

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Calhoun County

Carmen T. Mullen, Circuit Court Judge

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RECEIVED

NOV 18 2013

S.C. Supreme Court

WILLIE PELZER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000731

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PETITION FOR WRIT OF CERTIORARI

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II. The PCR court erred in finding that Petitioner’s trial attorneys provided effective assistance of counsel where Petitioner’s trial attorneys failed to cross-examine the State’s star witnesses - witnesses who owned the gun used to murder the deceased - about the possible life sentences they would have received for murder had they not implicated Petitioner instead.

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## ISSUES PRESENTED

- I. Did the PCR court err in finding Petitioner was not entitled to a belated direct appeal of his life without parole sentence where (1) Petitioner's trial attorneys never discussed with him the possibility of filing a direct appeal; (2) Petitioner's trial attorneys improperly assumed that Pelzer did not want to file a direct appeal after Petitioner made an apology to the Trial Court during sentencing; and (3) Petitioner's trial attorneys made a unilateral decision not to file a direct appeal on Petitioner's behalf?
  
- II. Did the PCR court err in finding that Petitioner's trial attorneys provided effective assistance of counsel where Petitioner's trial attorneys failed to cross-examine the State's star witnesses - witnesses who owned the gun used to murder the deceased - about the possible life sentences they would have received for murder had they not implicated Petitioner instead?

## STATEMENT

### **Indictment**

On April 27, 2009, Petitioner Willie Pelzer was indicted by the Calhoun County Grand Jury for one count of murder. App. 1089-1090.

### **Trial and Sentence**

On December 1-4, 2009, Pelzer was tried before the Honorable James C. Williams, Jr. and a jury. App. 1. Pelzer was represented by Mark A. Leiendecker and Martin Banks. Id. The State was represented by Solicitor David M. Pasco and Assistant Solicitor Donald Sorenson. Id.

The jury found Pelzer guilty of murder on December 4, 2009. App. 935, ll. 21-23. Judge Williams sentenced Pelzer to life without the possibility of parole. App. 960, ll. 8-12; 1091.

A direct appeal was not filed on Pelzer's behalf.

### **PCR Application and Evidentiary Hearing**

On August 4, 2010, Pelzer filed an application requesting post-conviction relief ("PCR"). App. 964-971. In his application, Pelzer asserted, among other things, that his trial attorneys were ineffective for failing to file a direct appeal. App. 965-966, 970. The State filed its Return on February 4, 2011. App. 972-976.

An evidentiary hearing was held on November 1, 2012 before the Honorable Carmen T. Mullen. App. 977-1059. Pelzer was represented by Tara Dawn Shurling, and the State was represented by Assistant Attorney General Megan Harrigan. App. 977. Pelzer, and his trial attorneys, Martin Banks and Mark Leiendecker, testified at the hearing. App. 982-1058.

**Order of Dismissal**

On March 13, 2013, Judge Mullen filed her Order of Dismissal denying Pelzer's PCR application. App. 1070-1087.

This petition for a writ of certiorari follows.

## STATEMENT OF FACTS

Jason Rivenburg was a tractor trailer driver from New York State. App. 138, l. 8 - 139, l. 18. On Thursday, March 5, 2009, Rivenburg drove to South Carolina because he had a delivery to make at a Food Lion in Elloree, South Carolina. App. 141, ll. 139, l. 19 – 141, l. 11; 150, ll. 14-24. Rivenburg was driving a 1997 tractor trailer that evening. App. 150, l. 25 – 151, l. 3.

Rivenburg called his friend, Jerry Dubin, also a tractor trailer driver from New York State, around 9:00 p.m. that evening. App. 140, ll. 1 – 23. The two spoke for a few minutes, but Dubin told Rivenburg to call him back a little later. Dubin testified that when he spoke to Rivenburg at 9:00 p.m., Rivenburg was still driving his truck at that point. App. 140, l. 24 – 141, l. 14.

