

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
(Case No. 2012-CP-10-3627)

Robert M. Young, Sr., Circuit Court Judge

Appellate Case No. 2013-000077

RECEIVED

NOV 12 2013

S.C. Supreme Court

STANFORD BROWN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI

Stanford Brown
#293743
Lieber Corr. Inst. EB-05
P.O. Box 205
Ridgeville, S.C. 29472

PETITIONER

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QUESTIONS PRESENTED

- I. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL WAS NOT INEFFECTIVE WHERE COUNSEL FAILED TO MOVE TO QUASH THE DEFECTIVE INDICTMENT WHICH DEPRIVED THE TRIAL COURT OF JURISDICTION.
- II. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE IN CONDUCTING A “PROPER INVESTIGATION” AND PETITIONER’S CLAIM WAS “MERE SPECULATION” BECAUSE PETITIONER FAILED TO MEET THE BURDEN OF PROOF.
- III. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL ARTICULATED A VALID “STRATEGIC DECISION” IN FAILING TO CHALLENGE THE CHAIN OF CUSTODY OF THE BEST KIT, WHICH DENIED PETITIONER DUE PROCESS OF LAW AND THE EFFECTIVE ASSISTANCE OF COUNSEL.
- IV. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE WHERE COUNSEL STIPULATED AND CONCEDED PETITIONER’S GUILT BY STATING IT WAS PETITIONER’S VOICE ON THE JAIL PHONE, WHICH UNDERMINED PETITIONER’S COMPLETE DEFENSE AND HIS PRESUMPTION OF INNOCENCE.

STATEMENT OF THE CASE

Petitioner Stanford Brown was indicted at the August 2007 term of the Charleston County Grand Jury (2007-GS-10-9933) of trafficking in cocaine base crack. He was convicted of trafficking in crack cocaine before the Honorable Kristi L. Harrington and a jury July 6-8, 2009. Judge Harrington sentenced Petitioner to thirty- (30) years. He was represented at trial by James W. Smiley, IV and Lance Hensley.

Petitioner timely appealed his conviction and sentence. The South Carolina Court of Appeals affirmed his conviction and sentence, *State v. Stanford Brown*, Unpublished Opinion No. 2012-UP-063 (Ct. App. filed February 8, 2013). Petitioner was represented by Wanda H. Carter, Esq., South Carolina Office of Appellate Defense.

Petitioner filed an application for post-conviction relief ("PCR") in the Charleston County Clerk of Courts office on June 4, 2012. An evidentiary hearing was convened before the Honorable Robert M. Young, Sr. on December 5, 2012. Petitioner was represented by Mark Pepper, Esq. On December 31, 2011, Judge Young issued an order of dismissal denying Petitioner's allegations of ineffective assistance of counsel.

Petitioner filed a timely petition for writ of certiorari in the South Carolina Supreme Court. Petitioner is represented again by Wanda H. Carter, Esq., who filed a *Johnson* petition. The Court has allowed Petitioner 45 days in which to file a *pro se* brief.

This petition follows:

ARGUMENT

I. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL DID NOT FAIL TO PROVIDE EFFECTIVE ASSISTANCE WHERE COUNSEL FAILED TO MOVE TO QUASH THE DEFECTIVE INDICTMENT, WHICH DEPRIVED THE TRIAL COURT OF JURISDICTION.

The indictment in question was not true-billed and signed by the Grand Jury Foreperson on a day specified on the indictment. At the post-conviction relief (“PCR”), evidentiary hearing the Petitioner testified that he asked the PCR Court to obtain the information, which was not available to Petitioner through his own diligent efforts, App. 469 - 471.

The PCR Judge’s summary of the evidence presented found Petitioner did not ask trial counsel (James W. Smiley, IV) to further investigate because counsel “told him that he already been true billed,” App. 529. The PCR Judge found Petitioner’s indictment was not objectionable and was properly true-billed by the grand jury, App. 533. The Court also found that Petitioner did not present any evidence that the grand jury did not convene on the day listed on the indictment, App. 534, thus, the Petitioner did not carry his burden of proving that the grand jury did not meet as indicated and that trial counsel was did not provide ineffective assistance in failing to challenge the indictment, *Id.*

Petitioner contends that PCR counsel (Mark Peper, Esq.) was negligent in failing to ascertain this information, but that Petitioner specifically requested the PCR Court obtain the information to satisfy the burden that the incarcerated layperson was incapable of meeting. It was PCR counsel’s duty to obtain the Grand Jury Empanelment Order and appropriate scheduling calendar to prove Petitioner’s allegation had merit.

