LAW OFFICE OF TRICIA A. BLANCHETTE

January 22, 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Christopher Pride v. State; Appellate Case No.: 2013-001157

Dear Sir:

For filing in the above referenced case, I have attached an original and six copies of the Petition for Writ of Certiorari, an unbound original and one copy of the Appendix and the Certificate of Service.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: J. Rutledge Johnson, Assistant Attorney General
Christopher Pride

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM UNION COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Lee S. Alford, Circuit Court Judge

Case No. 2011-CP-44-0331
Appellate Case No. 2013-001157

Christopher Lee Pride, Petitioner,

vs.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

Tricia A. Blanchette
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(803) 988-0008
Attorney for Petitioner

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ISSUES PRESENTED

I. Whether the lower court erred in finding that counsel was not ineffective for failing to communicate and/or act on a plea offer of ten years and that Petitioner was not prejudiced as a result.

II. Whether the lower court erred in finding that counsel was not ineffective for failing to request a continuance and/or argue against Petitioner being tried in his absence.

III. Whether the lower court erred in finding that counsel was not ineffective for failing to make a motion for a new trial after his reappointment during Petitioner's sentencing hearing.

STANDARD OF REVIEW

The reviewing court will uphold the findings of the PCR court if there is any evidence of probative value to support those findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). However, if no probative evidence supports those findings, the reviewing court will not uphold the findings of the PCR court. Jackson v. State, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003). Furthermore, the reviewing court will reverse the PCR court's decision when it is controlled by an error of law. Pierce v. State, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

STATEMENT OF THE CASE

During the June 2003 term of the Union County Grand Jury, Petitioner was indicted for Possession of Crack Cocaine with Intent to Distribute (2003-GS-44-0519) and Possession of Crack Cocaine with Intent to Distribute within Proximity of a School (2003-GS-44-0523. App. p. 108. Petitioner retained Fletcher Smith, Esquire. Attorney Smith was relieved by the Honorable J. Cordell Maddox, Jr., on September 13, 2004. Thereafter, Petitioner applied to the Sixteenth Circuit Public Defender's Office, and William All, Esquire, was appointed to represent Petitioner.

On October 13, 2004, Petitioner's case was called to trial. The State moved to have Petitioner tried in his absence. App. p. 4. In response, the Honorable John C. Hayes urged William All, Esquire, to move to be relieved as counsel and subsequently relieved Attorney All as counsel and granted the State's motion for Petitioner to be tried in his absence. App. pp. 9-12. The jury returned a guilty verdict on both charges and the sentences were sealed. App. pp. 91-2.

On January 18, 2005, a sentencing hearing was held in front of the Honorable G. Thomas Cooper, Jr. App. p. 95. Attorney All was reappointed by Judge Cooper and the sentence was unsealed with the terms as follows: twenty-five (25) years for PWID Crack Cocaine, Second Offense, and fifteen (15) years concurrent for the proximity charge. App. p. 104-5.

A timely direct appeal was filed on Petitioner's behalf and perfected by Fletcher Smith, Esquire, in conjunction with the Office of Appellate Defense. App. p. 124. On December 5, 2007, the South Carolina Court of Appeals affirmed Petitioner's conviction

and sentence. State v. Pride, 2007-UP-544 (S.C. Ct. App. filed December 5, 2007).[1] App. p. 160. On April 15, 2008, the Petition for Rehearing and Petition for Rehearing were denied by a split court. App. pp. 173-5. Thereafter, certiorari was sought and granted in the South Carolina Supreme Court. App. p. 176. On December 14, 2009, the South Carolina Supreme Court dismissed Petitioner's appeal finding that certiorari was improvidently granted. State v. Pride, Op. No. 2009-MO-064 (S.C. filed December 14, 2009). App. p. 177. The Remittitur was issued on December 30, 2009. App. p. 179. Petitioner submitted a pro-se petition to the United States Supreme Court, which was denied on June 21, 2010. App. p. 180.

On August 23, 2011, Petitioner filed an Application for Post-Conviction Relief in Union County. App. p.. 181. By way of his Application, Petitioner alleged:

1. Ineffective assistance of counsel.
2. Violation of S.C. Const. Article 1, Section 3 and U.S. Const.

Elizabeth Wiygul, Esquire, was appointed to represent Petitioner. Respondent submitted a Return and Motion to Dismiss on December 19, 2011. App. p. 187. A Conditional Order of Dismissal was signed on January 4, 2011, to which Petitioner responded that he was advised by Attorney Smith that he had one year from the decision of the United States Supreme Court to file his Application. App. pp. 193-8. Respondent agreed with Attorney Wiygul to allow Petitioner's Application to proceed to an evidentiary hearing.

