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May 15, 2014

Hon. Roger Couch  
180 Magnolia Street  
Spartanburg, SC 29306-2392

**RECEIVED**

MAY 19 2014

Re: Nathaniel Green v. State of South Carolina  
C.A. No.: 2008-CP-42-3298

S.C. SUPREME COURT

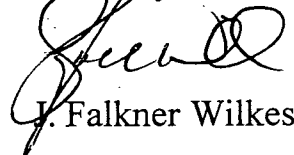
2010-151195

Dear Judge Couch,

This case is on remand for your consideration of a Rule 60 Motion. During the hearing the State and Applicant agreed to submit the transcript and certain exhibits from the Gibson case as it addressed the same issues raised in the present case. Those materials have been submitted as the Applicant's exhibit and should have been entered into the record by the court reporter.

I am now submitting a memorandum setting forth the Applicant's argument as to why he is entitled to relief based on this evidence.

Sincerely,

  
J. Falkner Wilkes

c.  
Suzanne H. White  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
Nathaniel Green )  
vs. )  
State of South Carolina, )  
\_\_\_\_\_ )

COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2008-CP-42-3298

MEMORANDUM OF DECISION

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**S.C. SUPREME COURT**

This matter comes to Court by way of a remand from the Supreme Court. Subsequent to his PCR hearing, Order of Dismissal, and appeal, the Applicant discovered material evidence relevant to his case. The Applicant moved the Supreme Court for leave to file a Motion pursuant to Rule 60. The Supreme Court granted the Applicant's motion and stayed the Applicant's PCR appeal, remanding the case to this Court to allow an evidentiary hearing. A hearing was held before this Court and evidence offered which shows that the chain of custody documents in Applicant's case were indeed fraudulent. Subsequent to the hearing, the Court granted each Party the right to submit a memorandum setting forth their respective arguments.

At issue is whether Applicant's trial counsel was ineffective by failing to object to the admission of drug evidence during the trial of the case. The admission of the drugs was based on testimony concerning the BEST bag and its

chain of custody, *but without the testimony of intermediate persons in the chain of custody*. There was no testimony identifying the person(s) in the chain other than the investigator that initially seized the drugs, and the chemist. Despite there being a lack of testimony as to the identity of all of the persons in the chain, trial counsel made no objection to the introduction of the drugs.

In his PCR the Applicant contended that trial counsel should have objected based on the failure of the State to establish a proper chain of custody for the drugs. The Applicant argued that the required signatures on the chain document (Form C, Rule 6) were falsified. Specifically, the Applicant testified that he believed that the chain of custody documents used in his case, as well as other cases, all had photocopied signatures, and therefore could not meet the requirements of Rule 6. (Appendix, 79-96). During the PCR hearing, the State objected to the introduction of the Applicant's exhibits and argued that as photocopies, there was no guarantee that they might not have been altered by the Applicant. (Appendix 93). In its Order of Dismissal the trial court drew the authenticity of the documents in questions as the Applicant was relying on photocopies and not the original chain documents. (Order ).

Subsequent to the PCR hearing, Order of Dismissal, and filing of the appeal, the Applicant discovered that in the case of Bobby Gibson v. State of South

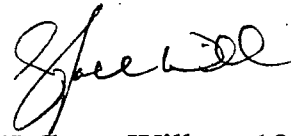
Carolina, officers of the Spartanburg County Sheriff's Office admitted under oath to the routine use of pre-signed, pre-notarized, and unwitnessed photocopies. The Applicant's Form C was one of several used in the Gibson case to establish the State's practice of using pre-signed, pre-notarized, unwitnessed forms. (Upon the Attorney General's discovery of this practice, the Attorney General consented to the admission of the Gibson transcript and exhibits in the Applicant's case.) Applicant has therefore established the use in his case of a pre-signed, pre-notarized, unwitnessed Form C in violation of Rule 6, as well as the rules applicable to Notaries Public.

Had the Applicant's trial attorney viewed the evidence and chain of custody documents prior to trial it would have been immediately apparent that the Applicant's Form C was a photocopy. Reasonable inquiry would have revealed that the State could not produce a Form C with original signatures, and that no "original" document existed due to the State's practice of using pre-signed, pre-notarized, unwitnessed forms. Because there was no valid signature or notarization of the Form C in the Applicant's case, the Rule 6 violation would have been immediately apparent to the trial attorney had he inspected the evidence and chain documents prior to trial, or even during the trial. Due to the defect in the chain documentation and failure to meet the requirements for admissibility under Rule 6,

a proper objection at trial would have likely resulted in the suppression of the evidence. As a result, trial counsel's failure to raise a timely objection to the admission of drug evidence constitutes ineffective assistance of counsel.

Wherefore, the Applicant is entitled to an Order granting post conviction relief setting aside his conviction and sentence.

Respectfully submitted,



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May 15, 2014.

