 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
Roger M. Young, Circuit Court Judge  
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**RECEIVED**

AUG 21 2014

**S.C. Supreme Court**

DERRICK GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000563  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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## ISSUE PRESENTED

1.

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when appellate counsel failed to attend a remand hearing held on January 29, 2010 to reconstruct the record of a hearing held on April 30, 2003 where Petitioner allegedly waived his right to counsel and was warned of the dangers of self-representation since this prevented Petitioner from taking any sworn testimony and arguing that the record could not be reconstructed for meaningful appellate review of the issue of whether Petitioner knowingly and intelligently waived his right to counsel at trial?

2.

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when appellate counsel failed to argue on appeal that Petitioner did not knowingly and intelligently waive his right to counsel at the June 11, 2003 *Schmerber* hearing where the court ordered Petitioner to allow the state to take samples of his blood and hair to be used for DNA comparison testing?

## STATEMENT

A Berkeley County Grand Jury indicted Petitioner at the March 12, 2003 term of General Sessions for the offense of murder. App. 1018-1019. On April 30, 2003, a hearing was held before the Honorable R. Markley Dennis, Jr. on Petitioner's motion to relieve his retained counsel, George B. Bishop, Jr. Unfortunately, a transcript of this proceeding is unavailable. By Order dated May 5, 2003, Judge Dennis granted Petitioner's motion to relieve Bishop as counsel. Supp. App. 1-2. The order states:

After being aware of the nature of the Defendant's request, much discussion was had with the Defendant regarding the seriousness of the charged offenses and the potential impact upon the Defendant should his request be granted. ... Mr. Grant was fully warned about the inherent risk of delaying representation by other counsel, appointed or retained. Mr. Grant acknowledged he understood and accepted the risks of his request.

The court further held that "until Mr. Grant has secured other counsel by appointment or hire, he shall represent himself in a *pro se* manner." Supp. App. 1-2.

On June 11, 2003, a Schmerber<sup>1</sup> hearing was held before Judge Dennis on the state's motion to obtain a blood and hair sample from Petitioner. App. 1; App. 4, ll. 10-12. Assistant Solicitor Blair Jennings represented the state at this hearing and Petitioner represented himself. After hearing testimony, Judge Dennis ultimately found there was probable cause to believe that a crime had been committed and probable cause to believe it was committed by Petitioner. The court further found that material evidence relevant to the question of Petitioner's guilt would be found by DNA comparison testing and that the method to be used to obtain the blood and hair samples was safe and reliable. App. 21, ll. 3-23; See Supp. App. 3-4.

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<sup>1</sup> Schmerber v. California, 384 U.S. 757 (1966).

Several other pretrial hearings were held on November 21, 2003, December 3, 2003, January 7, 2004, and February 13, 2004.<sup>2</sup> App. 27; App. 48; App. 99. All of these hearings were held before Judge Dennis. At each hearing, Petitioner reaffirmed his desire to represent himself. However, at the January 7, 2004 hearing, Judge Dennis, at Petitioner's request, appointed Patricia Kennedy as standby counsel to assist Petitioner. App. 68, ll. 3-11.

His case was called to trial on February 23, 2004 before Judge Dennis, and a jury. App. 111. Solicitor Ralph Hoisington and Assistant Solicitor Blair Jennings represented the state. App. 111. Patricia Kennedy was Petitioner's standby counsel. App. 111. On February 27, 2004, after deliberating for over ten hours, the jury found Petitioner guilty. App. 874, ll. 17-23. He was sentenced by Judge Dennis to life without parole. App. 887, ll. 5-14.

Petitioner filed a notice of appeal and then Chief Appellate Defender Joseph L. Savitz, III was appointed to represent him. Savitz initially filed a Brief of Appellant pursuant to Anders v. California, 386 U.S. 738 (1967), arguing the court erred by not instructing the jury on mere presence. Supp. App. 8. After a review of the record, the Court of Appeals requested briefing on the issue of whether Petitioner knowingly and intelligently waived his right to counsel. Supp. App. 19.

