State of South Carolina

In The Supreme Court

Certiorari to Bamberg County

R. Ferrell Cothran, Jr., Circuit Court Judge

Johnnie L. Jones. . . . . Petitioner.

vs.

State of South Carolina. . . . . Respondent.

Appellate Case No. 2013-001888

Pro Se Brief

Johnnie L. Jones. #340271
Lieber Corr. Inst.
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Wanda H Carter
Deputy Chief Appellate Defender
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Issues Presented

The Petitioner writ of Certiorari should be remanded back to the Lower Court to address issues that the that the PCR Court failed to address in the order denying Petitioner's PCR.

The Lower Court record does not support the finding that Petitioner knowingly or voluntarily waived any of his PCR allegations.

Statement

Petitioner was convicted of attempted kidnapping and assault and battery of a high and aggravated nature during the April 2010 term of the Bamberg County General Sessions Court before Judge Doyet A. Early. Petitioner was sentenced to imprisonment for an Aggregate Period of (18) years. Dan Luginbill and Kent Kirkland represented appellant at trial, and Assistant Solicitors Lauren Maurice and Kip McCallister appeared on behalf of the State. Petitioner appealed, but his convictions and sentences were affirmed. State v. Jones, Un Published Opinion No. 2012-UP-034 (Filed January 25, 2012) The undersigned Counsel represented Petitioner on direct appeal

On April 30, 2012. Petitioner filed a PCR application with the Bamberg County Office of the Clerk of Court. The respondent filed a return dated August 6, 2012, requesting that a PCR hearing be held in response to Petitioner's PCR action. Petitioner filed an amended PCR application with the Clerk's Office on September 5, 2012.

A PCR hearing was convened on July 8, 2013 at the Bamberg County General Sessions Court before Judge R. Ferrell Cothran. Petitioner was present at the hearing and represented by Charles T. Brooks. Daniel Goudey Asst. Attorney General on behalf of the State. On August 19, 2013 Judge Cothran issued an order of dismissal denying Petitioner's allegations of ineffective assistance of trial and appellate Counsel in the case.

Petitioner appealed Judge Cothran's Order of Dismissal. This Petition follows.

Argument

(1.) The Petitioner writ of Certiorari should be remanded back to the Lower Court to address issues that the PCR Court failed to address in the order denying Petitioners's PCR.

On September 5, 2012 Petitioner filed an amendment to his Post Conviction. The issues amended to Petitioner PCR were entertained at Petitioner at Petitioners's July 8, 2013 hearing. On August 19, 2013 Judge Cothran issued an Order of dismissal of the Petitioner. In Judge Cothran order of dismissal he failed to address all the Petitioners's claims submitted or amended to his PCR pursuant to So. Car. Code of Laws 17-27-80. The Petitioner raised in the Attached PCR application at the hearing and the record will show that the Petitioner did raised these claims in his amended appliration. Therefore Pursuant to Pruitt vs. State, 423 S.E. 2d 127 (1992) Remand for a rehearing is necessary to Preserve the Petitioner Claims for Appellate review.

(2.) The Lower Court record does not support the finding that Petitioner Knowing or voluntarily waived any of his PCR allegations.

On July 8, 2013 Petitioner PCR Application was held on all the issues that is before this Court. At no time did the Petitioner Knowingly, voluntarily and intelligently waived any of the issues in his amended PCR application, the Lower Court records must show that the Petitioner did so waived such issues Pursuant to 17-27-90 So. Car. Code of Laws.

In Narciso vs. State, 723 S.E.2d 369 (2012) the supreme Court held that in order to determine whether a waiver is effective, the court examines the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused (citing) U.S. v. Broughton-Jones, 71 F.3d 1143 (4th Cir. 1995) When a defendant's knowing and voluntary waive a statutory or Constitutional right it must be established by a complete record, and may be accomplished by a Colloquy between the Court and the defendant, and trial Counsel or both Brannon vs. State, 548 S.E. 2d 866 (2001)

Therefore remand is required in this case to determine whether Petitioner knowingly or voluntarily waived any of his amended PCR allegations.

Conclusion

Based on the foregoing arguments, Petitioner requests that this Court deny the Petition to Relieve Counsel and grant this Petition and allow full briefing on all issue raised before this Court.