Dubin called Rivenburg back around 10:30 p.m. or so that evening. Rivenburg was no longer driving at that point and informed Dubin that he had pulled over for the night but was real close to his second stop. App. 141, ll. 15-25. Dubin testified that he and Rivenburg spoke for a good fifteen to twenty minutes. App. 142, ll. 15-20. At some point, Dubin thought he had lost the call. Dubin said all he heard was silence and then the next thing he heard was an “Oh, my God,” and a sound like the phone dropped. App. 142, l. 21 – 143, l. 1. Dubin said he heard rustling and breathing and then a “bang, and another one repeatedly after that.” App. 143, ll. 2-7.

Dubin stayed on the line for at least five minutes and ultimately hung up with Rivenburg. Dubin tried to call Rivenburg back and sent text messages, but never received a response. He was not able to get in contact with Rivenburg the next Friday morning either.

App. 144, ll. 1-16. Dubin later learned from Rivenburg's wife that Rivenburg never made his second delivery. App. 144, l. 19 – 145, l. 8.

At 4:53 a.m. on Saturday, March 7, 2009, Sergeant Mike Headden with the Calhoun County Sheriff's Office was dispatched to the former and now abandoned Brakefield's BP gas station across from the Brakefield's Exxon gas station on Caw Highway. The complainant said that the dome light of a tractor trailer had been on for two nights in a row. When Sergeant Headden arrived at the scene, he looked through the passenger side door of the tractor trailer and observed a deceased person. App. 157, l. 3 – 158, l. 25; 187, ll. 21-23.

The deceased person was identified as Rivenburg. App. 277, ll. 3-5. He had been shot twice in the head. App. 279, ll. 11-12.

The State's law enforcement witnesses testified that a .45 caliber handgun purchased by a Willie Reed was most likely the weapon used to kill Rivenburg. App. 609, l. 3 – 615, l. 24.

Willie Reed had known Pelzer for approximately thirteen years. They had gone to school and church together. App. 296, ll. 3-9. Willie Reed purchased a .45 caliber handgun from Woody's Pawn Shop in Orangeburg on February 17, 2009. He testified that Pelzer and another individual named Jimmy Haygood were with him when he purchased the gun. App. 303, ll. 9-25. Jimmy Haygood was also supposed to purchase a gun that day but he did not have his State ID. App. 304, ll. 3-8.

The gun Willie Reed purchased was kept at Jimmy Haygood's father's house. Willie Reed said he did not keep the gun where he lived because he had young nephews at his house. App. 304, ll. 15-25. While Willie Reed said the gun belonged to him, others thought that it was Jimmy Haygood's gun since the gun was kept at Jimmy's house. App.

444, l. 21 – 445, l. 7. Jimmy Haygood also carried the gun on his person most of the time. App. 449, l. 15 – 450, l. 11. According to Bryant Haygood, Jimmy's cousin, everybody that it was Jimmy's gun. App. 450, ll. 10-11.

Willie Reed testified at trial against Pelzer. On the day that Rivenburg was killed, March 5, 2009, Willie Reed said that he, Jimmy Haygood, and Bryant Haygood hung out with each other. App. 306, l. 22 – 307, l. 25. Eventually, they all were hanging out at a house on Merrybell Lane. This was around 3:00 in the afternoon. Pelzer stopped by the house around 4:30 p.m. App. 308, l. 18 – 311, l. 24.

Around 10:00 p.m. that night, Willie Reed, Jimmy Haygood, and Bryant Haygood left the Merrybell Lane house to go get gas at the gas station. According to Willie Reed, Pelzer was still at the house when Reed and the Haygoods left the house at 10:00 p.m. App. 313, l. 17 – 315, l. 5.

