

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED

JUN 30 2014

Case No. 2013-000929

S.C. SUPREME COURT

DARRELL N. MITCHELL, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENTS.

PRO SE PETITION FOR WRIT
OF CERTIORARI

DARRELL N. MITCHELL
Pro Se Petitioner

S.C.D.C. No. 192228
Lee Correctional Institution
Kershaw Unit, South 1107
990 Wisacky Highway
Bishopville, South Carolina 29010

PETITIONER

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I S S U E S P R E S E N T E D

1. Did the PCR Court err in finding that Trial Counsel provided effective assistance of counsel where Trial Counsel failed to object and challenge the DNA Chain of Custody testimony between the taking and the analysis.

2. Did the PCR Court err in finding the Trial Counsel provided effective assistance of counsel where Trial Counsel failed to object to the Chain of Custody during Expert Testimony on his DNA Match from the 'CODIS'.

S T A T E M E N T

Petitioner hereby adopts and concurs with the previously
filed Statement filed by Appellate Defender, Carmen V. Ganjehsani.

This Petition for Writ of Certiorari follows.

S T A T E M E N T O F T H E C A S E

Petitioner hereby adopts and concurs with the previously filed Statement of Facts filed by Appellate Defender, Carmen V. Ganjehsani.

This Petition for Writ of Certiorari follows.

A R G U M E N T

1. Did the PCR Court err in finding that Trial Counsel provided effective assistance of counsel where Trial Counsel failed to object and challenge the DNA Chain of Custody testimony between the taking and the analysis.

Petitioner's Trial Counsel prejudiced the Petitioner by depriving him of a fair trial in failing to object to Officer Moreau's and Officer Ortuno's testimony concerning the match of the DNA evidence that was collected by the South Carolina Department of Probation, Parole, and Pardon Services in 2006, whom in turn, turned over the collection to the South Carolina Law Enforcement Division, also known as SLED. The record do not establish a complete Chain of Custody as to where the Petitioner's DNA was stored until the year 2008, before entering it into "CODIS". Benton v. Pellum, 100 S.E.2d 534 (1957). Officer M. John Ortuno testified that he had the Chain of Custody Reports and a letter from the Chemists who performed, received, stored, and analyzed the DNA before entering it into CODIS, of whom also tested the DNA. The finding had revealed that there was a match in the DNA found in the mop. The testimony from both experts (Moreau, and Ortuno), established that the specimen had passed through several hands before being analyzed and it is highly impossible to establish identity by these witnesses, without at least, an objection by trial counsel and requesting that the DNA Reports in Officer Ortuno's possession be reviewed. When these two witnesses for the State offered Petitioner's DNA specimen, they was required to establish, at least as far as practicable, a complete chain of Custody for the Evidence,

tracing possession from the time the Department of Probation, Parole, and Pardon Services had taken the DNA from the Petitioner to the final custodian, by whom it was analyzed. State v. Sweet, 647 S.E.2d 202, 205 (2007); People v. Riser, 47 Cal.2d 566, 305 P.2d 1; State v. Hatcher, 681 S.E.2d 925, rehearing denied, certiorari granted, reversed, 708 S.E.2d 750, habeas corpus denied, 2012 WL 527607, appeal dismissed.

There was strong evidence that both analyst from SLED did not perform the testing and matching Petitioner's DNA from the mop and 'CODIS'. There was also evidence that both SLED Agents confirmed the match of Petitioner's DNA found in mop from the 'CODIS'.

Neither Officer, Ortuno or Moreau, was directly linked to the evidence or documentary evidence on the 'CODIS' match. The Agent who received the evidence at the State Law Enforcement Division was not identified. The State presented no testimony regarding how the evidence of the Petitioner's DNA was handled in 2006 when the DNA was turned over to SLED from SCDPPPS or once it was surrendered at SLED, and the Record does not reveal the date that the Petitioner's DNA was left at SLED or where it was stored pending the entering of the DNA into the 'CODIS' in 2008. Almost two years later, pending the unidentified chemical analysis receipt and analysis. See State v. Hatcher, 681 S.E.2d 925 (S.C. App. 2009).

South Carolina Rules of Criminal Procedures, Rule 6(A) provides in pertinent part: "Report signed by the chemist or analyst who performed the test or tests required concerning

it's nature shall be evidence that the material delivered to him/her was properly tested under procedures approved by SLED, that those procedures are legally reliable and that the material is or contains the substance or substances stated. The report shall be admitted without the necessity of the chemist or analyst personally being present or appearing in court provided: (1) the report, at a minimum, identifies each item tested, the kind of test or tests conducted on each item, and chemists or analysts conclusion whether the item is or contains a controlled or other regulated substance in language which can be understood by a juror without the necessity for expert testimony; and (2) the report is accompanied by an affidavit of the chemist or analyst who performed the test or tests that: (a) he/she is certified by SLED as qualified under standard approved by SLED to analyze those substances; (b) set forth his/her training and experience as a chemist or analyst, to include the number of times he/she has been qualified as an expert witness and testified in court; and (c) he/she conducted the test or tests shown on the report using procedures approved by SLED and the report accurately reflects his/her opinion regarding the results of those tests."