Savitz ultimately argued in his Brief of Appellant that Petitioner did not knowingly and intelligently waive his right to counsel at trial and that, since the transcript of the initial waiver hearing (April 30, 2003) was unavailable, Petitioner should be granted a new trial. Supp. App. 17. Before submitting its Brief of Respondent, the state moved to remand the case to reconstruct the record of the April 30, 2003 hearing. A reconstruction hearing was held on January 29, 2010 before Judge Dennis. App. 889. The state was represented by Assistant Attorney General W. Edgar

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<sup>2</sup> The December 3, 2003 transcript was also unable to be transcribed.

Salter, III. App. 889. Also appearing were Petitioner, Blair Jennings, Patricia Kennedy, and George Bishop. App. 889. For some unknown reason, Savitz did not attend.

The South Carolina Court of Appeals ultimately affirmed Petitioner's conviction and sentence finding Petitioner knowingly and voluntarily waived his right to counsel with a full understanding of the consequences of self-representation. State v. Grant, Op. No. 2011-UP-499 (S.C. Ct. App. Filed November 9, 2011).

On May 11, 2012, Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of appellate counsel. App. 927-933. The state filed a return to this application dated July 1, 2013. App. 936-939. On July 24, 2013 and August 9, 2013, Petitioner, through counsel, filed amendments to his PCR application raising the issues contained in this petition. App. 934-935. The matter proceeded to an evidentiary hearing on September 18, 2013 before the Honorable Roger M. Young, Sr. App. 940. Assistant Attorney General Ashleigh Wilson represented the state, and Charles T. Brooks, III represented Petitioner. App. 940. By order dated March 10, 2014, Judge Young denied Petitioner relief. App. 1009-1017.

This petition for writ of certiorari follows.

## ARGUMENT

1.

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when appellate counsel failed to attend a remand hearing held on January 29, 2010 to reconstruct the record of a hearing held on April 30, 2003 where Petitioner allegedly waived his right to counsel and was warned of the dangers of self-representation since this prevented Petitioner from taking any sworn testimony and arguing that the record could not be reconstructed for meaningful appellate review of the issue of whether Petitioner knowingly and intelligently waived his right to counsel at trial.

### **PCR Hearing**

Petitioner testified at the PCR hearing that appellate counsel failed to attend the reconstruction hearing held on January 29, 2010. App. 952, ll. 13-16. He maintained that "it was [appellate counsel's] duty to be at this hearing" since he was the attorney appointed to represent Petitioner on direct appeal. App. 953, ll. 10-24. He testified that the trial court instead "had Patricia Kennedy from the public defender office" sit with him throughout this hearing, but Kennedy was not his attorney and she "basically testified for the State." App. 952, ll. 18-21; App. 953, l. 25 – 954, l. 8.

Petitioner testified, "He [appellate counsel] consented to having it [the reconstruction hearing]. He knew about it beforehand, and, as an attorney, it was his duty to be present at this hearing . . . If he knew he wasn't going to be able to attend this hearing, it probably would [have been] more appropriate for him to reschedule when he would be able to be present." App. 954, l. 22 – 955, l. 5. Furthermore, Petitioner maintained that he had no idea how to advocate for himself during the reconstruction hearing and that he did not "know what to say, what not to say." App. 955,

ll. 10-23. He testified, “Had Joseph [Savitz] been present at my January 29, 2010 hearing, I would have been able to put up a defense to the State’s contention that I knowingly and intelligently waived my right to counsel. Being that I was without counsel . . . I did not say [anything]. I did not oppose what the State was saying, and that was something that ended up hurting me.” App. 963, l. 15 – 964, l. 4.

Appellate counsel, Joseph Savitz, testified, “The obvious issue in this case was the fact [that] this was a murder case . . . and [Petitioner] represented himself . . . I didn’t see any issues other than the waiver of the right to counsel. He [Petitioner] says that’s the big issue in this case. I agree with that. The problem I had was I was never able to find a copy of the transcript of the waiver hearing, and Mr. Grant wasn’t very helpful to me, because when I asked him to give me the date, judge, court reporter, if he knew who it was, he told me the hearing didn’t even exist.” App. 972, l. 21 – 973, l. 6. Savitz explained that since the transcript of the initial waiver hearing was unavailable, he filed an Anders brief raising an issue about a certain jury charge, but the court “sent it back” and ordered him to brief the issue regarding whether Petitioner voluntarily waived his right to counsel. App. 974, ll. 4-17. He testified he “ended up arguing that the record didn’t really reflect whether [Petitioner] did or [did] not [knowingly waive his right to counsel], since we didn’t have this transcript, and since we didn’t have this transcript, he should get a new trial.” App. 974, ll. 17-21.