The threshold matter is that Petitioner’s indictment was “true-billed” and signed by the grand jury foreperson on August 6, 2007, App. 538. However, the Charleston County Grand

Jury did not convene for the August 2007 term until a date other than indicated on the indictment.

Trial counsel failed to ascertain the fundamental defect in the indictment and did not move to quash the defective instrument, even though he was cognizant of the matter and the statutory duty to raise the issue before the taking of evidence before the jury.¹

PCR counsel, Mark Peper, Esq. failed to adequately raise the substance of this ineffective assistance claim concerning an indictment that deprived the trial court of jurisdiction in this matter.

Petitioner suggests the trial court did not have subject matter jurisdiction to try guilty plea to the trafficking indictment because the indictment was “true-billed” and signed by the Grand Jury Foreperson prior to the Grand Jury term being convened, thus, is wrongly convicted, sentenced and incarcerated.

It should be noted the parties cannot confer subject matter jurisdiction by consent, *Plante v. State*, 315 S.C. 562, 446 S.E. 2d 437 (1994). Proceedings in a court of general jurisdiction will be presumed regular absent evidence to the contrary, *Pringle v. State*, 287 S.C. 409, 339S.E. 2d 127 (1986). The *Pringle* Court found the Foreman’s signature is not essential to the validity of the indictment; however, Petitioner asserts the date of that signature is an element if that Grand Jury was not in session at the time or just ended.

This is not merely a scrivener’s error. The document bears a date inconsistent with the grand jury term. An almost identical scenario transpired in *Anderson v. State*, 338 S.C. 629, 527 S.E. 2d 398 (Ct. App. 2000). As in *Anderson*, the Petitioner here request identical relief; remand the case for a hearing on whether the trial court was properly vested with subject matter

¹ S.C. Code Ann. § 17-19-90

jurisdiction during [Petitioner's] [trafficking] trial. At the hearing, the State shall bear the burden of proving subject matter jurisdiction [where Petitioner has diligently sought to discover such evidence from the State.] The hearing should be to determine whether the indictment was properly true-billed.

Petitioner contends that the PCR Court ruling is not supported by any probative evidence. The reviewing Court “gives great deference to the post-conviction Court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). A PCR Court’s finding will be upheld on appeal if there is “any evidence of probative value sufficient to support them,” *Id.* The appellate court must reverse where there is no probative evidence to support the findings, *Pierce v. State*, 338 S.C. 139, 144, 526 S.E.2d 222, 225 (2000).

Trial counsel’s failure to challenge the defective indictment comports with both the deficient performance and resulting prejudice prongs of *Strickland v. Washington*, 466 U.S. 668 (1984) where counsel was responsible to review the indictment, pursuant to S.C. Code Ann. §17-19-90; and Petitioner was prejudiced where the trial court was without subject matter jurisdiction to convict and sentence the Petitioner.

II. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE IN CONDUCTING A “PROPER INVESTIGATION” AND PETITIONER’S CLAIM WAS “MERE SPECULATION” BECAUSE PETITIONER FAILED TO MEET THE BURDEN OF PROOF.

The Petitioner testified at PCR that trial counsel (Smiley) was ineffective for failing to perform a thorough, independent investigation, to wit: (1) the chain of custody concerning the evidence tampering of the BEST Kit; (2) obtaining the Request Forms from the jail in order to effectively cross-examine Mr. Hancock concerning Petitioner complaining that the integrity of

his jail telephone PIN (Personal Identification Number) had been compromised by others, which were available exhibits at PCR; (3) failing to interview and cross-examine the CI (confidential informant) regarding another individual entering the automobile during that period of time, but which Charleston County authorities failed to present as evidence, which could have been exculpatory in nature; and (4) failing to call the witness (Detective Nice) that shot the video of the alleged transaction to cross-examine regarding identification of the people in the video.