Respectfully Submitted,

Johnnie L Jones

Johnnie L. Jones # 340271
Pro Se

May 28, 2014

State of South Carolina
In The Supreme Court

Certiorari To Bamberg County
R. Ferrell Cothran, Jr., Circuit Court Judge

Johnnie L. Jones _____ Petitioner,

vs.

State of South Carolina _____ Respondent.

Appellate Case No. 2013-001888

Designation of Matters to be
included in the Record on Appeal

Appellant Proposes the following be included in the record on Appeal:

1. The Attached, Amended PCR Application
2. The Attached order by the Supreme Court dated April 3, 2014

I Certify that the designation contains no matters which is irrelevant to this appeal.

This 28 of May, 2014

Johnnie L Jones
Johnnie L. Jones #340271
Lieber Corr. Inst.
Post Office Box 205
Ridgeville, S.C. 29472

State of South Carolina
In The Supreme Court

Certiorari To Bamberg County
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Certificate of Service

The Petitioner hereby certifies that a true Copy of the Pro Se Brief of Petitioner and Designation of matters in the above referenced case has be served upon the South Carolina Attorney Generals Office and on Wanda H. Carter Deputy Chief Appellate Defender at Post Office Box 11589, Columbia, S.C. 29211 by depositing in the U.S. mail First Class on this 28 day of May, 2014

Johnnie L Jones
Johnnie L. Jones #340271
Petitioner, Pro Se

FILED

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of BAMBERG)

Johnny L. Jones # 340271)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Rule 15(a), SCRCP
AMENDED/SUPPLEMENT
APPLICATION FOR

POST-CONVICTION RELIEF

2012-CP-05-77

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution

P.O. Box 205, 136 Wilborn Ave, Ridgeville, SC. 29472

2. Name and location of Court which imposed sentence

Bamberg County, General Sessions

3. Name(s) of co-defendant(s) (if any) none

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2007-GS-05-168 (assault and battery intent to kill)

but was found guilty of the lesser included, ABHAN

(b) 2007-GS-05-169 (attempted kidnapping)

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 19, 2010, 10 years for the ABHAN

(b) April 19, 2010, 18 years for the attempted kidnapping

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty trial by jury

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. affirmed sentences and convictions

ii.

iii.

(c) the date of each such result:

i. January 25, 2012

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Un.Pub. 2012-UP-034

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) n/a

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) ineffective assistance of counsel

(b) ineffective assistance of appellate counsel

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) see attached statement of facts and memorandum

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no ,

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing for post conviction relief

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) first filing for post conviction relief

(b)

(c)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea?

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Dan Luginbill and Kent McAllister, esq.
Bamberg County Bar

ii.

iii. Wanda H. Carter, esq.
South Carolina Indigent Defense

(b) the proceedings at which each such attorney represented you:

i. trial and sentencing

ii. same as above

iii. Direct Appeal

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Johnny L. Jones, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Johnny L. Jones
Applicant

SWORN or affirmed to and subscribed before me this 1st day of August, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

19. State clearly the relief you seek in filing this application:

~~State Habeas Corpus, Reconsideration, Recuse and Remand for new trial~~

Vacate sentences and Convictions and remand for new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO ~~NO~~

STATE OF SOUTH CAROLINA)
County of DORCHESTER) VERIFICATION

I, Johnny L. Jones #340271, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Johnny L Jones

SWORN to and subscribed before me this 15th day of August, 2012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

Ineffective Assistance of Counsel Continued:

Issue (C) Trial counsel rendered the ineffective assistance of counsel in his failure to object to, and motion to quash unlawful indictment, denying the Applicant of his Fifth, Sixth, and Fourteenth Amendment rights to a lawfully returned indictment, effective assistance of counsel, and due process to a fair proceeding.

Indictment No. 2007-GS-05-169 "Attempted Kidnapping" and Indictment No. 2007-GS-05-168 "Assault and Battery With Intent to Kill" shows that said indictments were true-billed May 31, 2007, and signed by the Foreperson of the Grand Jury on May 31, 2007. The same indictments shows that the Grand Jury convened on June 4, 2007, well after being signed and true-billed on May 31, 2007. (See attached indictments)

Here, Applicant was denied his Fifth Amendment, and S.C. Constitution art. 1, Section 11 rights that "no man shall be held to answer for any capitol offense or infamous crime except that indictment be handed down by a grand jury." And,

Section 14-9-210 of the South Caroling Code of Laws requires strict compliance with its provisions, and mandates that the grand jury shall be impaneled under the jurisdiction of the Court of General Sessions before the lawful return of a true-billed indictment be made. In the instant case, this procedure was not followed.

