



LAW OFFICE OF TRICIA A. BLANCHETTE

August 18, 2014

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

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AUG 18 2014

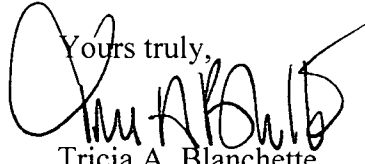
**S.C. Supreme Court**

RE: Christopher Pride v. State; Appellate Case No.: 2013-001157

Dear Sir:

For filing in the above referenced case, I have attached an original and six copies of the Petition for Rehearing, with Certificate of Service attached.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,  
  
Tricia A. Blanchette  
Attorney at Law

cc: J. Rutledge Johnson, Assistant Attorney General  
Christopher Pride

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM UNION COUNTY  
Court of Common Pleas  
Post Conviction Relief

Honorable Lee S. Alford, Circuit Court Judge

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Case No. 2011-CP-44-0331  
Appellate Case No. 2013-001157

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AUG 18 2014

**S.C. Supreme Court**

Christopher Lee Pride,

Petitioner,

vs.

State of South Carolina,

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Respondent.

PETITION FOR REHEARING

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Tricia A. Blanchette  
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Columbia, South Carolina 29211  
(803) 988-0008  
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## STATEMENT OF THE CASE

During the June 2003 term of the Union County Grand Jury, Petitioner was indicted for Possession of Crack Cocaine with Intent to Distribute (2003-GS-44-0519) and Possession of Crack Cocaine with Intent to Distribute within Proximity of a School (2003-GS-44-0523. App. p. 108. Petitioner retained Fletcher Smith, Esquire. Attorney Smith was relieved by the Honorable J. Cordell Maddox, Jr., on September 13, 2004. Thereafter, Petitioner applied to the Sixteenth Circuit Public Defender's Office, and William All, Esquire, was appointed to represent Petitioner.

On October 13, 2004, Petitioner's case was called to trial. The State moved to have Petitioner tried in his absence. App. p. 4. In response, the Honorable John C. Hayes urged William All, Esquire, to move to be relieved as counsel and subsequently relieved Attorney All as counsel and granted the State's motion for Petitioner to be tried in his absence. App. pp. 9-12. The jury returned a guilty verdict on both charges and the sentences were sealed. App. pp. 91-2.

On January 18, 2005, a sentencing hearing was held in front of the Honorable G. Thomas Cooper, Jr. App. p. 95. Attorney All was reappointed by Judge Cooper and the sentence was unsealed with the terms as follows: twenty-five (25) years for PWID Crack Cocaine, Second Offense, and fifteen (15) years concurrent for the proximity charge. App. p. 104-5.

A timely direct appeal was filed on Petitioner's behalf and perfected by Fletcher Smith, Esquire, in conjunction with the Office of Appellate Defense. App. p. 124. On December 5, 2007, the South Carolina Court of Appeals affirmed Petitioner's conviction

and sentence. State v. Pride, 2007-UP-544 (S.C. Ct. App. filed December 5, 2007).<sup>1</sup> App. p. 160. On April 15, 2008, the Petition for Rehearing and Petition for Rehearing were denied by a split court. App. pp. 173-5. Thereafter, certiorari was sought and granted in the South Carolina Supreme Court. App. p. 176. On December 14, 2009, the South Carolina Supreme Court dismissed Petitioner's appeal finding that certiorari was improvidently granted. State v. Pride, Op. No. 2009-MO-064 (S.C. filed December 14, 2009). App. p. 177. The Remittitur was issued on December 30, 2009. App. p. 179. Petitioner submitted a pro-se petition to the United States Supreme Court, which was denied on June 21, 2010. App. p. 180.

On August 23, 2011, Petitioner filed an Application for Post-Conviction Relief in Union County. App. p. 181. Elizabeth Wiygul, Esquire, was appointed to represent Petitioner. Respondent submitted a Return and Motion to Dismiss on December 19, 2011. App. p. 187. A Conditional Order of Dismissal was signed on January 4, 2011, to which Petitioner responded that he was advised by Attorney Smith that he had one year from the decision of the United States Supreme Court to file his Application. App. pp. 193-8. Respondent agreed with Attorney Wiygul to allow Petitioner's Application to proceed to an evidentiary hearing.

On November 5, 2012, the Honorable Lee S. Alford signed an Order substituting Tricia A. Blanchette, Esquire, in as Petitioner's counsel. On November 29, 2012, Petitioner, through counsel, filed an Amended Application for Post Conviction Relief, which alleged:

1. As to representation rendered by William All, Esquire:

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<sup>1</sup> This Opinion replaced South Carolina Court of Appeals Opinion No. 4208, which was withdrawn and substituted after the granting of a Petition for Rehearing. App. p. 153-59.