Trial Counsel admitted at the PCR Hearing that ~~he~~ did not learn about the positive DNA match until shortly before trial. App. 409. Trial Counsel had ten (10) days prior to trial of the case to object and require presence of the chemist or at the least, the chemist's report, to establish that the CODIS analysis was prepared in accordance with the rule.

The state's theory of the case was that the Petitioner was alone with his decedent father and bedridden mother when
the

when the murder was committed. That the Petitioner killed the decedent with a knife and cleaned up the blood with the mop, where allegedly the Petitioner's DNA was found.

The South Carolina Court of Appeals, however, could not review this error by the Trial Court, because trial counsel conceded not to object and preserve this issue for appeal. App. 165. There is a reasonable probability that the outcome at trial or on direct review would have been different. Therefore, where Petitioner 's counsel was deficient in preserving this error for direct appeal, the Petitioner is entitled to a new trial.

A R G U M E N T

2. Did the PCR Court err in finding trial counsel provided effective assistance of counsel where trial counsel failed to object to the Chain of Custody during Expert Testimony on his DNA Match from the 'CODIS'.

Petitioner's trial counsel erred in failing to object to Officer Moreau and Ortuno testimony concerning the testing and DNA match of Petitioner's from the 'CODIS' to that found and tested in the mop. By failing to object to this testimony, trial counsel failed to preserve this meritorious issue for appellate review.

As required to establish ineffective assistance of counsel, the petitioner has to satisfy the two prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). 'First, Petitioner has to show that counsel's performance was deficient. Under this prong, the proper measure of trial counsel's performance remains simply reasonableness under prevailing professional norms.' Cherry v. State, 386 S.E.2d 624 (1989). The second prong of the Strickland test requires a showing that the deficient performance prejudiced the Petitioner to the extent that there is a reasonable probability that but for counsel unprofessional errors, the result of the proceedings would have been different. The Petitioner is required to overcome the presumption that counsel was effective in order to receive relief.

C O N C L U S I O N

For the reasons set forth in this Petition, Petitioner's request for relief be respectfully granted and that this Honorable Court to Grant his Petition for Writ of Certiorari and Ordering that the PCR Court's Order of Dismissal be **REVERSED** and the case **REMANDED** for a New Trial.

Respectfully Submitted,

s/ 

Darrell N. Mitchell
Pro Se Petitioner

S.C.D.C. No. 192228
Lee Correctional Institution
Kershaw South 1107
990 Wisacky Highway
Bishopville, South Carolina 29010

PETITIONER

June 25, 2014.
Bishopville, South Carolina.

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DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Petitioner proposes the following be included in the Record
on Appeal:

1. Letter from the South Carolina Law Enforcement Division
dated May 1, 2014;
2. Letter from the South Carolina Law Enforcement Division
dated June 12, 2014.

I certify that this designation contains no matter which is
irrelevant to this appeal.

s/ Darrell N Mitchell

Darrell N. Mitchell
S.C.D.C. No. 192228
Lee Correctional Institution
Kershaw South 1107
990 Wisacky Highway
Bishopville, South Carolina 29010

June 25, 2014

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

June 12, 2014

Mr. Darrell Mitchell, # 192228
Lee Correctional Institution / Ker-S-1107
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Mitchell:

We received your request on April 22, 2014. According to our records, your sample was drawn on 7/27/2006 and submitted to us by the South Carolina Department of Probation, Parole and Pardon Services. The sample was entered into CODIS on 3/7/2008.

Sincerely,

Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp



An Accredited Law Enforcement Agency.

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

May 1, 2014

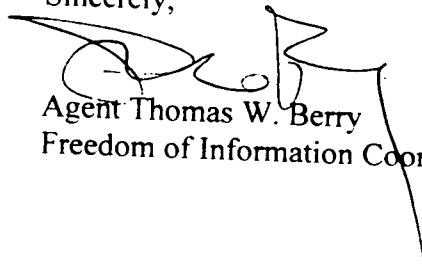
Darrell N. Mitchell, #192228
Lee C. I. / Ker-S-1107
990 Wisacky Highway
Bishopville, SC 29010

RE: SC Freedom of Information Act Request #2014-303

Dear Mr. Mitchell:

This letter is to inform you that we are processing your request, received April 22, 2014. It has been given the number SLED FOI #2014-303, which you may refer to in any further correspondence. We will be in touch with you soon regarding your request.

Sincerely,



Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

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PROOF OF SERVICE

I certify that I have served a copy of the **Pro Se** Petition for Writ of Certiorari on the Respondents by depositing a copy of it in the Mail Room Director of Lee Correctional Institution to be forwarded by **Inter-Agency Departmental Mail**-on this day, specifically addressed to Joshua L. Thomas, Assistant Attorney General, South Carolina Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

s/ Darrell N. Mitchell
Darrell N. Mitchell
S.C.D.C. No. 192228
Lee Correctional Institution
Kershaw South 1107
990 Wisacky Highway
Bishopville, South Carolina 29010

PRO SE PETITIONER

June 25, 2014.

RE.: DARRELL N. MITCHELL, #192228
Lee Correctional Institution
Kershaw South 1107
990 Wisacky Highway
Bishopville, South Carolina 29010

TO.:

~~Joshua L. Thomas
Assistant Attorney General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211~~

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

~~ATTN:~~

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JUN 26 2014

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