On November 5, 2012, the Honorable Lee S. Alford signed an Order substituting Tricia A. Blanchette, Esquire, in as Petitioner's counsel. On November 29, 2012,

[1] This Opinion replaced South Carolina Court of Appeals Opinion No. 4208, which was withdrawn and substituted after the granting of a Petition for Rehearing. App. p. 153-59.

Petitioner, through counsel, filed an Amended Application for Post Conviction Relief, which alleged:

1. As to representation rendered by William All, Esquire:

    a. Ineffective assistance of counsel for failure to effectively argue against trial in absence.

    b. Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence.

    c. Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29(a), SCRCrimP, following his reappointment during Applicant's sentencing hearing.

2. As to representation rendered by Fletcher Smith, Esquire:

    a. Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant.

    b. Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant.

App. pp. 199-202.

On February 8, 2013, an evidentiary hearing was conducted at the Moss Justice Center in front of the Honorable Lee S. Alford. App. p. 203. Petitioner was represented by Tricia A. Blanchette, Esquire, and the State was represented by J. Rutledge Johnson, Assistant Attorney General. Following the evidentiary hearing, the Honorable Lee S. Alford took the matter under advisement and later advised the State to prepare a proposed Order of Dismissal. App. p. 271.

Upon receipt of the proposed Order of Dismissal, Petitioner's counsel sent a letter to the Honorable Lee S. Alford addressing omissions of findings of fact and conclusions of law on issues set forth in the Amendment and addressed at the evidentiary hearing.[2]

[2] Receipt of this letter was acknowledged by the law clerk of the Honorable Lee S. Alford.

App. p. 272. The Order of Dismissal was signed on March 25, 2013 and filed on April 2, 2013. App. p. 274. On April 11, 2013, Petitioner, through counsel, filed a Motion for Rehearing Pursuant to Rule 59(a), SCRCP, and/or Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP. App. p. 289. In pertinent part, the Motion read as follows:

> In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered on each issue and that the testimony of each witness is properly addressed. Furthermore, Applicant would respectfully request that this Court carefully review the records, exhibits, and if needed the transcript from the evidentiary hearing and reconsider the findings of facts and conclusion of law set forth in the standing Order of Dismissal. Specifically, Applicant requests that this Court fully address and/or reconsider the following:
>
> 1. In the Order of Dismissal, the case caption and several references are made to York County when Applicant's case is out of Union County. Applicant acknowledges that this appears to be a typographical error or a result of the hearing taking place in York County. Nevertheless, Applicant requests that the case caption and references to York County be amended to reflect Union County.
>
> 2. In the Order of Dismissal, issue 1(a): "Ineffective assistance of counsel for failure to argue against trial in absence" is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.
>
> 3. In the Order of Dismissal, issue 1(b): "Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence" is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.

4. In the Order of Dismissal, issue 2(b): "Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant" is cited from the Amendment, is referenced in the summary of testimony but no findings of facts or conclusions of law are made on this issue. Pursuant to Marlar, Applicant would respectfully request that this Court amend the standing Order of Dismissal to properly address this issue and/or reconsider the dismissal and grant relief on this issue, which was properly raised at the evidentiary hearing.

5. In the Order of Dismissal, this Court made findings under the heading that "Motion for a new trial", and held that "a motion for new trial would not have been successful as Judge Cooper was not the trial judge and was not going to overturn another circuit judge's sentence." Applicant asks this Court to reconsider this finding, which is not supported by any testimony or evidence in the record. Furthermore, Applicant directs this Court's attention to Judge Cooper's comments on the record regarding Fletcher Smith, Esquire, or William All, Esquire representing Applicant at trial that Applicant "should have had one or the other." Record on Appeal p. 99, ln. 24.

For the above stated reasons, Applicant would respectfully request that this Court hold a motion hearing to ensure that all the testimony and arguments are fully addressed by this Court prior to appeal. The Applicant would also move before this Court to direct the entry of a new judgment, pursuant to Rule 59(a)(2), and/or amend the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

App. pp. 292-4.