- a. Ineffective assistance of counsel for failure to effectively argue against trial in absence.
  - b. Ineffective assistance of counsel for failure to protect client's right to counsel during trial in absence.
  - c. Ineffective assistance of counsel for failure to file a Motion pursuant to Rule 29(a), SCRCrimP, following his reappointment during Applicant's sentencing hearing.
2. As to representation rendered by Fletcher Smith, Esquire:
- a. Ineffective assistance of counsel for failure to act on guilty plea offer communicated to Applicant.
  - b. Ineffective assistance of counsel for failure to appear in court at trial or sentencing to address the existence of an attorney/client relationship with Applicant.

App. pp. 199-202.

On February 8, 2013, an evidentiary hearing was conducted at the Moss Justice Center in front of the Honorable Lee S. Alford. App. p. 203. Petitioner was represented by Tricia A. Blanchette, Esquire, and the State was represented by J. Rutledge Johnson, Assistant Attorney General. Following the evidentiary hearing, the Honorable Lee S. Alford took the matter under advisement and later advised the State to prepare a proposed Order of Dismissal. App. p. 271.

Upon receipt of the proposed Order of Dismissal, Petitioner's counsel sent a letter to the Honorable Lee S. Alford addressing omissions of findings of fact and conclusions of law on issues set forth in the Amendment and addressed at the evidentiary hearing.<sup>2</sup> App. p. 272. The Order of Dismissal was signed on March 25, 2013 and filed on April 2, 2013. App. p. 274. On April 11, 2013, Petitioner, through counsel, filed a Motion for Rehearing Pursuant to Rule 59(a), SCRCrP, and/or Motion to Alter or Amend Pursuant to

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<sup>2</sup> Receipt of this letter was acknowledged by the law clerk of the Honorable Lee S. Alford.

Rule 59(e), SCRCF. App. p. 289. On April 22, 2013, the Honorable Lee S. Alford issued an Amended Order of Dismissal and an Order on Petitioner's Rule 59, SCRCF, Motion. The Orders were filed on April 25, 2013. App. pp. 296, 311.

On May 24, 2013, Petitioner, through counsel, filed a timely Notice of Appeal, and a Petition for Writ of Certiorari and Appendix were filed on January 22, 2014. On May 8, 2014, the State submitted a Return to Petition for Writ of Certiorari. On August 6, 2014, this Court denied the Petition for Writ of Certiorari via written Order, from which this Petition for Rehearing follows.

### **ARGUMENT**

Pursuant to Rule 221, SCACR, Petitioner would respectfully request that this Court review the Petition for Writ of Certiorari, filed on January 22, 2014, and reconsider the decision entered on August 6, 2014 to deny the Petition for Writ of Certiorari without written explanation or opinion.

By way of the Petition for Writ of Certiorari, Petitioner argued that the lower court erred in finding that the performance of his attorneys was not ineffective and prejudicial to the Petitioner in three separate arguments, which are summarized briefly below. Petitioner would ask this Court to reconsider the complete arguments set forth in the Petition for Writ of Certiorari before upholding the decision of the lower court that found that his attorneys' ineffective assistance was excusable. Petitioner submits that the lower court failed to make complete rulings, as was argued in the post hearing motion, and no probative evidence supports the findings of the PCR court; therefore, this Court must not uphold the findings of the lower court. See Jackson v. State, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2002).

First, Petitioner has argued that the lower court erred in finding that counsel was not ineffective for failing to communicate and/or act on a plea offer of ten years and that Petitioner was prejudiced as a result. By way of the Amended Order of Dismissal, the lower court found that there was no evidence that Attorney Smith received a plea offer from the State and failed to act on it, and the lower court also excused Attorney All's failure to act on the ten year plea offer. Petitioner has argued that the lower court erred since his claim was that Attorney Smith failed to act on the plea offer and there was clear testimony from Attorney All that a plea offer was on the table when he took over representation from Attorney Smith. Furthermore, Petitioner has argued that there is no credible evidence that can be deduced from the testimony of Attorney Smith that his performance regarding the plea offer was not deficient as he clearly testified that he had no memory of the plea offer and no file to refer to on the matter. Most importantly, the lower court failed to address the clear prejudice that Petitioner suffered when he received a twenty-five year sentence in contrast to the ten year plea offer: See Davie v. State, 381 S.C. 601, 675 S.E. 2d 416 (2009). Petitioner testified that he wanted to accept the plea offer, yet the lower court excused counsel's conduct and failed to address the prejudice suffered by Petitioner. Petitioner urges this Court to not overlook the error committed by the lower court in not properly addressing and in denying this issue.