The general principles which apply to Petitioner's claim that he received constitutionally inadequate representation are well settled, *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). With respect to the question of an "objective standard of reasonableness" for attorney performance, the Court has declined to articulate specific guidelines, *Wiggins v. Smith*, 539 U.S. 510 (2003). Accordingly, "before counsel undertakes to act, or not to act, counsel must make a rational and informed decision on strategy and tactics founded upon adequate investigation and preparation." Hence, although a court must presume that counsel's conduct falls within the "wide range of reasonable professional assistance." See, *Bell v. Cone*, 535 U.S. 685, 702 (2002), counsel's alleged tactical decisions must be subjected to meaningful scrutiny" and must be "informed," so that before counsel acts, he or she "will make a rational and informed decision on strategy and tactics founded on adequate investigation and preparation."

The PCR Court found Petitioner's claim of improper investigation "mere speculation," App. 533.

In *Strickland*, the Court emphasized that "tactical" decisions, although entitled to a heavy measure of deference if undertaken following a reasonable investigation, are only as reasonable as the investigation on which they are based:

Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations, or to make a reasonable decision that makes particular investigations unnecessary.

Strickland, supra, 466 U.S. at 690-691.

In *Wiggins v. Smith, supra*, 539 U.S. 510 (2003), the Court applied this basic principle in expressly determining whether a lawyer's pre-trial investigation was constitutionally deficient. *Strickland* cannot be read to render trial counsel's conduct bulletproof under the Sixth Amendment merely by saying it was done for "strategic reasons," rather:

[E]ven assuming that counsel limited the scope of their investigation for "strategic reasons," *Strickland* does not establish that a cursory investigation automatically justifies a tactical decision with respect to - - strategy. Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy.

Wiggins, supra, 539 U.S. at 527. What matters is whether counsel in fact explored those avenues, as articulated above, that reasonable counsel would have pursued in light of what was known and in light of the defense strategy.

Petitioner contends that the PCR Court ruling is not supported by any probative evidence. The PCR Court's finding that Petitioner raises "mere speculation," App. 533 is negated by the specific instances shown by Petitioner, *supra*, pp. 5-6. The reviewing Court "gives great deference to the post-conviction Court's findings of fact and conclusions of law", *Dempsey v. State, supra*. A PCR Court's finding will be upheld on appeal if there is "any evidence of probative value sufficient to support them," *Id.* The appellate court must reverse where there is no probative evidence to support the findings, *Pierce v. State, supra*.

III. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL ARTICULATED A VALID “STRATEGIC DECISION” IN FAILING TO CHALLENGE THE CHAIN OF CUSTODY OF THE BEST KIT, WHICH DENIED PETITIONER DUE PROCESS OF LAW AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

The State’s evidence in the trial, absent the evidence introduced by the tainted chain of custody, was merely circumstantial and consisted mainly of the testimony of a first-time Confidential Informant who was attempting to be relieved of his own drug and child endangerment offenses; and a video that was visually (App. 94) and audibly (App. 120) questionable, and incapable of identifying any particular person, other than the C.I.

The nexus of this claim is either allegedly 13.34 grams (SLED) or 14.8 grams (Charleston County) of cocaine mixture submitted via two (2) BEST Kits², which were opened and repackaged after filing. Upon cross-examination of Detective Brown, “So you unpackaged the drugs and then put it in another drug [sic] after you had already put it in the box?” Detective Brown responded, “Yes,” App. 132. “What was the error? “Something clerical, *I’m not sure,*” App. 133 (emphasis supplied). And, you do not remember what was wrong?” Detective Brown responded “No,” *Id.* Detective Brown *admitted* his *previous testimony* regarding the date of the BEST Kit was “*not true,*” App. 133, 136 (emphasis supplied). Trial counsel asked Detective Brown “Where did this little bag come from?” Detective Brown responded, “*I don’t know,*” App. 136 (emphasis supplied). Counsel further queried Detective Brown “*You do not know this BEST Kit was opened - who added or subtracted from it?*” Detective Brown responded, “*No,*” *Id.* (emphasis supplied).

² Best Evidence Sampling Testing - South Carolina Regulation 73-100 (Uniform Procedures for Handling of Controlled Substances [1976 Code §§44-53-120 and 44-53-485])

Investigator Kjellman confirmed there was an “*unknown*” error, App. 299-300 and the original BEST Kit (No. 993) “no longer existed,” App. 301 (emphasis added). Investigator Kjellman testified Detective Brown “*tampered*” with BEST Kit No. 993 by *opening* it, App. 303 (emphasis added).