On April 22, 2013, the Honorable Lee S. Alford issued an Amended Order of Dismissal and an Order on Petitioner's Rule 59, SCRCP, Motion. The Orders were filed on April 25, 2013. App. pp. 296, 311. On May 24, 2013, Petitioner, through counsel, filed a timely Notice of Appeal. On September 25, 2013, the evidentiary hearing transcript was received, from which this Petition for Writ of Certiorari follows.

ARGUMENT

I. The lower court erred in finding that counsel was not ineffective for failing to communicate and/or act on a plea offer of ten years and that Petitioner was not prejudiced as a result.

In Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009), this Court found that counsel's failure to communicate a plea offer amounted to deficient performance. This Court further found that "the difference in the sentence Petitioner received and the plea offer is proof of prejudice." Id. at 614, 675 S.E.2d at 423. In reaching this decision, this Court cited to several other cases involving deficient performance in the context of plea bargaining. See, e.g. Sprouse v. State, 355 S.C. 335, 340, 585 S.E.2d 278, 281 (2003) (finding defendant was entitled to post conviction relief when counsel failed to ensure that the State adhered to the original plea agreement); Thompson v. State, 340 S.C. 112, 116-17, 531 S.E.2d 294, 296-97 (2000) (concluding defendant established a claim for ineffective assistance of counsel where trial counsel failed to object when the solicitor recommended the maximum sentence in violation of the plea agreement); Jordan v. State, 297 S.C. 52, 53-54, 374 S.E.2d 683, 684-85 (1988) (holding trial counsel rendered ineffective assistance of counsel in failing to withdraw guilty plea after State reneged on plea, and reasoning that counsel's conduct in not protecting defendant's right to enforce the plea agreement with the solicitor's office fell below "prevailing professional norms").

At the evidentiary hearing, Petitioner testified that Attorney Smith communicated a plea offer of ten years to him, but Attorney Smith did not act on it and was relieved as counsel. App. pp. 233-4. Petitioner testified that he wanted to accept the plea offer, but he was not able to and was sentenced to twenty-five years following his trial. App. p. 234.

When asked, Attorney Smith indicated that there may have been a plea offer of ten years, but he had no record of it. App. p. 225, lns. 5-18. He admitted that he did not have a written retainer agreement or a file that he could produce from Petitioner's case even though he later handled Petitioner's direct appeal. App. pp. 225, 227. Interestingly, Attorney All had a record of a ten year plea offer that was on the table when he took over representation from Attorney Smith. App. p. 260. Attorney All explained that he was unable to act on the plea offer since it was withdrawn when a new solicitor was assigned to the case. App. p. 260.

By way of the Amended Order of Dismissal, the lower court found that there was no evidence that Attorney Smith received a plea offer from the State and failed to act on it, and the lower court also excused Attorney All's failure to act on the ten year plea offer. The lower court concluded that Petitioner's claim was without merit and his testimony on the matter was not credible.

Petitioner submits that the lower court erred since his claim was that Attorney Smith failed to act on the plea offer and there was clear testimony from Attorney All that a plea offer was on the table when he took over representation from Attorney Smith. Furthermore, Petitioner submits that there is no credible evidence that can be deduced from the testimony of Attorney Smith that his performance regarding the plea offer was not deficient as he clearly testified that he had no memory of the plea offer and no file to refer to on the matter.

Additionally, the lower court failed to address the clear prejudice that Petitioner suffered when he received a twenty-five year sentence in contrast to the ten year plea offer. Petitioner made it clear that he wanted to accept the plea offer, yet the lower court

excused counsel's conduct and failed to address the prejudice suffered by Petitioner. Therefore, based upon the clear precedent discussed above, Petitioner submits that the lower court erred and must be reversed.

II. The lower court erred in finding that counsel was not ineffective for failing to request a continuance and/or argue against Petitioner being tried in his absence.

On October 13, 2004, Petitioner's case was called to trial at the Union County Courthouse in front of the Honorable John C. Hayes, III. Immediately thereafter, the State moved to have Petitioner tried in his absence. App. p. 4. In response, Attorney All, appointed counsel, responded to the trial court's request for background on the case. Attorney All explained that Petitioner had attended roll call but had failed to meet with him or return his phone calls, and he explained the confusion that existed over whether Attorney Smith was retained on the case. App. pp. 4-8. He further explained that he was not prepared to go forward as they had not discussed "any real possible defenses" during their two meetings. App. pp. 4-8. When the Solicitor was asked if he wanted to add anything, he responded: "No, that was very eloquent and very detailed and very accurate to my knowledge of what has happened at that point and at this point I would move to try Mr. Pride in his absence." App. p. 8, lns. 22-25.