Counsel's failure to object to this "rubber-stamped" unlawful indictment denied Applicant the 6th Amend. as well as 14th Amend right to a fair trial with the effective assistance of counsel and due process and in violation of his Fifth Amend. right to indictment by a lawfully impaneled grand jury.

Issue (0) Ineffective Assistance Of Counsel

Trial counsel rendered the ineffective assistance of counsel in his failure to object to the in-court identification of Applicant as the perpetrator, that was inadmissible due to a suggestive out-of-court identification procedure that created a very substantial likelihood of irreparable misidentification thereby denying the Applicant of his Sixth and Fourteenth Amendment rights to the effective assistance of counsel.

During in camera/in limine hearing, trial counsel did object to the in-court identification due to the improper and highly suggestive out-of-court identification procedure used in this case. (Tr. p. 30, L. 5 - p. 37, L. 21). But trial counsel failed to object to the victim's in-court identification and the out-of-court identification procedure was entered/offered during trial and failed to procure a final ruling, therefore failing to preserve this issue for appellate review. (Tr. p. 61, L. 16-23).

Trial counsel's failure to investigate and prepare to challenge the in-court identification and the improper and highly suggestive out-of-court identification procedure, as there was more than ample evidence that would have shown this in-court identification was unreliable and highly prejudicial to the Applicant.

(i) The victim's testimony was extremely inconsistent during both direct examination by the State and cross by the defense. (Tr. p. 55, L. 7 - p. 86, L. 18) and redirect examination (Tr. p. 87, L. 14-17) and his prior testimony during in camera/in limine hearing. (Tr. p. 32, L. 1 - p. 37, L. 21).

(ii) Victim testifies that he recognized Applicant by his voice, his statute and appearance, (Tr. p. 34, L. 12-13, p. 35, L. 17-20, p. 68, L. 17-20, p. 74, L. 22-25), that the police officer brought a photograph from Colleton County after he told them the Applicant's name (Tr. p. 34, L. 7-10; p. 37, L. 11-22), and shown one photograph from Colleton County [redacted] booking photo (Tr. p. 30, L. 15-18).

(iii) The victim testifies that Applicant walked right up to him, right up in front of him, stood there and looked at him in the face. (Tr. p. 57, L. 4-6, p. 68, L. 3-7). That Applicant pursued him when he ran toward the house, and after his wife turned on the outside lights, then Applicant ran around out in the driveway and out towards the street (Tr. p. 57, L. 19-23, p. 58, L. 1-4), and Applicant kept walking at a steady pace. (Tr. p. 75, L. 1-4).

(iv) Victim further testifies that he knew Applicant's parents, had known Applicant for a long time, were good friends or whatever. (Tr. p. 60, L. 19 - p. 61, L. 1-3; p. 69, L. 21 - p. 70, L. 1-12).

The victim never gave the Applicant's name to the police in [redacted] his written-hand-written statement nor a description of clothing nor any identifying characteristic(s) in statement (see attached statement of Daniel Hiers) nor any other physical description of the Applicant, whom he was good friends and had known for years (Tr. p. 76, L. 20-21, p. 77, L. 17 - p. 87), and no description on CAD report generated by the 9-1-1

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system(Tr. p. 116, L.22 - p. 118, L.12) but "a black man".

In the instant case, the photographic layout shown to Hiers was comprised of a single photograph only. This is unduly suggestive. This one photograph in the line-up that presupposes that this is the picture of the perpetrator. The accused knew to respond in kind by agreeing that this is the picture of the perpetrator indeed. This was an impermissibly suggestive photographic lineups.