Now trial counsel still failed to enter a contemporaneous objection to suppress the evidence contained in the BEST Kit.

Trial counsel was aware of the defective chain of custody of BEST Kit Numbers B18993 and B185822, App. 516. Counsel testified at PCR “I felt that was a card that should be played during trial,” *Id.* *South Carolina Regulation 73-100* regarding use of BEST Kits is specifically instructive. Not only did counsel fail to timely enter a contemporaneous during the trial, but could have avoided the prejudicial evidence even being considered by the jury if he had challenged the tainted procedure in a motion *in limine* for a suppression hearing under the Fourth Amendment of the United States Constitution. *See, Kimmelman v. Morrison*, 477 U.S. 365 (1986), *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

In 1993, the Supreme Court held that “the trial judge must ensure that any and all scientific testimony or evidence admitted in, be not only relevant, *but reliable*,” *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (2003) (emphasis added).

Counsel had a duty to enter an objection regarding the admission of evidence. The admission of evidence is addressed to the sound discretion of the trial court, *State v. Williams*, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989). On appeal the question presented is whether the trial court’s discretion is controlled by an error of law or is without evidentiary support,” *State v. Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). Where there is no evidence to support the trial court’s decision, the appellate court will not affirm it, *Id.*

Appellant asserts the Officer in *Hatcher, infra*, similarly testified to the BEST Kit procedure as Detective Brown in the instant case.

Appellant asserts counsel was ineffective for not objecting to the introduction or admitting to drug evidence when the State failed to establish a complete chain of custody.

Our Supreme Court has held that “a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable,” *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011) citing *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007). When “the substance analyzed has passed through several hands the evidence *must not leave it to conjecture* as to who had it and what was done with it between the taking and the analysis”, *State v. Hatcher, supra*, (internal citations omitted). Indeed, our Court of Appeals, in *Hatcher*, supported the duty for specificity of counsel’s objection to identify the grounds for the trial court.

Finally, the *Hatcher* Court reiterated, “South Carolina Courts have consistently held that all persons in the chain of custody must be identified and the manner of handling the evidence must be demonstrated,” *Hatcher, supra*, (internal citations omitted and note 4).

It is important to note the similarities between *Hatcher* and the case presently before this Court.

In *Hatcher*, two officers followed the C.I., who was equipped with a concealed microphone (See App. 120). The Officers in *Hatcher* similarly accepted the drugs from the C.I. and placed them in the BEST Kit. The *Hatcher* Court emphasized the evidence must be “delivered in substantially the same condition as when received,” citing Rule 6(b), South Carolina Rules of Criminal Procedure.

Appellant contends that notwithstanding the testimony of Detective Brown, the Charleston Evidence Custodian, and the SLED Chemist, the chain of custody is tainted when the “unknown” reason for tampering with and repackaging the evidence into another BEST Kit, and the destruction of BEST Kit No. 993, destroy the sanctity of the link in the chain of possession intended to be preserved by South Carolina Regulation 73-100. The State quite simply failed to establish or demonstrate a manner of handling that comports with due process or fundamentally fair evidence handling procedures.

This unchallenged “testimony” so infected the trial with unfairness as to result in a denial of due process, *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974).

The constitutionality of evidence seized in a criminal case can be challenged in a suppression hearing, *Jackson v. Denno*, 378 U.S. 368 (1964); *State v. Gamble*, 274 S.C. 214, 146 S.E.2d 709 (1966), *overruled on other grounds*. *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Similar hearings are required when the legality of the seizure of the evidence is challenged. A bare allegation of a constitutional violation is insufficient to require a suppression hearing, *State v. Patton*, 322 S.C. 408, 472 S.E.2d 245 (1996). However, based on the unethical violation of the chain of custody, counsel should have motioned the Court *in limine*, to challenge the admissibility of the evidence as well as the chain of custody of the evidence.

In *State v. Blassingame*, 271 S.C. 44, 47-48, 244 S.E.2d 528, 530 (1978), this Court pronounced a bright-line test for when a Fourth Amendment suppression hearing must be held. Whenever evidence is introduced that was allegedly obtained by conduct violative of a defendant’s constitutional rights, [or there is a question of the validity of the chain of custody of the evidence], the defendant is entitled to an evidentiary hearing out of the presence of the jury at

the threshold point to establish the circumstances under which it was seized [or the chain of custody being broken.]

