

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Richland County
Honorable Jocelyn J. Newman, C.C. Judge

SC Court of Appeals

THE STATE

RESPONDENT

V.

CLIFTON KIMBLE

APPELLANT

APPELLATE CASE NO. 2024-002126

REQUEST FOR LEAVE FOR EXTRAORDINARY REASON
TO ORDER APPEAL COUNSEL TO INCLUDE ISSUES
IN THE INSTANT APPEAL TO CITATIONS INVOLVING
U.S. V. GONZALEZ-LOPEZ, 126 S. Ct. 2557 (2006).

Clifton Kimble
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4848 Goldmine Hwy.
Kershaw, S.C. 29067

TABLE OF AUTHORITIES

<u>Gonzalez-Lopez v. U.S.</u> , 548 U.S. 140, 126 S. Ct. 2557 (2006).....	
<u>Faretta v. California</u> , 422 U.S. 806, 95 S.Ct. 2525 (1975).....	
<u>Anders V. California</u> , 386 U.S. 738 (1967).....	
<u>Griffin v. People of Illinois</u> , 351 U.S. 12, 76 S. Ct. 585 (1956).....	
<u>Douglas v. People of California</u> , 373 U.S. 353, 83 S. Ct. 814 (1963)...	
<u>Evitts v. Lucey</u> , 469 U.S. 387, 105 S. Ct. 830 (1985).....	
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S. Ct. 2052 (1984).....	

OTHER AUTHORITIES

<u>Curry v. Bettison</u> , 216 N.E.3d 797 (Ct. App. 2023).....	
<u>Kragt.v. Bd. of Parole and Post-Prison Superv.</u> , 325 Or. App. 668 (2023)	
<u>Davi Nails Salon and Spa, LLC., v. Do</u> , 346 So.3d 1288 D.C. Fla. 2022).	

CONSTITUTIONAL AUTHORITY

U.S.C.A. 6th Amendment
U.S.C.A. 14th Amendment
S.C. Const. Article I., Section 3.
S.C. Const. Article I., Section 14

Appellant respectfully moves this Honorable Court of Appeals, for the State of South Carolina. Asking that it orders counsel of record, for extraordinary reasons, to immediately brief the issue "whether the trial court erroneously deprived Appellant of his Sixth Amendment right to 'choice of counsel'". When such choice always remains open 'when the accused is footing the expense'. See Gonzalez-Lopez v. U.S. , 548 U.S. 140, 126 S. Ct. 2557 (2006).

OTHER AUTHORITIES

Curry v. Bettison, 216 N.E.3d 797 (Ct. App June 9, 2023)(Generally, if matters come to light on appeal that the parties have not raised, the appropriate course is to allow additional or supplemental briefing); see also Kragt v. Bd. of Parole and Post-Prison Supervision, 325 Or. App. 668 (Ct. App. 2023)(Same); and Davi Nails Salon and Spa, LLC v. Do., 346 So.3d 1288 (D.C. Fla. 2d Dis. 20 22)(Purpose of appellate rule providing for notice of supplemental authority is not to appraise court of party's latest find which could have easily been found and included in the original briefing, but rather, "to address extraordinary circumstances where new legal authority might impact the appeal")

AUTHORITY OF THE UNITED STATES SUPREME COURT ANDERS V. CALIFORNIA 386 U.S. 738 (1967)

In 1967, "Our" United States Supreme Court held;

For a decade or more, a continuing line of cases has reached this Court concerning discrimination against the indigent defendant on his first appeal. Beginning with Griffin v. People of State of Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed 891 (1956), where it was held that 'equal justice' was not afforded an indigent appellant where the nature of the review 'depends on the amount of money he has', at 19, 76 S.Ct. at 591, and continuing through Douglas v. People of State of California, 372 U.

S. 353, 83 S. Ct. 814, 9 L.Ed2d 811 (1963), this Court has consistently held 'invalid' those procedures 'where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshling of arguments on his behalf', while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself". At 358, 83 S. Ct. at 817.

Although Appellant here in the instant case at bar didn't suffer the consequence of Appellate Defender, Ms. Molly M. Keegan, filing an Anders Brief. Appellant must beg this Court's indulgence on the central question, "whether such Anders brief would have been more effective, where Appellant would have been extended, as of right, the opportunity to include issues he himself believed to be meritorious". And such issue is exposed in no less than approximately "43" pages of the trial transcript during pre-trial, (Tr. tr. pgs. 88-131). Where Appellant's initial court appearance with 'retained' counsel. Noticed counsel's performance was anything except what he'd paid for.