Willie Reed and the Haygoods first went to get gas at the Brakefield's Exxon right across from the closed BP gas station where Rivenburg had parked his tractor trailer for the night. App. 315, l. 6 – 316, l. 1; 525, ll. 1-3. Willie Reed said that they were unable to get gas at the Exxon because it closed a little early and they were told by the clerk that they could not pay with cash for gas at that time; they would have needed a debit or credit card to pay at the pump instead. Since they were planning to pay for gas with cash, Willie Reed said they went to Shell station on Columbia Road. After that, Willie Reed said they dropped Bryant Haygood off at his home and then went to the house of Jimmy Haygood's uncle. App. 316, l. 2 – 317, l. 21.

Willie Reed and Jimmy Haygood stayed at Jimmy's uncle's house for about five to ten minutes. They left the uncle's house around 10:30 p.m. App. 553, ll. 13-14. Willie

Reed and Jimmy Haygood were heading back to Jimmy's father's Merrybell Lane house when they allegedly received a telephone call from Pelzer asking them to meet him at the end of Bridle Wreath and Murph Mill. App. 318, l. 12 – 319, l. 6; 321, ll. 8-11. Willie Reed said he and Jimmy Haygood received that call from Willie Pelzer at approximately 10:49 p.m. Willie Reed and Jimmy Haygood then went to the location that Pelzer mentioned, but Pelzer did not show up at that location. Willie Reed and Jimmy Haygood were then going to head back to the Merrybell Lane house. App. 322, ll. 2-15.

Willie Reed testified that he and Jimmy then received another telephone call from Pelzer asking Willie Reed to come pick up Pelzer from Pelzer's trailer on Merrybell Lane. App. 323, ll. 10-24. They received this telephone call from Pelzer around 11:07 p.m. App. 323, l. 25 – 324, l. 2. Willie Reed and Jimmy Haygood did not head over to Pelzer's trailer right away, and they received another telephone call from Pelzer at about 11:13 p.m. wanting to know why they had not arrived. Willie Reed and Jimmy Haygood then went over to Pelzer's place shortly after 11:13 p.m. App. 324, ll. 3-24.

Willie Reed testified that when he arrived at Pelzer's trailer, he saw Pelzer place the .45 caliber gun purchased by Willie Reed on the car. Willie Reed claimed that Pelzer said he had killed someone. App. 325, ll. 3 – 14. Willie Reed also claimed Pelzer was no longer wearing a shirt that he was wearing earlier in the evening and that Pelzer was burning something in his backyard. App. 325, l. 20 – 326, l. 12.

Willie Reed then contended that Pelzer wanted to drive to Charleston that night. Willie Reed, Jimmy Haygood, and Pelzer took Jimmy Haygood's uncle's car to Charleston. Jimmy Haygood drove to Charleston. App. 330, l. 16 – 332, l. 3. The three arrived at an apartment complex in Charleston where Pelzer knew someone. Willie Reed alleged he

believed that Pelzer got rid of the gun while in Charleston. Willie Reed just assumed that Pelzer threw the gun in a dumpster, although Willie Reed admitted that he did not see that happen. App. 332, l. 18 – 333, l. 12.

The three arrived back at Jimmy Haygood's uncle's house in Calhoun County around 4:00 a.m. in the morning on March 6, 2009. App. 335, ll. 1-5. Willie Reed went to Jimmy Haygood's house at 10:00 a.m. in the morning on March 6, 2009, and the two falsely reported to the police that the .45 caliber handgun had been stolen to help themselves not be connected to a murder. App. 335, l. 13 – 336, l.8; 353, ll. 5 – 12; 353, l. 25 – 354, l. 4. Willie Reed did not tell the police anything about Pelzer allegedly saying that he killed someone or allegedly getting rid of the weapon in Charleston. App. 336, ll. 12-17.

Willie Reed met with the Calhoun County Sheriff's Office at about 4:30 p.m. on Saturday, March 7, 2009. Willie Reed again lied to the police about the gun being stolen and still did not tell the police that he knew anything about a murder. App. 337, l. 3 – 338, l. 6.

Willie Reed went back to the Sheriff's Office on Sunday, March 8, 2009 where he was then arrested for accessory after the fact of murder. App. 338, l. 12 – 339, l. 13.