Savitz testified he does not recall the January 29, 2010 reconstruction hearing, but acknowledged that Petitioner testified “I lined up an attorney to sit there with him during the hearing.” He maintained, “[A]t that point in time, he [Petitioner] was still saying that there wasn’t . . . a waiver hearing, . . . and, I mean, I had reason to believe that that was not true, and I was not going to present that kind of testimony in court.” App. 975, ll. 15-24. Savitz acknowledged during his testimony that he did not attend the reconstruction hearing in January 2010. App. 980, ll. 10-13.

## **Order of Dismissal**

The PCR court found appellate counsel was not ineffective for failing to be present at the reconstruction hearing. App. 1016. The court maintained “appellate counsel adequately secured another attorney, Patricia Kennedy, Esquire, to sit in his place during [Petitioner’s] June 29, 2010 reconstruction hearing” and that Kennedy spoke on Petitioner’s behalf at that hearing. App. 1016. The court also found Petitioner “failed to show what appellate counsel’s presence would have added to the reconstruction hearing” since appellate counsel was not present at the April 30, 2003 hearing and “would not have had anything to put on the record with regard to what took place at the waiver hearing.” App. 1016. Thus, the court found Petitioner “failed to carry his burden of proving counsel was ineffective for being absent from . . . the reconstruction hearing.” App. 1016.

## **Discussion**

Appellate counsel was ineffective for failing to attend the remand hearing held on January 29, 2010 to reconstruct the record of the April 30, 2002 hearing where Petitioner allegedly waived his right to counsel and was warned of the dangers of self-representation. Appellate counsel’s failure to attend prevented Petitioner from taking sworn testimony from the parties involved regarding what they recalled about the hearing and from arguing that the record could not be reconstructed for meaningful appellate review of the issue of whether Petitioner knowingly and intelligently waived his right to counsel at trial. See State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007).

“A defendant is constitutionally entitled to the effective assistance of appellate counsel.” Southerland v. State, 337 S.C. 610, 615-616, 524 S.E.2d 833, 836 (1999) (citing Evitts v. Lucey, 469 U.S. 387 (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair) and Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990) (appellate

counsel must provide effective assistance but need not raise every nonfrivolous issue presented by the record)). “In deciding a claim of ineffective assistance of counsel, the focus is on ‘the fundamental fairness of the proceeding whose result is being challenged.’” Southerland, 337 S.C. at 616, 524 S.E.2d at 836 (citing Strickland v. Washington, 466 U.S. 668, 685 (1984)). “First, the burden of proof is upon petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Second, the petitioner must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. (citing Strickland, 466 U.S. at 685).

In this case, appellate counsel’s performance was deficient, as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Appellate counsel should have attended the reconstruction hearing in January 2010 because this hearing was important to the outcome of Petitioner’s direct appeal where he argued he did not knowingly and intelligently waive his right to counsel. A reasonably competent criminal defense attorney would have attended this hearing.

The purpose of the January 2010 hearing was to reconstruct the record of the April 30, 2003 hearing where Petitioner allegedly first waived his right to counsel and was advised of the dangers of self-representation. Notably, the record of the January 2010 hearing shows that no sworn testimony was taken. Instead, the parties involved, specifically Blair Jennings, Patricia Kennedy, George Bishop, and Judge Dennis, merely discussed on the record what they thought happened at the hearing nearly seven years prior. The statements made by these individuals were largely conclusory and summarily indicated Petitioner was properly advised of the dangers of self-representation and knowingly and intelligently waived his right to counsel. For example, Bishop

said, “You [Judge Dennis] were very, as I recall, deeply inquiring with him as to his understanding of whether he knew what he was doing by asking not, not to be represented and . . . to potentially at that time be proceeding pro se. I recall very clearly that you admonished him to the dangers of that . . . to the folly of that . . . that [it] may very well not being in his best interests because he’s not trained . . . as I’ve seen you do any number of times when that issue’s been before you. But to be able to . . . cite specifically line by line the exact colloquy, I can’t, I can’t do that.” App. 900, l. 5 – 901, l. 2. Appellate counsel should have been at this hearing to advocate for Petitioner and represent Petitioner’s best interests.