On that bases, Appellant requested the time to 'hire' another attorney that he knew could do a better job on a case where "Appellant was claiming his innocence".

Appellate counsel is cloaked with the obligation 'of combing through the transcript' for potential merits for appeal. See Evitts v. Lucey, 469 U.S. 387 105 S. Ct. 830 (1985)(The Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal)as of right) Pp. 833-841. See Strickland v. Washington, supra.

For this Court's convenience, Appellate carves out pertinent portions of ~~the transcribed~~ record within those outlined pages. (88-131)

It all began Tuesday, December 10, 2024, where on page 89, lines 3-20, Judge Jocelyn Newman, clears the courtroom to handle private motions. Pointing out "Appellant request to terminate Mr. Harvey, his retained attorney". But before this, the court asks to 'first hear from the state on this matter', and Ms. Browder appears for the state.

The State (Ms. Browder) responds to the court's request. And explains that Mr. Harvey has been Appellant's attorney since the incident occurred in 2020, And the trial was scheduled for November, but that Mr. Harvey requested a continuance to prepare for trial. Tr. tr. p. 90, lines 1-6. And that the state would object to any continuance.

The State further cited objection to the removal of Mr. Harvey, citing State v. Sims and State v. Graddick. For the proposition; "Appellant must show satisfactory cause for the removal of his lawyer". Tr. tr. p. 90, lines 14-20.

Appellant's rebuttal to this is; "neither case applies to 'retained' counsel. Which Gonzalez-Lopez v. U.S., 548 U.S. 140, 126 S. Ct. 2557 (2006), so carefully carved the difference out. And held, "the defendant has the Sixth Amendment right to choose counsel when he's footing the bill". Simms and Graddick are both appointed counsel cases and for that reason, "they did not retain the right to choice of counsel".

Not for delay or any manipulatory reasons, Appellant clearly and unequivocally moved to relieve Mr. Harvey, who he'd previously retained and hire new and more competent counsel. Gave the court the most detailed 'chain of events leading up to his decision to relieve Mr. Harvey'. Which created more than 30 pages of transcribed record with testimony such as the following: Tr. tr. p. 91, lines 22-25, p. 92, lines 1-15.

The Defendant: This is for the record, by the record and on the record.

Like she said, he's been my attorney since 2000. And for two years this case laid dormant with no investigation, nothing. Nothing of sort about the plan. And I kept asking about this case, kept asking him. And so, yesterday was my first time in the court with Mr. Harvey. You know, I Like Mr. Harvey as a person. He's a I call him Matlock, but yesterday, he showed me incompetence a lot of incompetence. He came over here four times he called me cupid. I'm not Mr. Cupid, I'm Mr. Kimble.

Appellant was pointing out Mr. Harvey's incompetence by not remembering his client's name. Id. Tr. tr. pgs 91-92.

See also Tr. tr. p. 96-97. Where counsel is scrambling , explained by Appellant because he's (Mr. Harvey) is unprepared for trial involving photographic evidence.

Then on Tr.tr.p. 106, lines 22-25, Mr. Harvey clearly acknowledges "the attorney-client relationship has been irrevocally broken". Appellant responded "it wasn't until he observed the incompetence Mr. Harvey displayed the day the trial was to begin". This is why Appellant wanted 'to hire different counsel'.

Tr. tr. p. 111, lines 21-25 reads as follows:

The Defendant: I would like to have more time to find somebody else that I feel that is competent. I need to retrieve all my information from Mr. Harvey so I can have somebody else go over this information . And so I can have somebody that's competent.

On Tr. tr. p. 113, while attempting to respond to Appellant, "again, counsel calls Appellant by the wrong name". Appellant calls this to the court's attention, "that's exactly what I'm talking about".

Then on page 117, lines 17-25, the court gives Appellant an unconstitutional option under his guaranteed Sixth Amendment rights. That is; "to continue with unwanted counsel or represent himself". This option violates Faretta v. California, and Gonzalez-Lopez v. U.S..