Jimmy Haygood also testified at trial. He said that on the night of the incident, he had put the gun in his spare bedroom at his father's house on Merrybell Lane. He admitted that anybody who was at the house that night had access to the gun. App. 477, l. 21 – 478, l. 2. Jimmy Haygood claimed that Pelzer asked to borrow the gun that night but that he said no. App. 478, ll. 3-9.

Jimmy Haygood gave a similar account at trial as Willie Reed about Reed, Jimmy, and Bryant going to try to get gas at the Brakefield's Exxon across from the former BP

station where Rivenburg had parked his truck for the night. App. 478, l. 13 – 479, l. 24; 525, ll. 1-3. Jimmy Haygood said at 10:28 p.m. he received a call from Pelzer but did not answer the call. App. 480, l. 21 – 481, l. 8. Jimmy Haygood said he received a call from Pelzer at 10:49 p.m. asking him and Willie Reed to meet him at Bridal Wreath and Murph Hill. App. 481, ll. 9-18.

Jimmy Haygood testified that he tried to call Pelzer at 10:56 p.m. on March 5, 2009 but that his call went to Pelzer's voice mail. The State alleged that Jimmy Haygood's telephone call to Pelzer at 10:56 p.m. that went to Pelzer's voice mail was the exact time that Rivenburg was being murdered. App. 483, l. 24 – 484, l. 14.

Jimmy Haygood then received a call from Pelzer at 11:07 p.m. asking Reed and Haygood to pick him up from his trailer on Merrybell Lane. App. 485, ll. 7-20. Jimmy Haygood testified that Pelzer sounded calm in this call and did not sound agitated or scared. App. 548, l. 17 – 549, l. 5. Pelzer called them back at 11:13 p.m., and Willie Reed and Jimmy Haygood went over to Pelzer's. App. 486, ll. 4-24. Jimmy Haygood also claimed that Pelzer told him that he had killed someone. App. 487, l. 12.

The three then drove to Charleston, with Jimmy Haygood driving. Haygood claimed that Pelzer had the gun on him on the way down to Charleston and that he saw Pelzer throw away the gun in a trash can. App. 490, l. 20 – 493, l. 13.

After arriving back to Calhoun County, Haygood with Willie Reed falsely reported the gun stolen to the Calhoun County Sheriff's Office. App. 494, l. 2 – 495, l. 11.

Around 9:30 p.m. the evening of Saturday, March 7, 2009, Jimmy Haygood told the police that Willie Pelzer had killed Rivenburg. App. 501, ll. 9-16. Jimmy Haygood, like Reed, was also arrested for accessory after the fact of murder. App. 501, ll. 20-22.

Detective Stanley Graham picked up Pelzer during the early morning hours of Sunday, March 8, 2009. App. 679, ll. 10-18. In a verbal statement, Pelzer stated that he had not killed anyone. He also stated that he had not killed a white man, which the detective thought was significant because law enforcement had not disclosed the race of the victim. App. 685, ll. 1 – 11. However, Pelzer's mother, Carolyn Murph worked at the Wilco Hess Travel Plaza, and she had already heard the gossip from co-workers that there was a white trucker who had been killed. Carolyn Murph spoke to Pelzer around 3:30 in the afternoon on Saturday, March 7, 2009 and relayed to him that news. App. 801, l. 11 – 802, l. 22.

Pelzer's mother, Carolyn Murph, further testified that on the evening of March 5, 2009 when Rivenburg was killed, Pelzer came home to her house at 10:15 that night. She eventually went to bed and last saw her son around 10:45 p.m. that evening. App. 803, l. 9 – 805, l. 24. After she went into her bedroom at 10:45, she could hear Pelzer making noises with pots and pans like he was fixing himself something to eat. App. 806, ll. 3 – 23. Murph did not know what time Pelzer left the house, but she testified that he arrived back home around 4:00 a.m. the next morning. App. 807, ll. 4-5; 808, ll. 18-23.