Hiers' identification cannot be deemed reliable. The witness could not view the perpetrator properly in the face because it was dark when the crimes were committed. Hiers could see good enough to describe an Army trench coat that the perpetrator was wearing and the color as well as the coat had heavy buttons on it and the length was well below the knees because the coat obscured the pants perpetrator was wearing. No lighting was available until Hier's wife, who was inside the house, turned on the lights after hearing noises outside of the house. Applicant can barely walk and can not run. And it is common knowledge among the persons of the town of Ehrhardt, the people that Applicant works with, most every one around the Bamberg area. And Applicant's medical condition can be traced back to at least 1996, due to an accident, and his medical records would substantiate the fact of his "permanent limp", an identifying, prominent characteristic. Hiers testified that Applicant ran [redacted] behind him hitting him in the head, then ran around driveway and to the street. Hiers nowhere in his handwritten statement to police that he had been assaulted by a long time friend, never described Applicant from his prior dealings with him. Hiers claimed to have made the voice identification on the same evening of attack, but took a while to match voice to his good friend. Additionally, the only match of ~~Hiers~~ Hiers' blood on what was believed to have been a coat worn by perpetrator found elsewhere is of no consequence not only because the evidence does not establish that Applicant committed the crimes charged but the evidence was misdescribed, at best.

The victim also testified that Applicant was wearing a "heavy" like an Army trench coat either navy blue or dark black (Tr. p. 62, L.2-3) and was wearing a cap pulled down on his face but he never gave a description of any clothing in his handwritten statement. Hiers did testify that his own cap and jacket - cap was given to him by the Enterprise Bank of South Carolina that's in evidence had blood all over it (Tr. p. 66, L.5-24, p. 72, L.4-11, p. 73, L.19-22, p. 57, L.12-14). Said statement given the night of the attack and the morning after the alleged attack and before Applicant was arrested. And, coat entered into evidence at trial was a reversible light blue and navy blue with design on either side.

Had trial counsel reviewed my medical records verified with my doctors as I had asked him to do and spoken with several persons that I wanted to testify at trial - Applicant could have

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shown the jury documented medical evidence of his inability to walk normal but with a "very pronounced permanent limp" that makes Applicant easily identified at a distance, due to injuries he received in accident(s), that did damage to the hips, legs and knees. Applicant could have shown that he can not possibly run. These injuries to his hips, legs and knees occurred in the early 1990's, a very mimimun ten (10) years prior to the charges here.

Here, trial counsel's failure to investigate and interview several witness that would have verified injuries to Applicant and his statute and Applicant's medical records and doctors would have proved Applicant's medical claim that he was unable to run as well as an identifying characteristic - very pronounced limp - an extremely prominent identifying characteristic.

Counsel's failure to further object to this in-court identification of out-of-court identification when entered into trial - at the time it was entered into trial and in his failure to object to and obtain a final ruling, denied the Applicant Appellate review, in that, this issue was not preserved for review.

Furthermore, had counsel prepared for this trial, when the in camera/in limine hearing was held, Applicant could have ~~shown~~ Shown the above facts to the court, and in all probability, said evidence would have been suppressed.

This deprived the Applicant of his Sixth and Fourteenth Amendment right to the effective assistance of counsel and a fair proceeding.

Ineffective Assistance Of Counsel continued...

Issue (00) Trial Counsel failed to object to and motion to quash unlawful "rubber-stamped" indictment.

Here, Indictment No(s). 2007-GS-05-169 "Attempted Kidnapping" and 2007-GS-05-168 "Assault and Battery With Intent To Kill" were true-billed May 31, 2007, and signed by the Foreperson of the Grand Jury on May 31, 2007.

Said indictments show that the grand jury convened on June 4, 2007, in the body of the indictment, well after being true-billed and signed by the grand jury foreperson on May 31, 2007.

Trial counsel's failure to object to and motion to quash this unlawful "rubber-stamped" indictment denied the Applicant his Fifth, Sixth, and Fourteenth Amendment rights to a lawful indictment, effective assistance of counsel and due process.

(E) Ineffective Assistance of Appellate Counsel.

Appellate counsel rendered the ineffective assistance of appellate counsel in three different instances in the instant case: (a) Failure To Raise On Direct Appeal the following issues: (i) Defective/Insufficient Chain of Custody; (ii) Motion For a Mistrial or Curative Instruction That Jury Disregard Everything Said By A "Non-Responsive" or Possibly An Incompetent Witness; and (iii) Motion For A New Trial Based On The Fact Trial Jury Asked To Review Testimony Of An Expert State's Witness Who Had Changed Her Testimony Completely From The Day Before But Jury Rendered A Verdict Without Having Reheard Testimony. All of which were duly objected to and preserved for appellate review. Thus, denying Applicant his Sixth and Fourteenth Amendment rights to the effective assistance of appellate counsel and a fair appeals process/proceeding.

(i) Defective/Insufficient Chain of Custody.