In response, the court initiated a persuasive discussion with Attorney All that lead to his request to be relieved as counsel, which was immediately granted. App. pp. 9-11. Thereafter, the trial was conducted in Petitioner's absence and without counsel.

As is detailed above, the Petitioner made the following allegation in his Amendment: "1) As to representation rendered by William All, Esquire: a. Ineffective assistance of counsel for failure to effectively argue against trial in absence; and b. Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence." App. p. 200. As is also detailed above, Petitioner's counsel wrote a letter to the lower court upon receipt of the proposed Order and filed a timely Motion, Pursuant to Rule 59, SCRCP, asking the court to properly rule on Issue 1 (a) & (b), in accordance

with Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). App. pp. 273, 289. Despite Petitioner's counsel following the exact procedure set forth in Marlar, the lower court's Amended Order only referenced the issue in the citation from the Amendment and in the discussion of the testimony but failed to make specific findings of fact and conclusions of law.[3] As a result, Petitioner submits that the lower court erred in so doing, but Petitioner will address the merits of the issue below as it is properly preserved pursuant to Marlar.

In examining this issue, it is imperative to consider Petitioner's direct appeal as Petitioner's counsel argued to the lower court at the beginning of Petitioner's evidentiary hearing. On appeal, the following issue was submitted on Petitioner's behalf:

> Whether the lower court erred by relieving appellant's appointed counsel immediately before appellant's jury trial in his absence began since not "sufficiently cooperating" did not justify the drastic step, and the judge's ruling that appellant waived his right to counsel by his conduct was an abuse of discretion?

App. p. 127.

In addressing this issue, the South Carolina Court of Appeals undertook a thorough analysis of State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003) and State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006) but found that neither case required reversal of Petitioner's conviction. App. pp. 163-5. The Court of Appeals distinguished Petitioner's case since the defendants in Thompson and Roberson were not represented by counsel until the sentencing hearing and on the basis of Petitioner's reported conduct. App. p. 164. The Court of Appeals reluctantly concluded that Petitioner's was sufficient to waive his right to counsel, but held:

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[33] On April 22, 2013, the lower court issued an Order stating that "the Amended Order, dated April 22, 2013, adequately addresses the grounds raised in the Post Conviction Relief Application and the issues raised in the Rule 59 Motion." App. p. 311.

> Despite our holding, we take this opportunity to express our displeasure with the policy of permitting a defendant to be tried in absence and without counsel. Because the right to counsel is such a fundamental right, we believe the more prudent policy would be for a trial judge to decline to relieve counsel immediately prior to trial if a defendant is being tried in absentia.

App. pp. 166-7.

After the State made an unexpected motion to dismiss at the evidentiary hearing, Petitioner's counsel explained that Petitioner was not asking the lower court to rule on the exact same issue that was addressed on direct appeal but was alleging that Attorney All was ineffective when he failed to request a continuance and object or argue against the State's motion to try Petitioner in his absence. App. pp. 8-11, 217-224. Petitioner's counsel argued, as is stated in the Opinion in footnote two, that the appellate court only ruled on whether the lower court abused his discretion in finding that Petitioner waived his right to counsel by his conduct not whether the lower court erred in trying Petitioner in his absence. App. p. 171-2, 218. Petitioner's counsel further argued that Attorney All's deficient performance is was kept the issue of Petitioner's trial in absence from being raised on direct appeal since he did not make or preserve any arguments on the issue.

After hearing arguments from both sides, the lower court denied the State's motion and allowed Petitioner to call witnesses in support of his claims.[4] App. p. 223. While on the stand, Attorney Smith acknowledged his representation of Petitioner on his direct appeal and agreed that he could have raised the issue of Petitioner being tried in his absence if Attorney All would have moved for a continuance or entered an objection. Tr. Pp. 25-28. When Petitioner took the stand, he noted Attorney All's failure to move for a

[4] As is reflected in the evidentiary hearing transcript, the lower court limited the testimony Petitioner was allowed to elicit and Petitioner's counsel repeatedly had to argue regarding the burden the Petitioner had to establish and need to make a complete record. App. pp. 227-31, 237-40, 243-9, 267.

continuance or object to the trial in his absence and highlighted the prejudice he suffered as a result of the trial in his absence. App. pp. 237-8.