Pelzer was ultimately placed under arrest for the murder of Rivenburg. App. 745, ll. 5-7. There was no physical evidence linking Pelzer to the murder of Rivenburg – no fingerprints, no footwear impressions, no DNA, no blood evidence, and no gunshot residue linking Pelzer to the scene on either Pelzer's person or clothes. App. 191, l. 25 – 192, l. 2; 207, ll. 13-21; 225; 13-17; 226, ll. 18-19; 230; ll. 8-15; 764, l. 14 – 765, l. 9; 767; 1 – 25; 768, ll. 1-5; 779; 16-17.

Pelzer's arrest for the murder of Rivenburg was based on the statements of Willie Reed and Jimmy Haygood, the two individuals connected to the gun used to kill Rivenburg, and the fact that Pelzer did not answer a call from Jimmy Haygood at 10:56 p.m. on March 5, 2009, the time the State alleged Rivenburg was killed.

## ARGUMENT

- I. The PCR court erred in finding Petitioner was not entitled to a belated direct appeal of his life without parole sentence where (1) Petitioner's trial attorneys never discussed with him the possibility of filing a direct appeal; (2) Petitioner's trial attorneys improperly assumed that Pelzer did not want to file a direct appeal after Petitioner made an apology to the Trial Court during sentencing; and (3) Petitioner's trial attorneys made a unilateral decision not to file a direct appeal on Petitioner's behalf.**

The PCR court ruled that Pelzer's trial attorneys were not ineffective for failing to file a direct appeal following the jury's verdict of guilty on the charge of murder. At the post-conviction relief evidentiary hearing, Pelzer testified that he wanted an appeal because with a life sentence, he had "nothing else to lose." App. 1037, ll. 15 – 18. Pelzer also testified that he verbally asked his trial attorney Martin Banks for an appeal immediately after the jury found him guilty of murder. App. 1045, ll. 8 – 24. Pelzer said that Banks did not respond. App. 1045, ll. 25 – 1046, l. 1.

At the hearing, Martin Banks conceded that he thought about filing an appeal in this case and that in almost every other trial in which he had been involved, he had filed an appeal on behalf of the client. App. 997, ll. 5 – 11. The only reason he did not file an appeal in Pelzer's case was that during the sentencing phase, when Pelzer was apologizing to Rivenburg's family and the Trial Court for anything that he had done wrong, Banks felt like Pelzer was admitting guilt and the case had become more like a guilty plea than a trial. App. 997, l. 12 – 998, l. 2; 957, l. 2 – 958, l. 19. Banks testified that he wished he had filed an appeal for Pelzer, but said that Pelzer had not asked him to file and he did not see any issues for an appeal. App. 998, ll. 3-6. Banks asserted that he would file an appeal if he could do it over again, especially where Pelzer received a life without parole sentence. App. 999, ll. 9 – 12.

Banks also testified that a few days after the verdict, Pelzer's mother did come by his office asking Banks for a copy of the transcript. Banks informed her that he could not provide her with a copy of the transcript but that she could order a copy. App. 1013, ll. 2-10.

"To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). In this case, there is no evidence that Pelzer's trial attorneys ever discussed with Pelzer the possibility of filing an appeal of his life sentence. Rather, trial attorney Banks wrongly assumed that Pelzer's apology at sentencing was an indication that Pelzer did not want to appeal, but Banks never actually discussed this with Pelzer. Banks made a unilateral decision not to appeal Pelzer's life sentence even though Pelzer did in fact want to appeal.

In White v. State, 263 S.C. 110, 118, 208, S.E.2d 35, 39 (1974), this Court stated: "Although there was a reasonable basis for trial counsel's conclusion or assumption that the defendant was fully aware of his appeal rights, counsel should not have rested upon that assumption. He should have made certain that the defendant was fully aware of his rights and in the absence of an intelligent waiver by the defendant either pursued an appeal in his behalf or else, if deemed appropriate by counsel, complied with the procedure set forth in Anders v. State of California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)."

