charge is eligible for expungement because it is a summary level offense and:

- The charge was dismissed on _____ (Date).
- The charge was *not* proessed on 02-17-11 (Date).
- The defendant was found not guilty on _____ (Date).
- The defendant was charged pursuant to Section 34-11-90, made restitution, and paid the administrative fee to the County resulting in a dismissal on _____ (Date).

IT IS ORDERED that all records relating to such arrest/court summons and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained by SC Law Enforcement Division (SLED).

ANDERSON MUNICIPAL COURT
401 SOUTH MAIN STREET
ANDERSON, S.C. 29624

Signed this 21 day of March 2011

TRUE AND CERTIFIED COPY OF ORIGINAL
DOCUMENT ON FILE AT ANDERSON MUNICIPAL COURT
SIGNED [Signature]
COURT COORDINATOR

3-8-12

[Signature]
Summary Court Judge

[Signature]
Prosecutor/ Prosecuting Officer/ Affiant (Circle One)
(To Verify Accuracy of Disposition)

Expunged by SLED by: _____ Date: _____ (For SLED internal use only)

79-06-202

EXPUNGED

OWL
3-2-12

STATE OF SOUTH CAROLINA)
County of Anderson)
Anthony Mattison,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
Case No: #2012-CP-04-0335
59(e)
MOTION TO ALTER/
AMEND JUDGMENT

This matter comes before the Court by way of an application for Post-Conviction Relief filed March 21, 2012. The Respondent made it's Return on May 22, 2012. An evidentiary hearing into the matter was held on October 3, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Daniel L. Draisen, Esquire, Karen C. Ratigan, of the Attorney General represented the Respondent.

The applicant is respectfully requesting this Honorable Court to Alter/Amend his final judgment attached because the Order of Dismissal that was signed by Honorable Clifton Newman on November 25, 2012 do not address the fact that trial counsel Kurt Tavernier that represented the applicant in his jury trial was not present at the PCR hearing on October 3, 2012. Nor was appellate Counsel K. Hudgins of the Appellate Defense Office.

The S.C. Supreme Court held that if opposing counsel is not there for testimony and the PCR Court cannot determine his credibility then he concedes to the allegations/claims against him. Trial counsel cannot and did not articulate a strategy because he (Kurt Tavernier) trial attorney did not testify at the PCR hearing on October 3, 2012. Nowhere in the record did the applicant acquiesce to a waiver that counsel should not attend a PCR hearing that was mandatory that he be present.

PCR Counsel Daniel L. Draisen denied the applicant the right to have crucial issues considered on collateral effectively renders the already narrowed provision for a superficial remedy and denies applicant his equal protection rights under the Federal and State Constitution.

This violation which in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice.

The applicant made the claim in his post-conviction application that trial counsel was deficient and there is a reasonable probability that, but for counsel's errors, the outcome would have been different.

The state did not make or offer any evidence to the contrary and the state failed to provide the testimony of trial counsel at the PCR hearing on October 3, 2012. Further, the PCR Court did not have an opportunity to review the trial transcript because neither party presented it to the court. Therefore, the applicant should be granted another PCR hearing or the case should be vacated and remanded for a new trial.

Allegations in applicant's application for post-conviction relief must be deemed true until those allegations are controverted by the state, until allegations contained in verified application for post-conviction relief are controverted by the state, they are deemed to be true for purpose of determining whether relief should be granted.

The applicant questions whether he effectively waived his right to confront and cross examine witnesses by entering through counsel, a stipulation to a statement of facts which comprised the states case, he would be permitted to show that the stipulation was against his will or that he had no knowledge, however acquired of his right to confrontation of witnesses against him.

The Uniform Post-Conviction Act provides for the making of a complete record which fully and carefully records the proceedings so that the evidentiary basis for finding of fact will be available on review.

The applicant's allegations for PCR is premised on fundamental and statutory rights. The PCR Court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

Trial counsel and appellate counsel cannot waive attending a PCR hearing that they are a party to. PCR counsel cannot stipulate to waive confronting trial counsel and appellate counsel because the PCR statutes consist

of claims of ineffective assistance of appellate counsel.

Trial counsel Kurt Tavernier and appellate counsel K. Hudgins of the appellate defense office failed to give testimony at my PCR hearing, thereby denying me a full bite at the apple.

Not only does this deprive the applicant a proper ruling on the issues raised and the non-attendance of trial counsel and appellate counsel, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the ruling which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the true reasons for those findings as required by §17-27-80 and Rule 52(a) SCRCP.

Applicant requesting that this Court Alter or Amend his judgment to make the order reflect that opposing counsel Kurt Tavernier and appellate counsel was not present at the PCR hearing on October 3, 2012, and or grant a new PCR hearing so that the applicant can get a full bite of the apple.

STATE OF SOUTH CAROLINA)
County of Anderson)
Anthony Mattison,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
Case No: #2012-CP-04-0335

CERTIFICATE OF SERVICE

I, Anthony Mattison, #270904, certify that I have served the below parties with a copy of my Motion to Alter or Amend by placing a copy in the hands of the Perry Correctional Institution mailroom for mailing postage prepaid.

Clifton Newman
Court House
125 W. Main St.
Kingstree, S.C.
29556

Daniel Draisen
Attorney at Law
207 E. Calhoun St.
Anderson, S.C. 29621

Attorney General
P.O. Box 11549
Columbia, S.C.
29211

Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, S.C. 29622

Anthony D. Mattison

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ANDERSON COUNTY
CLIFTON NEWMAN, CIRCUIT COURT JUDGE

Anthony L. Mattison.....Petitioner

V.

State of South Carolina.....Respondent

Appellate Case No. 2013-000585

CERTIFICATE OF SERVICE

I, Anthony L. Mattison, certify that I have served the parties below with a copy of my Pro Se Petition for Writ of Certiorari by placing a copy in the Perry Correctional Institution mailroom's hands for mailing.

Daniel Shearouse
Clerk of Court
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Attorney General
P.O. Box 11549
Columbia, SC 29211

I, Anthony L. Mattison, certify and verify under penalty of perjury that the foregoing is true and correct.

Anthony L. Mattison

/s/ Anthony L. Mattison
Anthony L. Mattison

PERRY, I. DOMINIC - 200
430 OAKLAND ROAD
PEIZER, S.C. 29669

RECEIVED
NOV 07 2013
PCL MAILROOM

DANIEL SHEARSON
CLERK'S OFFICE
SUPREME COURT BLDG.
P.O. BOX 11330
COLUMBIA, S.C. 29211



UNITED STATES POSTAL SERVICE
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