

RE: The state, Petitioner

> In The SC Supreme Court

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Notice of Disqualification

Robert Watkins, Respondent

Appellate Case No. 2011-195272

Nov, 26, 2012

RECEIVED

Sworn Affidavit

pg 1 of 3

DEC - 5 2012

S.C. Supreme Court

Dear Your Honorable Justices of South Carolina Supreme Court, Judge Beatty.

I am writing you in reference to Appellate Case 2011-195272 that is pending before the S.C. Supreme Court.

Appellate Case 2011-195272 is actually criminal Case Indictment number 2002-GS-23-1063. In which I was convicted and imprisoned under. I appealed the conviction under this Indictment. You presided over the appeal, in which you were one of the appellate Court Judge of S.C. Court of Appeals that dismissed my appeal. In Unpublished Opinion No 2004-UP-406 Submitted April 21, 2004 * Filed June 22, 2004 see copy of Judgment attached. (2 pages). I then filed a application: Seeking Post Conviction Relief which is civil Case No 2004-CP-23-7064 In which The honorable Judge Harry R. Patterson denied. I then filed a petition for Writ of Certiorari with the S.C. Supreme Court. in which you were one of the Justices of S.C. Supreme Court that presided over my case in which was reversed in Memorandum Opinion No 2008-MO-001 Submitted November 15, 2007 - filed January 14th, 2008 see a copy of the Memorandum Opinion attached in which you presided. attached (3 pages).

The inference to the same case 2002-GS-23-1063, that is also unpublished opinion NO 2004-UP-406, and Memorandum opinion NO 2008-Mem-001, that is now Appellate Case no 2011-195272 in which a petition for a writ of Certiorari was filed by the attorney general's office on July 14, 2011, and in which as one of the justices of S.C. Supreme Court, on November 6, 2012 you issue along with 2 other justices and the chief justice an order granting the state petition for a writ of Certiorari to review the S.C. Court of Appeals decision in State v Watkins op. no 2011-UP-091 (S.C. Ct App. filed March 8, 2011) which is also inference to case 2002-GS-23-1063. See attached copy of November 6, 2012 order granting petition for writ of Certiorari (4 page).

Pursuant to USC 28 § 455 (c)(1)(b)(i) SCAJR 501 Canon 3E(1), and USC 28 § 144, in which would disqualify you from any involvement in Appellate case no 2011-195272 as a S.C. Supreme Court Justice due to your prior involvement as an appellate Court Judge. I so kindly ask that you recuse yourself and take the necessary steps in vacating the order issue on November 6, 2012 due to your involvement in which I believe based on the above information, that you would be disqualified from presiding over my case.

I appreciate your time and patience in this matter.
God Bless you.

Respectfully Submitted by
Mr Robert M. Watkins inmate 243803
FY-197A

M. C. I.

326 Redemption Way

M^o Linnick SC, 29899

I hereby, under the oaths of perjury, claim that the
information in my sworn affidavit to Justice Beatty of
S.C. Supreme Court, is true to the best of my knowledge

Robert M. Watkins

Sworn to before me

this 28 day of Nov month 2012 year

S.C. Notary Joan A. Young Exp. Date

10-11-2021

The Supreme Court of South Carolina

Post Office Box 11330

Columbia South Carolina 29211

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT
BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Robert M. Watkins,

Appellant.

RECEIVED

DEC - 5 2012

S.C. Supreme Court

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2004-UP-406
Submitted April 21, 2004 – Filed June 22, 2004

APPEAL DISMISSED

Senior Assistant Appellate Defender Wanda P.
Hagler, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Charles H.

Richardson, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

PER CURIAM: Robert M. Watkins (Appellant) was convicted of armed robbery and possession of a weapon during the commission of a violent crime. He received concurrent sentences of thirty years in prison and five years in prison, respectively, on the two charges.

On appeal, counsel for Appellant has filed a final brief along with a petition to be relieved as counsel. Appellant has filed a pro se response. After a thorough review of the record pursuant to *Anders v. California*, 386 U.S. 738 (1967) and *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.¹

GOOSLBY, HOWARD, and BEATTY, JJ., concur.

