

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
WILLIAM H. SEALS, JR. CIRCUIT COURT JUDGE

JAMIE B. GREEN

PETITIONER

VS.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE No. 201⁴3-000026
PRO-SE PETITION FOR WRIT OF CERTIORARI

RECEIVED

JUL 26 2014

S.C. SUPREME COURT

JAMIE B. GREEN #229373
KERSHAW CORR. INSTITUTION
4848 GOLDMINE HIGHWAY
KERSHAW, SOUTH CAROLINA 29067

INDEX

INDEX.....1

ISSUES PRESENTED.....2

STATEMENTS.....3

ARGUMENT.....4-11

CONCLUSION.....12

ISSUES PRESENTED

- 1) DEFENSE COUNSEL FELL BELOW THE STANDARD OF REASONABLENESS IN VIOLATION OF STRICKLAND V. WASHINGTON, WHEN TRIAL COUNSEL FAILED TO INVESTIGATE PETITIONER'S WITNESS TESTIMONY THAT WOULD HAVE CONFIRMED THAT THE ARRESTING OFFICER, VIOLATED THE PETITIONER'S FOURTH AMENDMENT RIGHT UNDER THE UNITED STATES CONSTITUTION, BY UNLAWFULLY SEIZING BLOOD SAMPLES AND URINE SAMPLES.
- 2) DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO HIRE AN EXPERT TO EXAMINE THE IMPORT DOCUMENTS, AS WELL AS CONDUCT AN INDEPENDENT INVESTIGATION OF THE RECORDS CONTAINED IN PETITIONER'S CASE FILE.
- 3) DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE FOR FAILING TO SEEK AN APPEAL OF SENTENCING AS REQUESTED BY PETITIONER.
- 4) COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE 59(e) MOTION TO ALTER OR AMEND THE ORDER OF THE PCR DENYING THE PETITIONER THE RIGHT FOR THE REVIEW OF ALL ISSUES IN A COLLATERAL PROCEEDINGS.
- 5) DEFENSE COUNSEL FAIL TO DISCLOSE EVIDENCE THAT COULD HAVE FAVORED THE PETITIONER BEFORE HE DECIDED TO PLEAD GUILTY OF THE CHARGES HE WAS ACCUSED OF.

STATEMENT

On August 2, 2012 Petitioner appeared before the Honorable Micheal G. Nettles in Florence County and Plead Guilty to two(2) counts of felony Driving Under the Influence resulting in death, and one(1) count of felony Driving Under the Influence resulting in bodily injury. Honorable Judge Nettles imposed a twelve(12) year sentence on each count. Henry M. Anderson Esquire was the Petitioner's Trial Counsel. Todd Tucker Esquire was the Assistant Solicitor for the State.(App. pages 1-34)

Petitioner filed a timely (PCR) Post Conviction Relief application on November 12, 2012 that was Amended January 7, 2013(App. pages 35-47) Respondent filed a return dated February 7, 2013(App. pages 48-52) an evidentiary hearing was held on October 7, 2013, before the Honorable William H. Seals Jr.. Petitioner was represented by Robert T. King Esquire. Respondent was represented by Joshua Thomas, Assistant attorney General. Both the Petitioner and his Trial Counsel testified at the hearing.(App. pages 53-83) On November 25, 2013 Honorable Judge Seals issued an order denying and dismissing Petitioner's application for (PCR) Post conviction Relief.(App. pages 84-92) This Petition Follows.

ISSUE ONE

DEFENSE COUNSEL FELL BELOW THE STANDARD OF REASONABLENESS IN VIOLATION OF STRICKLAND V. WASHINGTON, WHEN TRIAL COUNSEL FAILED TO INVESTIGATE PETITIONER'S WITNESS TESTIMONY WOULD HAVE CONFIRMED THAT THE ARRESTING OFFICER, VIOLATED PETITIONER'S FOURTH AMENDMENT RIGHT UNDER THE UNITED STATES CONSTITUTION, BY UNLAWFULLY SEIZING BLOOD SAMPLES AND URINE SAMPLES.

ARGUMENT

S.C. Code §56-5-2950 States; "At the direction of the arresting officer the person first must be offered a Breath Test to determine the alcohol concentration of his blood. If the person is physically unable to provide an acceptable Breath Sample because he has an injured mouth, is unconscious, dead, or for any other reason considered acceptable by the licensed medical personnel, a Blood Sample may be taken." In other words the Petitioner would have to be incapacitated at the time of the incident.