Here, Pelzer's trial attorneys should not have rested upon the assumption that Pelzer was aware of his appeal rights and was waiving his right to an appeal during his apology to the Trial Court during sentencing. There was no knowing and intelligent waiver by Pelzer

of a direct appeal and therefore, Pelzer's trial attorneys should have pursued an appeal on Pelzer's behalf.

Consequently, Pelzer's trial attorneys disregarded their duty as counsel and failed to file a timely Notice of Appeal. See In Re Anonymous Member of the Bar, 303 S.C. 306, 308, 400 S.E.2d 483, 484 (1991) (the South Carolina Supreme Court has held that an attorney who is retained solely for the purpose of trial of a non-indigent criminal defendant must serve and file a timely Notice of Appeal as required by Rule 203, SCACR, and continue to represent the client until relieved by Court because counsel is required to take all necessary steps as may be reasonably practicable to protect the client's interests under Rule 1.16 of the Rules of Professional Conduct).

Accordingly, the performance of Pelzer's trial attorneys was constitutionally deficient where Pelzer did not knowingly or intelligently waive his right to a direct appeal and the trial attorneys failed to perfect his appeal. The record demonstrates that but for Pelzer's trial attorneys' deficient performance, Pelzer would not have been denied his right to a direct appeal. The PCR court erred in holding that Pelzer's trial attorneys provided effective assistance of counsel, and Pelzer is entitled to a belated direct appeal of his life without parole sentence pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); see also Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002) (provides that "[a] defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal.").

**II. The PCR court erred in finding that Petitioner's trial attorneys provided effective assistance of counsel where Petitioner's trial attorneys failed to cross-examine the State's star witnesses - witnesses who owned the gun used to murder the deceased - about the possible life sentences they would have received for murder had they not implicated Petitioner instead.**

Pelzer asserted below that his trial attorneys were ineffective for failing to cross-examine the State's star witnesses, Willie Reed and Jimmy Haygood, about the possible life sentences they would have faced if they had been charged with murder of Rivenburg. The gun that was used to kill Rivenburg was purchased by Willie Reed and kept by Jimmy Haygood. To deflect guilt from themselves, Willie Reed and Jimmy Haygood claimed that Pelzer took the gun and used it to kill Rivenburg. Reed and Haygood were then only charged with accessory after the fact of murder instead of murder. The accessory after the fact of murder carried a maximum charge of fifteen years while murder carried the possibility of a life sentence. App. 363, ll. 8-15; 502, ll. 15-21; S.C. CODE ANN. § 16-3-20(A).

Pelzer's trial attorneys should have cross-examined Willie Reed and Jimmy Haygood about the life sentences they would have faced had they not given statements to law enforcement implicating Pelzer in the murder of Rivenburg. After giving these statements to law enforcement, Reed and Haygood were not charged with murder but only with accessory to murder after the fact. App. 532, l. 9 – 533, l. 4.

A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause of the United States Constitution. Davis v. Alaska, 415 U.S. 308 (1991). This Court has long held that a defendant has the right to cross-examine a witness's possible sentence if convicted of the same crimes as the defendant to show the potential bias

of the witness in testifying for the State against the defendant. See State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991).

The PCR court ruled that Pelzer's trial attorneys were not ineffective for failing to cross-examine Willie Reed and Jimmy Haygood about the possible sentences they would have faced had they been charged with murder instead of accessory after the fact because Reed and Haygood were not actually ever charged with murder and never faced a sentence for a murder charge. This, however, is exactly the type of bias that Pelzer's trial attorneys should have sought to have shown at trial. Willie Reed and Jimmy Haygood were the two individuals connected to the gun used to kill Rivenburg. They then lied to law enforcement that the gun was stolen in an attempt to distance themselves from the crime. Willie Reed and Jimmy Haygood clearly could have faced a murder charge had they not went to law enforcement and gave statements implicating Pelzer instead to save themselves from being charged with murder. By giving favorable statements to law enforcement, Willie Reed and Jimmy Haygood went from facing a potential life sentence to only a maximum sentence of fifteen years. There could not be a greater incentive to implicate someone else for a murder when the exposure to a prison sentence could be lowered from life to fifteen years.