This defective/insufficient ~~evidence~~ - Chain of Custody was objected to being entered into evidence because sufficient chain of custody had not been established (Tr. p.122, L.11 - p.123, L.7). Again, because one police officer had testified that he had placed coat and stocking cap in a brown paper bag and the other police officer testifies that she placed evidence in a white plastic bag (Tr. p.150, L.22 - p.156 L.19) as well as p.162, L.3-17; p.186, L.11-15, p.197, L.3 - p.198, L.3.

Here, there's testimony of two Ehrhardt police officers testifying that one place coat and stocking cap in a brown paper bag, the other testifies that she put evidence in white plastic bag (Tr. p.120, L.2-4) and (Tr. p.166, L.1-3;).

Stocking was not on the "Evidence Log Sheet" that State's Witness signed at SLED Forsenics Department Lab and one police officer testifies that there should have been a stocking cap with coat (Tr. p.105, L.23-24) and the other testifies that she did not check pockets of the coat and that she did not recognize stocking cap (Tr. p128, L.15-20) and (Tr. p127, L.6-7). Police officer further testified that she destroyed brown paper bag - the original bag - evidence had been placed in (Tr. p.165, L.19-21).

Next, Expert State's Witness, former Ehrhardt police officer changes her testimony completely around from the previous day's testimony.

Sandra Tavanis, first cross-examination by defense:

Ms. Tavanis, is that the inventory sheet you filled out or a copy thereof? yes, I believe it's a copy of it, yes sir. Does that inventory sheet list a knit cap? No, it did not. Three items, correct? (Tr. p.128, L.10-15).

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p. 128, L 16-25

That's correct. I didn't search the pockets of the jacket, you know. So, I don't know whether that was part --- whether anything was inside of the jacket or not. And the reason you didn't search it is because it was sealed. yea. Well, it wasn't sealed, but we put it in the bag, myself and the state attorney or, excuse me, the solicitor, assistant solicitor and that -- I forgot his last name. His first name is Ben. I don't remember his last name. And that was June of 2007 you bagged it and shipped it? yes. And, so, it was not sealed prior to that. It was in the bag in the evidence area in the evidence room, yes, sir. (Tr. p. 128, L. 16 - p. 129, L. 6). And you do not have that bag that you took it out of here today, do you? That is the bag. This is the bag that it was in when you first saw it. yes. Now, now, you were not working on January of 2007, correct? I was, I was not working on those days, no, sir. (Tr. p. 129, L. 12-19). And, so, the first time you saw this physical evidence, it was already in this bag? (Tr. p. 129, L. 24-25). yes. you did not put it there. No, I didn't put it there. (Tr. p. 130, L. 1-3).

Sandra Tavanis, recalled the next day, direct by State:

Okay. Do you recognize the bag? yes, I do. Okay. And was this the only bag that the evidence was in? During the course of the trial yesterday when the questions of the bags came up, I immediately remembered that that was the bag. However, during the time yesterday when everyone was talking, I remembered that, and there was a mention of the bag being sealed, and I remembered that there was a paper bag that had been stapled. When I produced the bag, this was in June, the day when I turned the bag into evidence over to SLED, whenever I went to SLED, before that the Solicitor, Ben Moore, and Mr. Bamberg, the Solictor's investigator, came down to Ehrhardt and Mr. Moore wanted to inspect the evidence. I attempted to get staples -- I remembered that I had attempted to get the staples out of the bag very nicely to not break the bag. Well, I didn't do it. And, I do remember whether it was Mr. Moore who told me or whether it was me and I tore the bag open in order for them to inspect the evidence. It was a regular, a regular brown bag that you get at the grocery store. And after they inspected the evidence, there was no way that that bag could, could cover the evidence any more because it was all torn up, and I remember asking Mr. Moore what he wanted me to do, and he said just to put it in the other bag, and I threw the other bag, the brown bag away at that time because it had nothing to do with evidence. I sealed it up and subsequently transported it to, to SLED forensics. I apologize to the Court and I apologize to the jury for wasting your time in making this mistake. I forgot. That's it. Ms. Tavanis, how long after you, you changed the (Tr. p. 164 - p. 165, L. 25).

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evidence from that paper bag to that white paper bag did you take it to SLED? I took it to SLED the next morning. (Tr.p.166, L.1-3).