Further, S.C. Code §56-5-2950 mandates; "No test may be administered or sample taken unless the person has been informed that he does not have to take the test or give the sample, but that his privilege to drive must be suspended or denied for ninety(90) days if he refuses to submit to the test. (S.C. Code §56-5-2950 Ann. 2014)

Officer William Lee, the arresting officer and initial officers conducting the investigation at the scene of the accident, testified during the Petitioner's trial that prior to arrest and the sample being taken, that he spoke to Petitioner, asking specific questions about the accident and how it occurred. (SEE Appendix, page 12 lines 7-12) However, during officer Lee's testimony at trial is no mention of the requirement under S.C. Code §56-5-2950, showing that Petitioner was advised of his right

to refuse to a Breath Test and the giving of Blood and Urine samples. The statute was enacted to protect citizens from unlawful seizure under Fourth Amendment by officer's of the State. PCR Counsel never questioned Trial counsel as to why he failed to raise this issue at the hearing. Petitioner requested PCR counsel to present this fact to the court, where he not only presented evidence of their testimony but asked Trial counsel to question witnesses that were present that would have verified that Petitioner was coherent prior to arrest, and that officer Lee did speak to Petitioner before any samples were taken. The witnesses would have confirmed that officer Lee failed to advise the Petitioner of the requirements under S.C. Code §56-5-2950 that he could have refuse to give samples or be tested. This would have required that all samples taken be excluded from evidence during trial. "Evidence seized in violation of the Fourth Amendment must be excluded from trial. "SEE...STATE V. KHINGRATSAIPHON, 352 S.C. 62,69 572 SE 2d 456,459(2002).

This failure prejudiced the Petitioner where as not only was the Chain of Physical Custody of the samples taken not properly established pursuant to Rule 6 of the S.C. Rule of Criminal Procedure. SEE...STATE V. CARTER, 344 S.C. 419, 544 SE 2d 835(2001), also STATE V. CRIBB, 310 S.C. 518, 426 SE 2d 306(1992).

In this case the State failed to establish the identity of the person who handled the evidence. All parties were not known, which is a prerequisite for the acceptance as evidence in a jury trial. SEE...STATE V. WILLIAMS, 301 S.C. 369, 392 SE 2d 181(1990)

The evidence also substantiates the fact that Petitioner was not given this critical information as required under S.C. Code §56-5-2950, where the arrest warrants were not made until later in the day as contained in the NIBR'S report.(App.pages 3-4) The implied consent Statute only applies to testing for evidence of Driving Under the Influence after an arrest has been made or if there is probable cause for an arrest, The facts show that Petitioner was not under arrest at the time of the extraction of his Blood and Urine. SEE...STATE V. TANNER, 299 S.C. 459, 385 SE 2d 832(1989)

Due to trial counsel's failure to question Petitioner's witnesses testimony counsel advise to Plead Guilty prejudiced Petitioner under the standard in HILL V. LOCKHART, 474 U.S. 52(1985), quoting the standard in STRICKLAND V. WASHINGTON,. Had Petitioner known that the sample were taken in violation of the Statutory requirements and the Fourth Amendment he would have not Plead Guilty and insisted on proceeding to trial.

ISSUE TWO

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO HIRE AN EXPERT TO EXAMINE THE IMPORTANT DOCUMENTS, AS WELL AS CONDUCT AN INDEPENDENT INVESTIGATION OF THE RECORD CONTAINED IN PETITIONER'S CASE FILE.

ARGUMENT

At the Petitioner's PCR hearing Trial Counsel admitted to not investigating Petitioner's case in any professional manner(App. page 77 lines 20-25 & pages 78-79 lines 1-21). Petitioner argues that if Trial Counsel would have fully investigated the case file, he would not have Plead Guilty but insisted upon a trial, pursuant to STRICKLAND V. WASHINGTON, 466 U.S. 668(1984).