Under *Blassingame*, a defendant need not articulate specific grounds as to why a suppression hearing is necessary; he need make only a broad, general motion.

At PCR, Petitioner testified that he requested a suppression hearing on the evidence, App. 466.

Accordingly, “before counsel undertakes to act, or not to act, counsel must make a rational and informed decision on strategy and tactics founded upon adequate investigation and preparation,” *Bell v. Cone*, 535 U.S. 685, 702 (2002).

Petitioner contends that the PCR Court ruling is not supported by any probative evidence. The reviewing Court “gives great deference to the post-conviction Court’s findings of fact and conclusions of law”, *Dempsey v. State, supra*. A PCR Court’s finding will be upheld on appeal if there is “any evidence of probative value sufficient to support them,” *Id*. The appellate court must reverse where there is no probative evidence to support the findings, *Pierce v. State, supra*.

IV. WHETHER THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE WHERE COUNSEL STIPULATED AND CONCEDED PETITIONER’S GUILT BY STATING IT WAS PETITIONER’S VOICE ON THE JAIL PHONE, WHICH UNDERMINED PETITIONER’S COMPLETE DEFENSE AND HIS PRESUMPTION OF INNOCENCE.

During the Petitioner’s jury trial, counsel made the statement to the jury in closing argument as follows:

“But you listen to the tape and listen to it close. Never, ever, does he [Petitioner] say, “I sold Cory the drugs.” Not ever...

App. 404. This statement clearly implies Petitioner was the person discussing the crime on the jail telephone. At PCR, Petitioner testified he did not make the phone calls, App. 473. He also testified that he “did not use [my] PIN number,” *Id.*, that he wrote the jail classification pertaining to someone using my PIN number because I had a little incident with a female friend I was dealing with saying that I gave someone her number that used my PIN number, *Id.* Petitioner also testified he informed counsel that counsel could get the requests regarding the telephone PIN number problem from the jail and present them as evidence that other individuals had access to that PIN number, App. 474.

During pretrial hearings the Court asked trial counsel if he intended to “object to the jail tapes?” App. 35, to which Mr. Smiley responded, “well, not necessarily,” *Id.* Counsel’s only premise was a challenge on the business record exception, App. 37, 147. Petitioner asserts trial counsel never intended to support the defense theory that the voice on the tapes was not Petitioner’s.

Petitioner contends that he was denied his right to the effective assistance of counsel when counsel conceded in his argument to the jury that there was no reasonable doubt regarding the primary issue in dispute - Petitioner’s guilt or innocence. Counsel identified the voice on the telephone as Petitioner’s, thus nullifying Petitioner’s reliance on his cloak of innocence and his theory of defense that someone used his telephone PIN number.

Petitioner testified that he would have preferred Mr. Smiley (counsel) not allow the phone tapes to enter into evidence, App. 475, but that counsel “admitted it,” *Id.* After arguing during the course of the trial that other prisoners could use other PIN numbers, when the State moved to publish the jail tapes before the jury, App. 241, counsel stipulated in a bench conference that it was Petitioner’s voice on the tape, App. 243, and that Petitioner is “Boobie”, App. 253, to

bootstrap for other evidence purposes, which weighed heavily throughout the State's closing, App. 383-395. In fact, it had bearing on the larger portion of the State's closing.

The adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate, *Anders v. California*, 386 U.S. 738 (1967).

The right to the effective assistance of counsel is the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.

When a true adversarial criminal trial has been conducted even if the defense counsel may have made demonstrable errors, the kind of testing envisioned by the Sixth Amendment has occurred. However, if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated, *United States v. Cronie*, 466 U.S. 648, 656-57 (1984).

Petitioner contends that a criminal defendant is also protected from unfairness in the criminal process by the due process requirement that "his guilt" be proven beyond a reasonable doubt.

The United States Supreme Court has explicitly held that the "Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact and element to constitute the crime with which he is charged, *In re Winship*, 397 U.S. 358 (1970). The Supreme Court has also stated that due process commands that no man shall lose his liberty unless the government has borne the burden of producing evidence and convincing the fact finder of his guilt. *Spencer v. Randall*, 78 S.Ct. 1332 (1958). When a defense attorney concedes that there is no reasonable doubt concerning a factual issue in dispute, the Government has not been held to its burden of persuading the jury that the defendant is guilty.

