

STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIORARI TO WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge  
Case No. 2008-CP-45-0095

JAMEL ALEXANDRETTE,..... PETITIONER,

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **ISSUE PRESENTED**

Is there any evidence of probative value in the record to support the Post-Conviction Relief court's ruling that counsel was not ineffective in his representation of Petitioner, specifically where Petitioner alleged counsel told him that he was "on his own" in his defense?

## STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. The Petitioner was indicted at the October 2006 term of the Williamsburg County Grand Jury for Murder. He was represented by Legrand Carraway, Esquire. On May 1, 2007, the Petitioner appeared before the Honorable R. Ferrell Cothran, Jr., where he pled guilty to the charge and was sentenced to a recommended thirty (30) years imprisonment. The Petitioner did not appeal his guilty plea or sentence.

Petitioner filed a timely application for post-conviction relief (PCR) on February 26, 2008. Respondent made its Return to the application on July 2, 2008. In his application for post-conviction relief (PCR), Petitioner alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Fail to advise me a (sic) defense, such as self defense."
  - b. "Failure to inform me of lesser offense."
  - c. "Failure to protect attorney client privilege."
2. Involuntary guilty plea.<sup>1</sup>

An evidentiary hearing was convened into the matter on October 26, 2010, before the honorable W. Jeffrey Young at the Sumter County Courthouse. Petitioner was present at the hearing and represented by counsel, Charles T. Brooks, III, Esquire. Respondent was represented by Mary S. Williams of the South Carolina Attorney General's office. Also present and testifying was Petitioner's plea counsel, LeGrand Carraway, Esquire. By order dated January 25, 2011, and entered with the clerk February 3, 2011, Judge Young denied and dismissed the application for PCR with prejudice. This petition follows.

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<sup>1</sup> Applicant added an additional allegation of Ineffective Assistance of Counsel at the hearing citing counsel's failure to investigate the charges.

## STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence’ of probative value” exists to sustain the PCR judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

In a post-conviction relief action, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

## ARGUMENT

- 1. There is evidence of probative value in the record to support the PCR judge's finding that counsel was not ineffective in his representation of Petitioner on these charges.**

Respondent submits the PCR court correctly found counsel was not ineffective in his representation of Petitioner on his 2006 murder charge, namely where Petitioner alleged counsel advised Petitioner that he “was on his own” with respect to his defense.

Petitioner was charged with the murder of Eugene Williams (“Williams”) stemming from an altercation at the Southside grocery store in Hemingway, South Carolina, on June 12, 2006. (App. p. 24, lns 15 – 18.) According to the solicitor’s recitation of facts at the plea, Petitioner arrived at the store riding with a gentleman named Lewis Rogers (“Rogers”). (App. pp. 24, ln 23 – 25, ln 8.) As Rogers entered the store to make some purchases, he saw Petitioner get out of the car and approach Williams in the store parking lot, hearing gunshots just a moment later. (App. p. 25, lns 9 – 17.) When Rogers exited the store, Petitioner was fleeing stating he “needed to get out of [there].” (App. p. 25, ln 15 – 17.) Two additional witnesses at the store were subpoenaed to testify at trial, stating they saw Petitioner approach Williams in the parking lot, punch him in the face, then pull a gun from his waistband and shoot Williams roughly five (5) times. (App. pp. 25, ln 18 – 26, ln 9.) Petitioner entered a plea to the murder charge on May 1, 2009, after initially entering a plea of not-guilty and selecting a jury to sit on the trial. (App. pp. 1 – 19.) A possession of a weapon during the commission of a violent crime charge was *nolle prossed* by the State as part of the plea.

At the plea hearing, the judge found Petitioner’s plea was entered freely and voluntarily after a brief colloquy with Petitioner during which Petitioner stated he was satisfied with counsel’s representation, had enough time to meet with counsel, and believed counsel had done everything he should have in preparation for the case (App. pp. 20, ln 24 – 21, ln 10); stated he

was entering the plea freely and voluntarily without any threats or coercion (App. p. 22, lns 4 – 10); and freely admitted his guilt to the crime as charged. (App. p. 27, lns 12 – 20.)

At the PCR hearing on October 26, 2010, Petitioner testified that he was forced to enter this plea as counsel told him “if [he went] to trial, [he was on his] own”. (App. p. 73, lns 16 – 17.) Petitioner then went on to admit at the hearing twice that he had in fact lied to the judge at the plea hearing while under oath, explicitly stating “I lied” (App. p. 77, ln 9) and “I lied in there”. (App. p. 79, ln 18.) Counsel then testified at the hearing, articulating that he reviewed the facts of the case, potential sentences, the potential for a jury trial, mitigating circumstances, lesser included offense possibilities, and the state’s evidence against Petitioner with Petitioner in preparation for the case. (App. pp. 80, ln 19 – 87, ln 13.) Counsel testified that he also sat in on pre-trial interviews with several planned witnesses and reviewed their potential testimony with Petitioner. (App. p. 84, lns 8 – 12; p. 87, lns 19 – 25.) Counsel went on to say during the entirety of his representation, Petitioner’s whole story had always been that he “just went crazy and started firing”. (App. p. 83, lns 22 – 23.) Counsel finished by adamantly denying ever telling Petitioner that he was “on his own” if he proceeded to trial, or that he wasn’t going to represent Petitioner in some meaningful way. (App. p. 86, ln 1 – 3.)

Based on these facts, Respondent submits there is more than ample evidence of probative value in the record to support the PCR court’s finding that counsel was not ineffective in his representation of Petitioner on this charge. Counsel’s credible testimony directly contradicts the allegations set forth by Petitioner. Further, the PCR court properly discredited Petitioner’s assertions that counsel made statements about Petitioner being “on his own” as Petitioner openly admitted twice to lying under oath. Petitioner made the voluntary and intelligent decision to take an advantageous plea offer after being fully and adequately advised by competent counsel. Petitioner candidly admitted his guilt to the plea judge at the hearing and failed to present any

credible evidence at the PCR hearing that affected his decision to enter this plea. Therefore, Respondent requests this Petition be denied.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

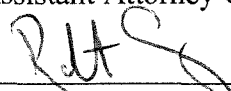
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November 14, 2011

STATE OF SOUTH CAROLINA

SUPREME COURT

—————  
Certiorari to Williamsburg County  
The Honorable W. Jeffrey Young, Circuit Court Judge  
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JAMEL ALEXANDRETTE,

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**PROOF OF SERVICE**  
—————

I, Lauren Meara, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
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I further certify that all parties required by Rule to be served have been served.

This 14 day of November, 2011.

  
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LAUREN MEARA  
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