Petitioner was prejudiced by appellate counsel’s deficient performance because there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Southerland, 337 S.C. at 616, 524 S.E.2d at 836 (quoting Strickland, 466 U.S. at 692). Specifically, Petitioner was prejudiced because, by not attending the hearing, appellate counsel was unable to argue on Petitioner’s behalf that the record of the April 30, 2003 hearing could not be reconstructed for meaningful appellate review. The PCR court’s assertion that appellate counsel “adequately secured another attorney, Patricia Kennedy, Esquire, to sit in his place” at the reconstruction hearing is respectfully incorrect. App. 1016. Kennedy was a witness at the reconstruction hearing who was there to testify as to what she recalled from the April 30, 2003 hearing. She was not Petitioner’s attorney and she was not there to advocate on Petitioner’s behalf.

Furthermore, the PCR court’s assertion that appellate counsel’s presence at the reconstruction hearing was unnecessary because he “was neither present at [Petitioner’s] pre-trial waiver hearing or at trial” and would not “have had anything to put on the record with regard to what took place at the waiver hearing [sic]” is also respectfully incorrect. App. 1016. Appellate counsel’s presence at the reconstruction hearing was not for the purpose of being a witness in the

case testifying as to what he recalled, but was rather to be an advocate for his client and represent his best interests. If appellate counsel had been at the reconstruction hearing and made the proper arguments that the record could not be reconstructed for meaningful appellate review, it is likely the outcome of Petitioner's direct appeal would have been different.

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when appellate counsel failed to argue on appeal that Petitioner did not knowingly and intelligently waive his right to counsel at the June 11, 2003 *Schmerber* hearing where the court ordered Petitioner to allow the state to take samples of his blood and hair to be used for DNA comparison testing.

### **PCR Hearing**

Petitioner testified at the PCR hearing that appellate counsel "argued on appeal more or less I did not knowingly and intelligently waive my right to counsel to proceed pro se at trial." App. 948, ll. 2-4. He maintained counsel should have also raised the issue of whether he knowingly and intelligently waived his right to counsel at the pretrial *Schmerber* hearing, "which is a critical stage of the proceeding." App. 948, ll. 4-8. Petitioner testified, "[H]ad [appellate counsel] argued in his appellate brief that I did not knowingly and intelligently waive my right to counsel at my June 11th, 2003 hearing, the outcome of my appeal would have been different . . ." App. 949, ll. 16-24.

Additionally, Petitioner explained, "Under the United States constitution, the Sixth Amendment, I have the right to counsel. I have the right to counsel at every critical proceeding. That's my right, and if I did not knowingly and intelligently waive my right to counsel, the Court was bound to appoint me counsel, and when I appeared at the June 11, 2003 hearing, the Court did not advise me that I had the right to have the Court appoint counsel, neither did I waive my right to counsel. The Court did not advise me of the disadvantages or the dangers . . . of appearing without an attorney." App. 950, l. 17 – 951, l. 2. He noted, "The appellate Courts in their decision, they stated that I knowingly and intelligently waived my right to counsel to proceed pro se at trial. They

didn't say that I knowingly and intelligently waived my right to counsel to proceed pro se at my pretrial hearing. There's a difference." App. 951, l. 24 – 952, l. 4.