Counsel's failure to interview witness, conduct any legal research or obtain a review of any records was Ineffective Assistance of Counsel. SEE...GROSE CLOSE V. BELL, 130 F.3d 1161,1170(6th cir. 1997) Counsel's investigation was incomplete and inadequate. This honorable Court has held that strategic choices made by counsel after an incomplete investigation are reasonable, "only to the extent that reasonable professional judgement supports the limitation on the investigation," McKNIGHT V. STATE 378 S.C 33,45 661 SE 2d 354,360(2008). Attorneys have a duty to investigate their clients case so as to enable them to

make professional decisions that merit distinction as "informed legal choices." SEE...ELMORE V. OZMINT, 661 F.3d 782(4th cir. 2011)

In the present case counsel failed to conduct an investigation into Chain of Physical Custody and the findings of such samples taken to confirm that they were properly administrated and seized pursuant to the Fourth Amendment and S.C. Code §56-5-2950. The Petitioner presented witness testimony to Trial Counsel, who chose not to investigate the matter to determine if the evidence was admissable.

Further, it is not for a lawyer to fabricate defenses but he does have an affirmative obligation to make suitable inquiry to determine whether valid ones exist. SEE...JONES V. CUNNINGHAM, 313 F.2d 347(4th cir, 1963) in the present case Trial Counsel neglected to make any investigation whatsoever as clearly established by PCR hearing which as a result constitutes Ineffective Assistance of Counsel due to the prejudice such has caused Petitioner.

ISSUE THREE

DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE FOR FAILING TO SEEK AN APPEAL OF SENTENCING AS REQUESTED BY PETITIONER.

ARGUMENT

After the Petitioner plead guilty he advised his Trial Counsel to file and appeal on the sentence and conviction. After ten(10) days elapsed for filing of the appeal as required by Rule, Petitioner sought an inquiry into why he received no notification from Trial counsel or the Court of Appeals for this request. Counsel advised the petitioner that he had not filed any appeal, and the Court of Appeals also advised the petitioner that no appeal of his sentence or conviction was no file.

Pursuant to WHITE V. STATE, 208 SE 2d 39(1981), A defendant

has a right to review of his sentence by way of direct appeal, where such appeal is the first appeal of right for issues State Constitution, during trial and whether his guilty plea was voluntarily, an intelligently entered. SEE...BOYKIN V. ALABAMA.

The Fourth Circuit has ruled that Trial Counsel has a duty to consult with a defendant regarding an appeal from a guilty plea, which is distinct from the generic obligation to inform a defendant of that right. Therefore, counsel can be deficient and a defendant is prejudiced when counsel fails to consult with the defendant regarding an appeal if the defendant expresses some interest in appealing, In Re Anonymous Member of The Bar, 330 S.C. 306, 400 SE 2d 483(1991) "After conviction or guilty plea counsel has in all cases a duty to make certain that a client is fully aware of the right to appeal."

In ROE V. FLORES ORTEGA, 129 S.Ct. 1029(2000), the United States Supreme court held that such duty to consult is imposed when (1) that a rational defendant would want to appeal, and (2) that a particular defendant reasonably demonstrated to the counsel that he was interested in appealing. SEE...BRAY V. STATE, 620 SE 2d 743(SC 2005). Petitioner asserts that the record reflects this expressed intent of his desire to appeal.(App. page 36 line 9).

ISSUE FOUR

COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A 59(e) MOTION TO ALTER OR AMEND THE ORDER OF THE PCR COURT DENYING THE PETITIONER THE RIGHT TO REVIEW OF ALL ISSUES IN A COLLATERAL PROCEEDING.

ARGUMENT

On November 14,2013 Petitioner requested that his PCR Counsel file a 59(e) motion and a 60(b) motion due to each issue addressed at the hearing was not properly ruled upon as required by S.C. Rule of Civil Procedures, 52(a). A PCR Court is required

to make specific finding of fact and state expressly its conclusion of law relating to each issue presented. SEE...S.C. Code §17-27-80, in conjunction to the PCR Act's structure to ensure Due Process under Rule 52(a) of Civil Procedures. The Petitioner raised several grounds to be addressed at the hearing before the PCR Court, which were raised for preservation, however the final order failed to address crucial issues of evidence presented. Petitioner raised the issue of Trial Counsel failing to present the Fourth Amendment Violation of unlawful seizure, in violation brought this issue as Ineffective Assistance of Counsel under the Sixth Amendment, where counsel failed to conduct any interview of witness testimony that would have verified the fact that Petitioner was not incapacitated prior to the taking of his Blood and Urine, and Petitioner never was advised at the scene that he could refuse such seizure.