Without the testimony of Willie Reed and Jimmy Haygood, the State's prosecution of Pelzer for the murder of Rivenburg would have been entirely circumstantial. Therefore, Pelzer's trial attorneys should have fully explored the bias and motivation of Willie Reed and Jimmy Haygood for testifying against Pelzer and should have questioned them about the potential life sentences they could have faced if they had been charged with murder instead of Pelzer. See State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012)

(finding trial court's error in limiting cross-examination of the State's witnesses was not harmless "[g]iven the State's heavy reliance on circumstantial evidence").

The PCR court also ruled that Pelzer's trial attorneys could not have been ineffective for failing to fully cross-examine Willie Reed and Jimmy Haygood about the possible life sentences they could have received had they been charged with murder because this Court's decision in Gracely was not issued until 2012, two and a half years after Pelzer's trial, and thus his attorneys could not have anticipated changes in the law. App. 1085. Gracely, however, did not create new law and instead reaffirmed this Court's prior holdings in State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) and State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), cases issued long before Pelzer's 2009 trial.

By failing to fully cross-examine Willie Reed and Jimmy Haygood about the potential life sentences they faced had they been charged with murder instead of Pelzer whom they implicated, Pelzer's trial attorneys rendered ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668 (1984). Had Pelzer's trial attorneys fully questioned Willie Reed and Jimmy Haygood about their bias and motivation for implicating and testifying against Pelzer, the result of Pelzer's trial could have been different. See Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The PCR court therefore erred in denying Pelzer post-conviction relief on this ground, and Pelzer is entitled to a new trial.

### STATEMENT OF ISSUES ON APPEAL

Pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the issues to be raised on a belated direct appeal are as follows:

- (1) Whether the Trial Court erred by granting the State's Batson motion finding defense counsel's peremptory challenge of juror # 94 was not racially neutral where defense counsel struck this juror because this juror's wife was employed at a doctor's office and therefore he was privy to the nature of injuries and medical conditions due to his association with his wife and her co-workers?
- (2) Whether the Trial Court erred in denying Appellant's motion to change venue where 31 jurors of the pool of 47 jurors had exposure to the extensive pretrial publicity of the case and where at least six of the jurors from the jury pool had participated in fundraising efforts for the deceased's family?
- (3) Whether the Trial Court erred in denying Appellant's motion for additional voir dire to determine the extent of the opinions as to guilt developed by the jurors in the jury pool arising from their exposure to pretrial publicity?
- (4) Whether the Trial Court erred in denying Appellant's motion to disqualify the entire jury panel and move the case to a later term where 31 jurors of the pool of 47 jurors had exposure to the extensive pretrial publicity of the case and where at least six of the jurors from the jury pool had participated in fundraising efforts for the deceased's family?
- (5) Whether the Trial Court erred in giving a voluntary intoxication charge to the jury where there was no evidence that Appellant was intoxicated on the night of the deceased's murder?

**CONCLUSION**

For the reasons set forth herein, Petitioner Willie Pelzer's petition for writ of certiorari should be granted and pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), Pelzer is entitled to a belated direct appeal. Pelzer is also entitled to the relief of a new trial for trial counsel's ineffective assistance of counsel in failing to cross-examine the State's star witnesses concerning the possible life sentences they would have faced had they been charged with murder.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of November, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Calhoun County  
Carmen T. Mullen, Circuit Court Judge

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WILLIE PELZER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

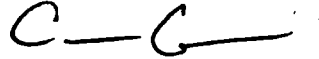
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Willie Pelzer, #338263, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of November, 2013.

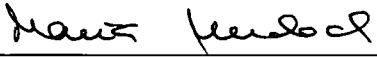


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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day  
of November, 2013.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023