At the end of his testimony, Petitioner explained to the PCR court, "Judge Dennis presided over this . . . June 11, 2003 hearing. As we read page 18 of the June 11, 2003 transcript, line 17 through 22, Judge Dennis himself said this: Let me just point out something again today by your actions because at some point in time I'm going to have to make a determination as to whether or not they're going to permit you to proceed pro se, but there has to be a hearing to make that determination, that is, represent yourself. Here on the record . . . Judge Dennis, the Court, is confirming . . . that a determination as to whether or not I'll be able to proceed pro se [has] not been made [at this point]. Now, the State is saying that at the April 30, 2003 hearing that a determination had been made. Judge Dennis is saying [in the June 11, 2003 transcript] that a determination [has] not been made [yet]." App. 970, l. 3 – 971, l. 4.

Appellate counsel, Joseph Savitz, maintained that he did not think the issue concerning whether Petitioner knowingly and intelligently waived his right to counsel at the Schmerber hearing was meritorious because Petitioner "waived counsel, ostensibly waived counsel, at the hearing that we don't have the transcript of, and you don't have to waive counsel at every single stage of the proceedings. Once you waive the right to counsel, you have waived your right to counsel, and the judge said, Hey, you know, maybe you don't want to be representing yourself. This isn't a good idea. So he clearly waived it at the Schmerber hearing, if he didn't before." App. 974, l. 22 – 975, l. 14.

Blair Jennings, the assistant solicitor who prosecuted the case, testified that there was "not any one single waiver hearing." He explained, "[T]he first hearing was April 30th when Mr. Grant wanted to terminate the services of Mr. Bishop. So that was the first time Judge Dennis went over

with him ad nauseam the risks and dangers of proceeding without an attorney . . . Mr. Grant did not want the public defender's office appointed specifically and told Judge Dennis that he was going to represent himself but was going to make plans to hire another attorney . . ." App. 982, l. 3 – 983, l. 19. Jennings maintained that "literally every time we were in court" Judge Dennis discussed with Petitioner his decision to represent himself and "why he was making a poor decision." App. 983, l. 20 – 984, l. 6.

Additionally, Jennings testified that the Berkeley County Sheriff's Office obtained a blood and hair sample from Petitioner on December 31, 2002, the date of his arrest for murder, but Jennings was uncertain whether this was the result of a search warrant or whether Petitioner voluntarily consented to giving the samples. Either way, Jennings explained that "it was a high profile case, obviously very serious case, so to cross all the Ts and dot all the Is, I did want to have a [Schmerber] hearing to just make sure everything was done correctly." App. 984, ll. 8-20.

### **Order of Dismissal**

The PCR court found appellate counsel was not ineffective for failing to argue Petitioner did not freely and voluntarily waive his right to counsel at a pretrial Schmerber hearing held on June 11, 2003. App. 1015. The court noted "[a]ppellate counsel is not required to raise every non-frivolous issue that is presented in the record on appeal." App. 1015. The court further found that "appellate counsel properly concluded that waiver of [Petitioner's] right to counsel at his Schmerber hearing was not a meritorious issue for appeal," particularly "in light of the fact that the issue on appeal was whether or not [Petitioner] freely and voluntarily waived his right to counsel at the April 2003 hearing which was held before the . . . Schmerber hearing." App. 1015.

## Discussion

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when appellate counsel failed to argue on appeal that Petitioner did not knowingly and intelligently waive his right to counsel at the June 11, 2003 Schmerber hearing where the court ordered Petitioner to allow the state to take samples of his blood and hair to be used for DNA comparison testing.

A criminal defendant is entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 398. "However, appellate counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift, 302 S.C. at 539, 397 S.E.2d at 526 (citing Jones v. Barnes, 463 U.S. 745 (1983)). Generally, in analyzing a claim of ineffective assistance of counsel, the court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland, 337 S.C. at 616, 524 S.E.2d at 836. "First, the burden of proof is upon petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Second, the petitioner must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 616, 524 S.E.2d at 836.

In this case, it is clear appellate counsel's "performance was deficient" because he failed to raise on appeal the issue of whether Petitioner knowingly and voluntarily waived his right to counsel at the pretrial Schmerber hearing held on June 11, 2003. See Southerland, 337 S.C. at 616, 524 S.E.2d at 836. Petitioner was prejudiced by appellate counsel's deficient performance because if counsel would have raised this issue on appeal, it is likely the outcome of Petitioner's direct appeal would have been different.