When asked about whether he argued against Petitioner being tried in his absence, Attorney All responded that "we were in a discussion of why he was not present" and the trial court suggested that "it was apparent that Mr. Pride considered Mr. Smith his attorney and not me and suggested I make a motion to be relieved." App. p. 265, lns. 8-14. Attorney All explained that he had planned to make a motion for continuance, suppression and for a Jackson v. Denno hearing, but he was relieved prior to making any motions. App. p. 265.

It is clear from the lengthy response that Attorney All gave to the trial court, which the State deemed as eloquent and needing no additions, that Attorney All made the State's argument for them but failed to ever make an argument on Petitioner's behalf or take the opportunity to request a continuance. In support of his allegation at the evidentiary hearing, Petitioner provided the lower court a copy of Morris v. State, 371 S.C. 279, 639 S.E.2d 53 (2006). As the lower court noted the facts are distinguishable, but Morris makes it clear that counsel can be found deficient for failing to request a continuance prior to a trial in absentia.[5] Here, Attorney All's performance was clearly deficient as he aided the State in obtaining a trial in Petitioner's absence, went along with the trial court's suggestion to be relieved as counsel and never entered an objection or requested a continuance on Petitioner's behalf.

Turning to the prejudice suffered as a result of Attorney All's deficient

[5] In Morris, this Court specifically held that counsel was ineffective for failing to move for a continuance, so Morris could plead guilty as had been agreed upon by Morris and the State.

performance, Petitioner submits that the appellate brief outlines the prejudice suffered throughout the trial. See App. p. 124. At trial, as noted by Petitioner at the evidentiary hearing, two jurors were sat that had connections to the State and one juror was sat that Petitioner knew served as a police officer. App. pp. 21-23, 240-41.

During the Jackson v. Denno hearing, the only witness called was Investigator Brian Bailey and the court found Petitioner's statement admissible and found that the probative value outweighed the prejudice derived from the mention of prior drug distribution activities.[6] App. pp. 24, 34. The trial court did remove the line stating "he was released from jail" but left in the line stating "about February 2003 I started selling crack again" and the details regarding those sales. App. pp. 34-5, 60-2. As a result of counsel's failure to object or move for a continuance, no one was present to ensure that the statement detailing prior bad acts, which the court stated were prejudicial, was not presented to the jury. App. p. 137.

As is argued in the appellate brief, no one was present to object to the qualifications of Keila Spann, SLED chemist, or object to the admission of her report. App. pp. 45, 137-8. Also, no one was present to enter an objection to the reasonable doubt instruction under State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991). App. p. 79, lns. 11-15, p. 137-8.

Beyond the prejudice argued to the appellate court and highlighted at the evidentiary hearing, Petitioner submits that his conviction following a brief, non-adversarial trial in conjunction with his sentence of twenty-five year screams of the prejudice suffered as a result of counsel's failure to act as an advocate on his behalf.

[6] During his direct testimony, Brian Bailey testified that he had been investigating Petitioner for one year, which was factually incorrect as Petitioner was incarcerated during that time frame. App. p. 47.

Despite affirming Petitioner's convictions, the South Carolina Court of Appeals expressed its displeasure with Petitioner being tried in his absence without counsel because the right to counsel "is such a fundamental right." App. p. 167. Unfortunately, Attorney All did not make such an argument to the lower court and ensure that Petitioner's fundamental right to counsel was protected. Therefore, Petitioner submits that the lower court should be reversed since it is clear that Attorney All was ineffective for failing to request a continuance and/or argue against Petitioner's trial in his absence.

III. The lower court erred in finding that counsel was not ineffective for failing to make a motion for a new trial after his reappointment during Petitioner's sentencing hearing.

On January 18, 2005, Petitioner appeared for a sentencing hearing in front of the Honorable G. Thomas Cooper, Jr. at the Union County Courthouse. When asked, Petitioner responded that he did not have a lawyer, and the solicitor began explaining the situation to the court. App. p. 97, lns. 1-21. Attorney All was present and he interrupted the solicitor's explanation, by saying: "I think Mr. Springs is remembering it a little bit wrong." App. p. 97, lns. 22-23. Thereafter, Attorney All provided a summary of the case, and both the solicitor and Attorney All explained the confusion over whether Attorney Smith had been retained. App. pp. 97-8. While the solicitor was summarizing how the trial court encouraged Attorney All to be relieved on account of Petitioner's desire to have Attorney Smith as his lawyer, Judge Cooper interjected: "Well he should have had one or another." App. p. 99, lns. 15-24.