Sandra Tavanis, Cross by Defense (Tr. p.166, L.11 - p.168, L.25):

Did you write this on the outside of the bag? No, that's not my handwriting. Is there anything on this bag, and I'm gonna show it to you, where you would of sealed it and signed over it documenting that you're the person that did that? No, sir. And do you recall whether or not the paper bag that you threw away had been sealed by Officer Bearden and signed by him? I don't recall whether there had been any signs on it, sir. So, where SLED has a procedure where everybody signs who touches it, Ehrhardt has a procedure where we throw away the old bag? That was during a discussion with the solicitor, sir, at the, at the time. That's a difficult question. Could you repeat it? Is it policy of the Ehrhardt Police Department to throw part of the chain of custody? There's no written policy that you have an evidence log? At that time, no, sir, we did not. So, we have no way to document who handled this evidence this evidence? At this point, sir, no. And not at that point? Correct. yes. And you testified very strongly yesterday that was the bag you saw it in. You were sure. I believe I was -- I believed it at the time, yes, sir. And then you sit on that front row for the rest of the hearing, correct? yes, sir. And you heard me argue to the judge that there was a chain, a hole in the chain of custody? You heard those arguments? yes, sir, I did. And after hearing those arguments you changed your testimony?

The Court: Mr. Luginbill, Don't be badgering her. Just ask her in a very calm manner. After you heard me argue that there was a chain of custody problem that could have cost the State this case, you remember --

The Court: Mr. Luginbill, that's an improper question without all of that editorializing. you changed your testimony after you heard me argue the chain of custody, didn't you? I remembered, during the course of your arguments, that there was -- that the identification -- when y'all, when y'all said something about it being sealed, okay, I literally turned to Acting Chief Bearden and said it was stapled, wasn't it, and he said yes. And that just woke me up, and, and yes, I did -- I am changing my testimony. I made a mistake. Obviously I was struck on stupid yesterday is the only way to put it. Of course, if there was a chain of custody we would know. Absolutely. But we don't have that, do we? That's right.

Three objections were made against the evidence being entered: (a) Tr. p.122, L.22-24; Tr. p. 123, L.2-3; (b) Tr. p. 151, L.16-18; p.151, L.22-23; and (c) Tr. p.197, L.3-9.

All three objections were denied. The first objection was Overruled, and put into evidence (p.123, L.4-7); Second objection; the court again overruled objection (p.156, L.2-19); and third objection, overruled again - (p.197, L.21 - p.198, L.3).

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Here, Applicant submits that the defective/insufficient chain of custody was objected to when entered into evidence, and ruled on in the instant case.

I was denied the effective assistance of appellate counsel here, when appellate counsel failed to raise on direct appeal defective/insufficient chain of custody that was properly preserved by objection for appellate review on direct appeal of his conviction and sentence, denying the Applicant the Sixth and Fourteenth Amendment rights guaranteing Applicant the effective assistance of appellate counsel and due process to a fair appeals process.

Trial Court erred in allowing the defective/insufficient chain of custody that was clearly defective, insufficient and tainted and was highly prejudicial to the Applicant and should not have been entered into evidence. Had this evidence been suppressed and jury not allowed to see, and hear the reference to it, the outcome of instant case would have been different.

Clothing evidence - coat, gloves, baseball cap, and stocking cap should not have been entered into evidence, at trial, in that, a non-certified police officer, not trained in the proper collection and handling and storage of said evidence; worked on the Ehrhardt Police Force for less than thirty (30) days and transported evidence around on patrol, even carried it to trial counsel's office (Tr. p. 108, L. 24 - p. 109, L. 1-3, 6-7). Stocking cap entered into evidence, that was not properly recorded and documented where found or seized, not on the Evidence Inventory that State's witness signed when turning the evidence into SLED Forsenics Lab. Then admits that she did not recognize the stocking cap (Tr. p. 127, L. 4-7, L. 10) and testifying - actually assuming that coat was inside the jacket (Tr. p. 127, L. 6-7) and another police officer testified that he thought that there was a stocking cap that should been with the coat (Tr. 105, L. 23-24).

Then evidence bags being torn open and changed from brown paper bag to white plastic bag without any chain of custody. Neither could testify how evidence was taken out of one bag and placed in another (Tr. 120, L. 2-4, 10-13, 14-17; p. 126, L. 4, L. 24-25, p. 127, L. 2, 4-7, 10; p. 128, L. 10-25, p. 129, L. 1-6, 12-19, 24-25.