Under Faretta v. California, 422 U.S. 806 (1975), a trial judge faced with a defendant who elects to represent himself must (1) advise the accused of his right to counsel and (2) adequately warn the accused of the dangers of self-representation. See Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) and State v. Thompson, 355 S.C. 255, 584 S.E.2d 131 (Ct. App. 2003). If the trial judge fails to address the disadvantages of appearing pro se, the appellate court examines the record to determine whether the accused had sufficient background or was informed of his rights by some other source. State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). “[The] ultimate test is not the trial judge’s advice but rather the defendant’s understanding.” State v. Thompson, 355 S.C. 255, 584 S.E.2d 131,135 (Ct. App. 2003). Ex Parte Jackson, 381 S.C. 253, 672 S.E. 2d 585 (Ct. App. 2009), and McLauren both list the factors to be considered in determining whether the accused had a sufficient background to understand the disadvantages of self-representation.

At the beginning of the June 11, 2003 Schmerber hearing, Judge Dennis asked Petitioner whether he had hired counsel or whether he was proceeding pro se. Petitioner told the court that he had not hired counsel and was representing himself “at this present time.” Petitioner ultimately agreed to go forward with the hearing with him acting as his own attorney. App. 4, l. 14 – 5, l. 6. At no point during the beginning of this hearing did the court ever caution Petitioner about going forward with the hearing without an attorney or advise him of the dangers of self-representation. Instead, the state immediately presented the testimony of Captain Rick Ollic of the Berkeley County Sheriff’s Office. Petitioner did not ask Ollic any questions. See App. 15, ll. 16-17.

After this testimony, Petitioner raised subjects not relevant to the Schmerber hearing. Specifically, he handed the solicitor documents pertaining to discovery, a change of venue, and subpoenaing witnesses. It was at this point that Judge Dennis told Petitioner, “[A]t some point in

time, I'm going to have to make - - I or some judge is going to have to make a determination as to whether or not they're going to permit you to proceed pro se; but there has to be a hearing to make that determination, that is, represent yourself." App. 18, ll. 17-22. It is clear from Judge Dennis' statement that, at the time of this hearing, he had not made a determination regarding whether Petitioner had knowingly and intelligently waived his right to counsel and was aware of the dangers of self-representation.

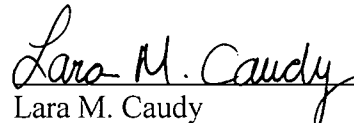
However, immediately before announcing his ruling granting the state's request for a Schmerber order, the court did tell Petitioner, "I really hope that you'll seriously consider hiring an attorney or re-thinking and allowing the Court to appoint one for you . . . you really ought to give serious consideration to having someone other than yourself looking at this for you, because it's very difficult to be objective about your own situation. I just make that observation for you." App. 19, l. 25 – 20, l. 11. Unfortunately, this advice came after Petitioner had already agreed to go forward with the hearing without counsel, and immediately prior to the court's ruling, and therefore had no impact on the issue of whether Petitioner was advised of the dangers of self-representation and knowingly and intelligently waived his right to counsel at the June 11, 2003 hearing.

It is clear from the record of this hearing, and Petitioner's conduct during the hearing, that he was unaware of the serious consequences of self-representation and that he had not, at that time, made a knowing and intelligent waiver of his right to counsel during this critical stage. This meritorious issue should have been raised by appellate counsel on appeal and, if it had, likely would have changed the outcome of Petitioner's direct appeal. Thus, Petitioner was prejudiced by appellate counsel's deficient performance.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issues presented.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of August, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
Roger M. Young, Circuit Court Judge

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DERRICK GRANT,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

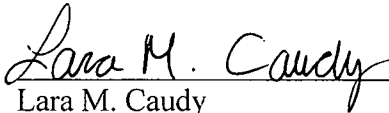
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CERTIFICATE OF SERVICE

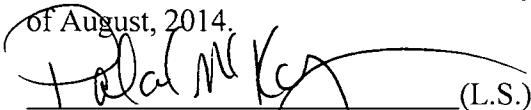
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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of August, 2014.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day  
of August, 2014.

  
(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.