Thereafter, Judge Cooper gave Petitioner an opportunity to explain the situation. App. pp. 100-1. In response, Judge Cooper asked why Attorney Smith was not present in the courtroom, and Petitioner replied that Attorney Smith was in a "senator's meeting", which the court confirmed. App. p. 101, lns. 15-19.

After a brief discussion with Attorney All, Petitioner indicated that he was willing to go forward with the sentencing hearing and wanted Attorney All to be reappointed to represent him at the sentencing hearing. After some discussion about Attorney All not having any mitigation or arguments to make at this point, it was agreed that he was being

reappointed to merely file the notice of appeal for Petitioner following the issuance of the sentence.[7]

By way of his amendment and through argument and testimony offered at the evidentiary hearing, Petitioner alleged that trial counsel was ineffective when he failed to make a motion for a new trial following his reappointment during the sentencing hearing. Specifically, Petitioner, through counsel, directed the lower court's attention to Judge Cooper's comment that Petitioner should have had an attorney at his trial to demonstrate that a motion should have been made to allow Judge Cooper to rule on the matter and to further preserve the issue for appeal. Additionally, counsel could have cured his own failure to object to the trial in absentia or request a continuance by raising the issue in a motion for a new trial at the sentencing hearing.

In affirming Petitioner's conviction and sentence, the Court of Appeals distinguished Petitioner's case from State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003) and State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006). Interestingly, in both of those cases, counsel made a motion for a new trial, which evolved into the basis for the grounds on which the appellate courts granted reversal. Here, counsel failed to make such a motion despite believing that he had been cut short by the trial court before he could make a motion for continuance or object to the trial in absentia. App. pp. 265-67. When asked at the evidentiary hearing, counsel did not provide a reasonable explanation for his failure to make a motion for a new trial. App. pp. 264-65.

[7] During the discussion, Judge Cooper indicated that it was "highly unlikely" that he would change another judge's sentence "unless there is some obvious error." App. p. 104, lns.16-22.

By way of the Amended Order of Dismissal, the lower court held: "This Court finds a motion for a new trial would not have been granted and would not have preserved any issues which were not addressed in the direct appeal." App. p. 308. The court reasoned: "Further, a motion for a new trial would not have been successful as Judge Cooper was not going to overturn another circuit court judge's sentence." App. p. 309. Petitioner submits the lower court's findings are in error and not supported by the record.

As is noted in the Amended Order of Dismissal, neither Attorney All or Judge Cooper had the trial transcript at the sentencing hearing, but what is not addressed in the Order is the Solicitor's offer to continue the hearing if Petitioner was not prepared to go forward. App. p. 102, lns. 8-15. Petitioner concedes that without any argument provided by counsel or a review of the trial record it was likely that Judge Cooper would not overturn the sentence of another circuit court judge, but Petitioner urges this court to find such to be deficient performance by counsel not the basis for the purely speculative finding that Judge Cooper would deny the motion. Simply put, a motion for a new trial was not even attempted, let alone properly and persuasively made my counsel, which is deficient performance not a basis to deny Petitioner relief. Based upon the above discussion, including the prejudice analysis set forth under Issue II, Petitioner submits that counsel was ineffective when he failed to make a motion for a new trial after being reappointed at the sentencing hearing and the lower court's failure to make such a finding requires reversal.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant this Petition for Writ of Certiorari and allow the Petitioner to proceed to briefing the requested issues under Rule 243(j), SCACR, or reverse the lower court's standing Order.

Respectfully submitted,

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(803) 988-0008
ATTORNEY FOR PETITIONER

This 22 day of January, 2014.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM UNION COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Lee S. Alford, Circuit Court Judge

Case No.: 2011-CP-44-0331
App. Case No.: 2013-001157

Christopher Pride, Petitioner,

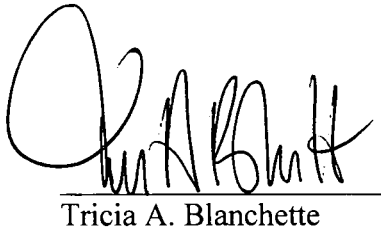
vs.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I that I hand delivered this 22nd day of January 2014, a copy of the Petition for Writ of Certiorari and Appendix to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General
Att: J. Rutledge Johnson, Ast. AG
1000 Assembly Street, Room 519
Columbia, SC 29201



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January 22, 2014