Then the most wholly incredible testimony of Sandra Tavanis, a former Ehrhardt police officer, on recall/redirect by the State (Tr. p. 164, L. 17 - p. 166, L. 3) and cross/recross by defense (Tr. p. 166, L. 11 - p. 168, L. 25). Even Tavanis agreed that there was no chain of custody (Tr. p. 168, L. 21-25).

Applicant would assert that, at the least, this was deception and fraud on the Court, as well as perjury on the part of a State's witness - a police officer, or rather, former police officer.

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The trial court erred in allowing this defective, insufficient and tainted evidence into evidence over trial counsel's objections, thereby violating the Applicant's Sixth and Fourteenth Amendment rights to a fair trial process. And that appellate counsel's failure to raise this issue that was properly preserved for appellate review by objecting to and receiving a ruling from the trial court denied the Applicant appellate review of this issue, effective assistance of appellate counsel and fair appeals process, in violation of Applicant's Sixth and Fourteenth Amendment rights.

Ineffective Assistance of Appellate of Counsel:

Issue (E)(ii) Appellate counsel rendered the ineffective assistance of counsel for her failure to raise on direct appeal the issue of the Trial Court's denial of Motion For A Mistrial or Curative Instruction That Jury Disregard everything said by a "Non-responsive" or possibly an incompetent witness.

Here, State's witness, James Grant, testified that he was hard of hearing he also appeared to not understand questions, was answering questions totally out of the frame of questions (tr. p. 97, L. 9 -- p. 100, L. 9). Then when trial counsel attempted to question him - claimed his hearing aid battery was dead, the court allowed Grant to step off witness stand while bailiff got him an hearing aid battery (Tr. p. 100, L. 17 - p. 101, L. 21).

Grant resumes his testimony. He seems to answer incoherently at times, nodding his head at times, and was not directly in response to questions being asked him (Tr. p. 131, L. 1 - p. 136, L. 9).

During questioning during cross by defense, Grant's testimony was not in response to questions, he nodded many times, testifies that he signed statement but did not write middle, that someone else wrote it, that he had given Applicant coat, then that he did not give Applicant coat (Tr. p. 131, L. 1 - p. 136, L. 9; p. 133, L. 21 -- p. 134, p. 11).

Trial counsel motioned that the he didn't have the opportunity to adequately cross-examine Grant, that he didn't believe him to be a competent witness or for a mistrial or for a curative instruction that they disregard everything Grant said, and the trial court declined motion (Tr. p. 137, L. 11 - p. 139, L. 4).

Grant's testimony, at the very least, should have been stricken and the jury advised to disregard what had been said due to witness being incompetent. This objections and motions were again properly preserved for appellate review.

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Here, the trial court again erred in allowing Grant's testimony as it is clear that he did not realize or understand questions being asked. At the least, trial court should have stricken his testimony and gave a curative instruction. Appellate counsel again rendered ineffective assistence of appellate counsel and denied the Applicant his Sixth and Fourteenth Amendment rights to effective appellate counsel and fair appeals process.

Ineffective Assistance of Appellate Counsel continued:

Issue (E)(iii) Appellate counsel rendered ineffective assistance of counsel in her failure to raise on direct appeal the denial of motion for a new trial Based on the Fact Trial jury Asked to Review Testimony of an Expert State's Witness who had changed her testimony completely from the day before but jury rendered a verdict without having reheard testimony.

During deliberations, the jury sent a note to the trial court requesting a copy of transcript of Sandra Tavanis, the trial court responded that they did not have a transcript. That her testimony or portions could be replayed if they wished (Tr. p.282, L.22 - p.283, L.3).

The jury then came into open court and the testimony of Sandra Tavanis was played for the jury, then the jury requested that it be played again louder (Tr. p.283, L.11-14) but the Court states that's about as good as it gets. We can try another procedure. I'll ask her to do that and y'all step back and continue to work. Advises the jury that if he could get it to work that call them back out (Tr. p.283, L.15-18).

Then the jury exited the courtroom (p.283, L.19) and returned a verdict (p.283, L.20).

Trial counsel makes a motion prior to sentencing, asking for a new trial based on - the jury asking a question to review the transcript and they rendered a verdict prior to ever getting that transcript read to them or being able to hear testimony (p.286, L.24 - p.287).