Also, the order fails to address other issues raised and presented that were not ruled upon as required. All issues whether frivolous or not must be addresses in the Final Order to preserve them for review on Writ of Certiorari, otherwise this Honorable Court will deem them waived by Petitioner. SEE...AUSTIN V. STATE, 305 S.C. 435, 409 SE 2d 395(1991)

ISSUE FIVE

DEFENSE COUNSEL FAIL TO DISCLOSE EVIDENCE THAT COULD HAVE FAVORED THE PETITIONER BEFORE HE DECIDED TO PLEAD GUILTY OF THE CHARGES HE WAS ACCUSED OF.

ARGUMENT

Which was a written statement from victim Alphonza Harrold, SEE...ROSARIO RULE Prosecutor displayed it to the Attorney which he never informed the Petitioner, as well to the Judge. This

information was not in Petitioner's Rule 5 Discovery and was never given to him up until this day. "SEE"(App. page 6 lines 4-9, page 72 4-20) Petitioner was also neglected from having possession of the victims's Alphonza Harrold Toxicology Report, Melissa Harrold Autopsy and Death Certificate, and Toxicology Report which should have been given to the Petitioner under Rule 5 Discovery. "SEE"(App. page 78 lines 10-25, page 79 lines 1-6) which was a violation. SEE...BRADY V. MARYLAND, 333 U.S. 83(1963) Requires the Prosecutor to disclose all evidence favorable to the defense that is within the custody and control of the State relevant to either guilt or sentencing. SEE...STATE V. GEER, WL4812784

To establish a BRADY DUE PROCESS VIOLATION, an accuser must demonstrat the evidence was favorable to the accused,(2) it was in the possession of or known to the Prosecution,(3) it was suppressed by the Prosecution and,(4) it was material to guilt or punishment. U.S.C.A. Const. Amend. 14 "SEE" STRICKLER V. GREENE, 527 U.S. 263, 119 S.Ct. 1936. Favorable evidence is material if the defendant can demonstrate that there is a reasonable possibility that had the evidence been disclosed the out come of the proceedings would have been different. SEE...STATE V. MOSES, 702 SE. 2d 395, Suppression by the State of evidence favorable to an accused upon request violates DUE PROCESS where the evidence is material either to guilt or punishment. U.S.C.A. Const. Amend 14 Defense Counsel lead Petitioner to believe that there was not an Autopsy, Death Certificate or Toxicoliogy Report done on Mrs. Melissa Harrold, but later Petitioner discovered there was one. "SEE"(App. page 62 lines 6-17) KYLES V. WHITLEY,515 U.S. 419(1995). In KYLES, the court went even further in clearly stating that "The Prosecutor has a duty to learn of favorable evidence known anyone acting on the governments behalf in the case, including the police, have a duty to disclose such evidence to the defense." A prosecutor who fails to disclose favorable evidence after he has been put on notice of its existence is in

an utterly indefensible position.(App. page 78 lines 18-22)

CONCLUSION

Petitioner's Writ of Certiorari should be granted. Counsel's request to be relieved denied and issues raised addressed by this Honorable Court to determine if the Petitioner's conviction and sentence should be vacated and remanded

Jamie B. Green
Petitioner PRO-SE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
WILLIAM H. SEALS, JR. CIRCUIT COURT JUDGE

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PETITIONER

VS.

STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the PRO-SE Petition for Writ of Certiorari in the case has been served to The South Carolina Supreme Court, this ___ day of _____, 2014

1/s/ Jamie B. Green
Jamie B. Green #229373
KERSHAW CORR. INSTITUTION
4848 GOLDMINE HIGHWAY
KERSHAW, S.C. 29067

*Signed and Subscribed
before me on the 24th of June
2014.*

Catherine A. Comer

Jamie B. Green #229373
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DATE: 6-24, 2014

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S.C. SUPREME COURT

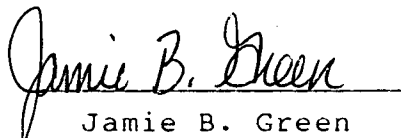
Clerk of The south Carolina Supreme Court
Daniel E. Shearouse
1231 GERVAIS STREET
P.O. BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

RE: JAMIE B. GREEN V. STATE OF SOUTH CAROLINA
PRO-SE PETITION FILING.

Dear Mr. Shearouse;

Enclosed please the original PRO-SE Johnson Petition for Writ
of Certiorari with certificate of service for filing with your
office. Thank you.

Sincerely



Jamie B. Green
Petitioner, PRO-SE