¹ This case is decided without oral argument pursuant to Rule 215, SCACR.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Robert M. Watkins,

Petitioner,

v.

State of South Carolina,

Respondent.

FILED CLERK OF COURT
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ON WRIT OF CERTIORARI

Appeal from Greenville County
Victor Pyle, Jr., Circuit Court Judge
Larry R. Patterson, Post Conviction Relief Judge

Memorandum Opinion No. 2008-MO-001
Submitted November 15, 2007 – Filed January 14, 2008

REVERSED

Appellate Defender Robert M. Pachak, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Petitioner.

pursuant to *Anders v. California*, 386 U.S. 738 (1967). *State v. Watkins*, Op. No. 2004-UP-406 (S.C. Ct. App. filed June 22, 2004).

Petitioner filed an application for PCR in which he alleged trial counsel was ineffective for failing to obtain an alibi instruction. At the PCR hearing, trial counsel testified that he believed the letter to the solicitor's office complied with Rule 5(e)'s notice requirements. The PCR court found trial counsel was not ineffective because his belief that he complied with the rule was "well founded" and dismissed Petitioner's PCR application. Petitioner argues to this Court that the PCR court erred in ruling trial counsel was not ineffective. We agree.

The burden of proof is on the applicant in post-conviction proceedings to prove the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

Because Pelzer's testimony showed that Petitioner was at a different place at the time of the robbery, he was entitled to an alibi charge. *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001) (holding that if there is any evidence to support a charge, the trial court should grant the request). Thus, trial counsel was deficient for failing to raise this argument to the trial court and obtaining an alibi instruction. See *Ford v. State*, 314 S.C. 245, 442 S.E.2d 604 (1994) (holding that counsel's rejection of an alibi charge when the defendant claims that he was in another place at the time of the commission of the criminal act constitutes deficient representation under an objective standard of reasonableness). Moreover, Petitioner was prejudiced by the trial court's failure to give an alibi instruction because there is a reasonable probability that the result of trial would have been different, as the State based its case against Petitioner entirely on circumstantial evidence. See *Riddle v. State*, 308 S.C. 361, 363, 418 S.E.2d 308, 309 (1992) (holding that the failure to give an alibi charge, where the defendant claims to be at another place, is reversible error); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (noting that an alibi charge is considered especially crucial when the evidence is entirely circumstantial).

Accordingly, we hold that trial counsel was ineffective and grant Petitioner relief.

TOAL, C.J., MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

The Supreme Court of South Carolina

The State, Petitioner,

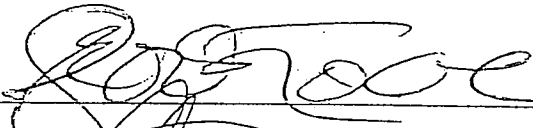
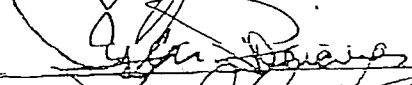
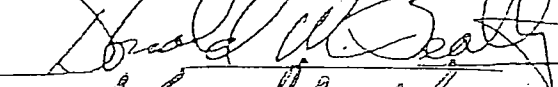

v.

Robert Watkins, Respondent.

Appellate Case No. 2011-195272

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Watkins*, Op. No. 2011-UP-091 (S.C. Ct. App. filed March 8, 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

 C.J.
 J.
 J.
 J.

John W. Kittredge, J., not participating.

Columbia, South Carolina

November 6, 2012

cc:

William M. Blich, Jr.

David Alexander

Robert M. Watkins, 243803

The Honorable Jenny Kitchings

Robert M. Watkins 243803 PL-197A

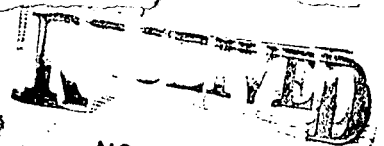
M.C.F.

386 Redemption Way

McCormick SC, 29829

Confidential

The Honorable Judge Beatty,
The Supreme Court of South Carolina
P.O. Box 11330
Columbia SC, 29211



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Supreme Court Justice

Legal Mail

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