Then on Tr.tr.pp. 117, lines 10-24, the following colloquy ensues:

The Court: So I've got to consider that I've also got to consider the interest of the State in moving the case forward. This is from--is it June of 2020? So more than four years ago. This is the second trial date that has come up. The witnesses are here. The parties are here. Everybody's ready to go. Right. The incident was allegedly June 5th, 2020..

And so the trial--your request for a continuance more time, as you said, Mr. Kimble, is denied, which leaves you two options; "to be represented by Mr. Harvey throughout trial or to represent yourself".

The Defendant: I will represent myself. Because you're forcing my hand. That was the first time I ever seen him in a courtroom [Tr. tr. p. 118, lines 1-25] setting. That was my first time out of four years. Now I see if I came in this courtroom and continued with this case over and over again, and then one day I just came in and said, "look here, I don't want him as my attorney", No, that's not the case. From what I seen yesterday, his first day in the courtroom, preparing this case for 'four years', having this case in his hand for four years, "I'm not comfortable with him, at all".

And so, you forcing my hand and say, "Look here, just because some witnesses are in town, just because the State--this--this has been continued one time in November". "I mean in November, they wasn't ready" they wasn't ready for court in November.

From the above colloquy forward (Tr. tr. p. 119), Appellant explains that counsel had "four years to prepare for trial", that at the very beginning of hiring Mr. Harvey, "he was vividly aware Appellant maintained his innocence, and would "reject" any type or kind of plea negotiation". But that Mr. Harvey was "so convinced that he would eventually get Appellant to plead guilty, he failed to prepare any defense for trial". From Tr. Tr. pgs 119 up to 123, Appellant stands in his position of "wanting to relieve counsel, would rather fend for himself than continue with Mr. Harvey". When the following colloquy occurs. Tr. tr. p. 123, lines 15-25.

The Court: Now, Mr. Kimble, you're choosing to represent yourself. Have you ever studied law before?

The Defendant: No. But I'm not choosing to represent myself. I'm choosing to have a new counsel. And I told you why, because I'm uncomfortable with what's going on with this counsel.

The Court: Well, you're choosing an unavailable option.

The Defen.: Okay, "why is it not available"?

The Court: Because today is the trial date.

The Defen.: Right. I can understand if the [p. 24] trial started, but the trial hasn't started yet. And so that's the reason why--I seen him yesterday, and what I seen yesterday, is no way, I mean you seen it too. You even stepped in a couple times. And so--you gave me the look and I looked at you and I'm like wow.

The Court: I'm sorry I gave you no looks yesterday.

The Defen.: Okay.

The Court: You may have misinterpreted an expression on my face, but

The Defen: Okay, well I'm not comfortable. I'm not comfortable the way this thing has been happening.

The Court: Right. But knowing that Mr. Harvey has studied law and you have not, would you like him to remain here to assist you and advise you as you represent yourself?

The Defen.: Well, "why would I want that"?

The Court: Have you ever studied law before?

The Defen.: No, I haven't----

The Court: Do you know rules of evidence?

The Defen.: That's why, that's the reason I need a professional.

The Court: [p.125] Okay, That was a yes or no question. Do you know the rules of evidence?

The Defen.: No, I do not.

The Court: Do you know the elements of the crimes you're charged with?

The Defen.: No, I do not.

The Court: What the State has to prove to prove that you're guilty of those crimes?

The Defen.: No, I don't I don't know. I don't know any of that. "That's the reason why I hired a professional. I'm saying the reason why I need the competent person here.

The Court: Yeah. I don't find that Mr. Harvey lacks competence. We disagree about that.

Appellant pause here to identify for this Court's convenience, which I'm certain this Court is well aware. Once the Court initiated "a HOBSON'S" choice between representing himself and unwanted counsel. The err the trial court engaged in was "the failure to warn the defendant of the disadvantages of self-representation", rather than Appellant's level of legal experiences. See Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

Faretta errors exposed:

Appellant contends here which should have been raised in the initial appeal of the instant case. Is where "the Sixth and Fourteenth Amendments of the Federal Constitution guarantee that persons brought to trial in any state or federal court be afforded right to assistance of counsel before he can be validly convicted and punished by imprisonment". Except that, Faretta "waived his right to unwanted counsel". And further goes to hold, "forcing a attorney on an unwilling defendant, in and of itself, in 'unconstitutional'.