Secondly, Petitioner has argued that the lower court erred in finding that counsel was not ineffective for failing to request a continuance and/or argue against Petitioner being tried in his absence. In the Petition for Writ of Certiorari, it is explained in detail how the lower court initially refused to even consider this issue and then failed to properly rule on the issue despite a specific request to do so in Petitioner's post hearing

motion. Simply put, Attorney All essentially made the State's argument for them and failed to argue for a continuance or that Petitioner should not be tried in his absence. In Morris v. State, 371 S.C. 279, 639 S.E.2d 53 (2006), this Court held that counsel can be found deficient for failing to request a continuance prior to a trial in absentia. Petitioner would urge this Court to not overlook counsel's clear error that was essentially ignored by the lower court. The record shows that counsel practically aided the State in obtaining a trial in Petitioner's absence, went along with the trial court's suggestion to be relieved as counsel and never entered an objection or requested a continuance on Petitioner's behalf. Counsel's actions and inactions were clearly prejudicial to Petitioner, as detailed in the Petition, and is a matter that should not continue to be ignored.

Finally, Petitioner has alleged that the lower court erred in finding that counsel was not ineffective for failing to make a motion for a new trial after his reappointment during Petitioner's sentencing hearing. By way of his amendment and through argument and testimony offered at the evidentiary hearing, Petitioner alleged that trial counsel was ineffective when he failed to make a motion for a new trial following his reappointment during the sentencing hearing. Specifically, Petitioner, through counsel, directed the lower court's attention to Judge Cooper's comment that Petitioner should have had an attorney at his trial to demonstrate that a motion should have been made to allow Judge Cooper to rule on the matter and to further preserve the issue for appeal. App. p. 99, Ins. 15-19. Additionally, counsel could have cured his own failure to object to the trial in absentia or request a continuance by raising the issue in a motion for a new trial at the sentencing hearing.

In affirming Petitioner's conviction and sentence, the Court of Appeals distinguished Petitioner's case from State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003) and State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006). Interestingly, in both of those cases, counsel made a motion for a new trial, which evolved into the basis for the grounds on which the appellate courts granted reversal. Here, counsel failed to make such a motion despite believing that he had been cut short by the trial court before he could make a motion for continuance or object to the trial in absentia. App. pp. 265-67. When asked at the evidentiary hearing, counsel did not provide a reasonable explanation for his failure to make a motion for a new trial. App. pp. 264-65. Nevertheless, the lower court held: "This Court finds a motion for a new trial would not have been granted and would not have preserved any issues which were not addressed in the direct appeal." App. p. 308. The court reasoned: "Further, a motion for a new trial would not have been successful as Judge Cooper was not going to overturn another circuit court judge's sentence." App. p. 309. Petitioner has argued and submits that his Court has overlooked that the lower court's findings are in error and not supported by the record.

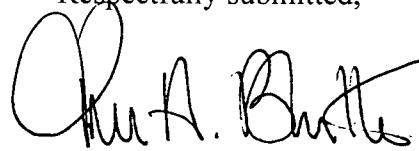
As is noted in the Amended Order of Dismissal, neither Attorney All or Judge Cooper had the trial transcript at the sentencing hearing, but what is not addressed in the Order is the Solicitor's offer to continue the hearing if Petitioner was not prepared to go forward. App. p. 102, Ins. 8-15. Petitioner concedes that without any argument provided by counsel or a review of the trial record it was likely that Judge Cooper would not overturn the sentence of another circuit court judge, but Petitioner urges this court to find such to be deficient performance by counsel not the basis for the purely speculative

finding that Judge Cooper would deny the motion. Simply put, a motion for a new trial was not even attempted, let alone properly and persuasively made by my counsel, which is deficient performance not a basis to deny Petitioner relief. Therefore, Petitioner would urge this Court to reconsider the full argument set forth in the Petition for Writ of Certiorari.

CONCLUSION

In consideration of the above stated arguments, Petitioner respectfully requests that the Court conduct a full review of the previously submitted Petition for Writ of Certiorari and Appendix. Petitioner would further urge this Court to reverse the Order filed on August 6, 2014 and allow Petitioner to further brief the arguments or remand to the lower court for a new trial.

Respectfully submitted,



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Tricia A. Blanchette  
Post Office Box 12725  
Columbia, South Carolina 29211  
(803) 988-0008  
ATTORNEY FOR PETITIONER

This 18 day of August, 2014.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM UNION COUNTY  
Court of Common Pleas  
Post Conviction Relief

Honorable Lee S. Alford, Circuit Court Judge

Case No.: 2011-CP-44-0331  
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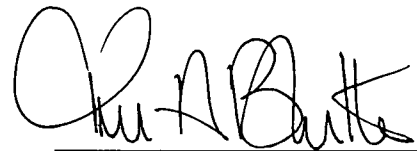
State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I that I placed in the U.S. mail this 18<sup>th</sup> day of August 2014, a copy of the Petition for Rehearing to J. Rutledge Johnson of the Attorney General's Office, at:

Office of the Attorney General  
Att: J. Rutledge Johnson, Ast. AG  
P.O. Box 11549  
Columbia, SC 29211-1549



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August 18, 2014