The Supreme Court recognized in *Cronie* that there are circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.

Cronic, 104 S.Ct. at 2046. The Court identified the complete denial of counsel or the deprivation of effective representation at a critical stage of an accused's trial as justifying the presumption of prejudice, *Id.* at 2047.

The *Strickland* test, requiring a showing of prejudice caused by counsel's ineffectiveness, is applicable (1) in cases where the record reflects that an attorney's errors or omissions occurred during an attempt to present a defense, or (2) that the or she engaged in an unsuccessful maneuver that was intended to assist the defendant in obtaining a favorable ruling, (quoting *United States v. Swanson*, 943 F.2d 2070, 1073 (1991)).

Petitioner asserts that counsel's conduct clearly caused a complete breakdown in the adversarial system of justice, which should compel this Court to apply the *Cronic* exception to the *Strickland* requirement of a showing that the outcome of the trial would have been different without counsel's errors or omissions. Counsel's concession, in his argument to the jury that "never, ever, does he say, I sold Cory the drugs," App. 404, does not demonstrate mere negligence in the presentation of Petitioner's case or a strategy to gain a favorable result that misfired. Instead, counsel's statement "substantially lessened" the State's burden of proof or persuading the jury that Petitioner was guilty. The one fact that counsel said, "does he say" tainted the integrity of the trial and nullified Petitioner's defense theory of innocence.

The Court in *Cronic* held "if counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that make the adversarial process presumptively unreliable."

Counsel's actions were not merely an attempt to champion Petitioner's cause. The concession that it was Petitioner's voice on the jail telephone concerning being involved in the

offense then before the jury was a clear abandonment of the defense of the Petitioner at a very critical stage of the criminal proceeding.

In *Herring v. New York*, 95 S.Ct. 2550 (1975), the Court recognized the importance of the opening and closing argument to a criminal defendant.

Under *Cronic*, no prejudice must be specified, yet the prejudice incurred is readily apparent by counsel's opening argument, which denied Petitioner a fair trial and the right to the effective assistance of counsel.

Petitioner contends that the PCR Court ruling is not supported by any probative evidence. The reviewing Court "gives great deference to the post-conviction Court's findings of fact and conclusions of law", *Dempsey v. State, supra*. A PCR Court's finding will be upheld on appeal if there is "any evidence of probative value sufficient to support them," *Id*. The appellate court must reverse where there is no probative evidence to support the findings, *Pierce v. State, supra*.

CONCLUSION

For the foregoing reasons the writ of certiorari should issue.

Respectfully submitted,



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October 29, 2013

PETITIONER, Pro se

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October 29, 2013

Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

Re: *Stanford Brown v. State*
Appellate Case No. 2013-000077

Dear Mr. Shearouse:

Please find enclosed for filing one (1) copy of the Petitioner's *pro se Johnson* petition in the above-referenced PCR certiorari. This copy is unbound, per your August 30, 2013 letter instructions.

Also enclosed is a certificate of mailing of the Petition on counsel for Respondents.

Your assistance in this matter is sincerely appreciated.

With kindest regards, I remain,

Sincerely,


Stanford Brown

PETITIONER

RECEIVED

NOV 12 2013

S.C. SUPREME COURT

Cc: Ashleigh R. Wilson, Esq.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
(Case No. 2012-CP-10-3627)

Robert M. Young, Sr., Circuit Court Judge

Appellate Case No. 2013-000077

STANFORD BROWN,

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STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF MAILING

The undersigned Petitioner hereby certifies that he has mailed and true and correct copy of his *pro se Johnson* Petition for Writ of Certiorari to counsel for Respondents, via U.S. Mail, first class postage affixed thereto, this 10TH day of ~~October~~ November 2013, addressed as follows:

Ashleigh R. Wilson, Esq.
Office of South Carolina Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Stanford Brown
#293743
Lieber Corr. Inst. EB-05
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S.C. SUPREME COURT

PETITIONER

AMS

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Honorable David E. Shearouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

FEDERAL BUREAU OF INVESTIGATION