Faretta goes further to explain; "The counsel provision supplements the design. It speaks of the "assistance of counsel", and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplates that counsel, like other defense tools guaranteed by the Amendment,

"shall be an aid to a willing defendant not an organ of the State interposed between an unwilling defendant and his right to defend himself personally". "To thrust counsel upon the accused, against his considered wish, "thus violates the logic of the Amendment"". "To force a lawyer on a defendant can only lead him to believe that the law 'contrives against him'.". Id. at 836, 95 S. Ct. 2525.

Whether Appellate Counsel's omission were inadvertent or intentional:

Appellant must beg the question of whether Appellate counsel's omissions from his initial appeal brief were inadvertent or plain intentional. When Circuit Court Judge Jocelyn J. Newman, piled 'constitutional error' upon 'constitutional error'. Attempting to pass such on as 'a fair trial'. When not slightly resembling due process was afforded, after Appellant 'pleaded to the court', based on his personal observance of counsel's performance, which revealed he [counsel Mr. Harvey], lacked the ability to place the state's case to meaningful adversarial testing.

The trial court on page 125, disagrees with removing Mr. Harvey, Appellant's 'retained' counsel. Because she 'disagreed with counsel's level of competence, in light of Appellant's answers 'he had no legal training'. According to Faretta, and Gonzalez-Lopez, a accused do not have to qualify in legal training in order to represent themselves, nor for that matter, did the Court in Gonzalez-Lopez, require the accused to demonstrate that "another choice of counsel", required the defendant to demonstrate how much more efficient would the new choice of counsel be.

With these vivid irrational conclusions being transcribed for over 43-pages of the transcript. Whereas, Appellate Counsel omitted "including 'final rulings

on materially fundamental Constitutional issues' dealing with a defendant's Sixth Amendment rights". Borderlines legal-malpractice moreso than simply governed by Strickland's ineffective assistance of counsel. Where no attorney assigned as appellate counsel should have missed the appeal issues from pages 88 through to 132, accounting for approximately 44 pages of the record on appeal.

Even where simultaneous "structural errors" occurred under the watchful ears and eyes of Judge Jocelyn J. Newman. And even where Appellant was accused of very serious offenses. At Tr. tr. p. 474, lines 20-25; p. 475, lines 1-25, the jury "acquits the Appellant of 'kidnapping' and 'First Degree Burglary', and the 'Assault and Battery', after the testimony of Doctor and Lawyer, Mr. Michael Hayes, (Tr. tr. pgs. 264-274), clearly demonstrated "no serious injury was sustained to the victim". And further shows, "the state elicited 'false and misleading testimony concerning 'black-eyes and other injuries'. Where the attending physician contradicted this false testimony.

Then to add insult to constitutional injury. After affirmatively denying any continuance to Appellant for which to afford 'choice of counsel'. At Tr. tr. p. 285. The Court grants the state a in-trial continuance. Clearly giving the 'Appearance of Impropriety', which violates a Judge's role in the courtroom, according to South Carolina Appellate Court rules 501.

ACTUAL, FACTUAL INNOCENCE

In conclusion, Appellant, withstanding the structural errors which should have been included within the initial appeal brief. Is the fact, "he was initially accused of a 'misdemeanor in this case". Had counsel acted competently,

and is why Appellant took issue with his representation. Rather than investigating the bare facts. Allowed Appellant to run the risk of being wrongly convicted of crimes he is actually innocent of.

Because of being tried for two more serious crimes of which the jury acquitted Appellant. The jury apparently felt remorse for a prosecutor "that fell ill during the trial", to at minimum, give her a conviction on the lesser charge, knowing the medical expert testimony eliminated "ABHAN" from the consideration, as no serious injury under the legal definition had occurred.

Based on the foregoing, Appellant respectfully request this supplemental, 'out-of-time' brief be considered so the right to effective assistance of counsel on the initial appeal can be afforded. See Evitts v. Lucey, supra. And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/


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CERTIFICATE OF SERVICE

I, Clifton Kimble, do hereby certify that I have forwarded a true and correct copy of the intended Supplemental Brief on appeal, to all parties, on this 22 day of June 2026, with adequate postage attached, the addresses is as follows:

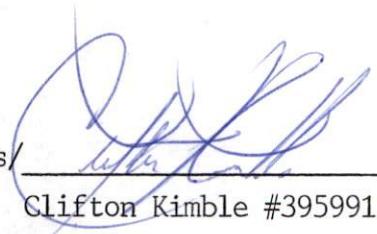
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