Based on that, counsel brought to the attention of the trial court that the jury felt it important enough to ask that they be afforded opportunity to get that testimony especially since it was a law enforcement witness who clearly changed her testimony from one day to the next. They wanted to hear her initial testimony.

Here, the trial court clearly committed a grievous error of the greatest magnitude. The trial court denied the fact finders - the jury -

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their request to hear or to have the testimony of a State's witness- law enforcement officer whom had the most wholly incredible testimony before the Court, the finders of facts, and the public and Applicant.

The Applicant submits that had the jury heard or been read Sandra Tavanis testimony as they requested, the outcome of his trial would have been different.

At the very least, here State's witness, Sandra Tavanis, committed fraud on the court. A law enforcement officer was allowed to commit perjury at Applicant's trial.

In the instant case, convictions and sentences were gained through the judicial acts of the perjury of Sandra Tavanis.

Under the Due Process Clause of the Fourteenth Amendment, the Applicant's conviction can not be allowed to stand on the "wholly incredible testimony of Sandra Tavanis nor the mishandled, defective and tainted evidence, of such that items could not even be said where they were taken from. Applicant asserts that even the very basic search protocol is checking pockets for contraband and then testify that she destroyed an evidence bag. This blanant misconduct not only harmed Applicant, an innocent man, by rendering him guilty and imprisoned him, this misconduct harm and destroys the integrity of the Applicant's trial. It's shocking - a total miscarriage of justice.

And, here, appellate counsel failed her duty to Applicant, in that she did not even attempt to do an Anders brief and present transcript to the High Court of South Carolina. Denying Applicant the basic protections of the Sixth and Fourteenth Amendments.

Appellate counsel presented the following argument on Appellate's direct appeal: "The trial judge erred in allowing the accuser's identification testimony into evidence at trial because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown the accuser resulted in an unreliable identification and a misidentification in the case.

This, Applicant asserts is an issue for PCR. This argument was not properly objected to - object to the evidence at the time it is entered. Here, the objection was during in limine hearing and therefore, not preserved for appeal.

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In the instant case, there was no objection at the time the evidence was entered.

As the South Caroling Appellant Court Rules, Rule 220(b)(1) and the following authority hold: State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) (holding a ruling in limine is not final and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review). That's what the opinion in Applicant's case says.

Applicant's submits that he has a limited understanding of the law but he believes that rule is to the point.

Appellate counsel rendered ineffective assistance of appellate counsel in failing to raise the fact that the trial judge/court erred in not allowing the jury to hear the testimony of Sandra Tavanis again or the transcript being read to them, in violation of his Sixth and Fourteenth Amendment right.

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The Supreme Court of South Carolina

Johnnie L. Jones, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-001888

ORDER

By order dated February 7, 2014, we denied petitioner's motion to relieve Wanda Carter, of the Commission on Indigent Defense, Division of Appellate Defense, as his counsel in this matter and to have counsel outside the Division of Appellate Defense appointed in Ms. Carter's place. Ms. Carter has now filed a motion for the appointment of outside counsel in which she raises the same alleged conflict of interest set forth in petitioner's earlier motion - the fact that petitioner alleged in his application for post-conviction relief (PCR) that Ms. Carter was ineffective in her representation of petitioner on direct appeal. However, as Ms. Carter acknowledges in her petition, that issue was not ruled upon by the PCR judge. Accordingly, it is not reviewable by this Court. *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992)(issue must have been raised to *and ruled upon* by the PCR judge to be preserved for this Court's review). We therefore find there is no conflict of interest necessitating the appointment of outside counsel. Ms. Carter's motion is denied.

C.J.

FOR THE COURT

Columbia, South Carolina

April 3, 2014

RECEIVED

SC OFFICE OF APPELLATE DEFENSE

cc:
Daniel Francis Gourley, II, Esquire
Wanda H. Carter, Esquire
Johnnie L. Jones #340271

Daniel E. Shearouse, Clerk
So. Car. Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

Date May 28, 2014

Re: Pro Se. Brief, Case No. 2013-001888

Dear Mr. Shearouse,

Enclosed is a copy of my Pro Se Brief that is to be filed in your Office. Thank you in advance for your devoted assistance. I am,

Sincerely,

Johnnie L Jones

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cc:
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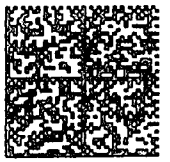

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