

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

**RECEIVED**

JUL 08 2014

**SC Court of Appeals**

Raymond Edmonds,

Petitioner

vs.

State of South Carolina,

Respondent

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**PETITION FOR REHEARING AND REMITTUR PURSUANT TO RULE, 221 SCACR**

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Petitioner filed an application for post-conviction relief on October 8, 2007. An evidentiary hearing was held on August 14, 2009, before the Honorable G. Thomas Cooper, Jr. Petitioner was present and was represented by Tricia Blanchette, Esq. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner, trial counsel, Angela Williams, and Philana James testified at the hearing.

On February 5, 2010, Judge Cooper issued an order denying and dismissing petitioner's application for post conviction relief. A subsequent rule 59(e) motion was denied on July 29, 2010.

On November 23, 2010, a Johnson petition was submitted to the court. On January 14, 2013, this court granted the petition. Now at this time, petitioner is now petitioning for rehearing and remittitur pursuant to Rule 221 SCACR.

## RELEVANT FACTS

As the record states, On November 24, 2010 the court granted a Johnson Petition leaving petitioner with 45 days to file a pro se brief on his behalf. See: **EXHIBIT #1**

Following the court's order, petitioner filed his pro se petition on January 10, 2011 raising only two (2) issues:

Trial counsel's stewardship was "unreasonably ineffective" and "prejudicial" for failing to properly present facts to support a motion to have the court suppress evidence which was obtained by law enforcement, through an "unlawful" search warrant, against the defendant, and/or - The Trial Court improperly held the search warrant was valid.

Trial counsel was ineffective and prejudicial, for failing to request a Jackson vs. Deno hearing without the court's prompting; and her failure to prepare and call any witness during this critical stage or even present a viable argument on behalf of the defense. See: (pro se brief)

Although petitioner timely filed a pro se brief in a timely fashion manner, this court ordered the Attorney on record Robert M. Pachak to fully brief his issue in the form of a initial brief.

## QUESTION

Did the South Carolina Court of Appeals Court was in error for not considering petitioner's pro se brief on the merits, after petitioner been ordered by the court to submit a pro se brief on his behalf?

## ARGUMENT

Petitioner contention is that although this Honorable Court ordered Attorney Pachak to file an initial brief, his pro se brief

his pro se brief should still be relevant.

To support petitioner argument, petitioner contends that his Johnson petition and his Initial petition are identical.

Petitioner understands that when a counsel of record files any material documents, he can not file anything on his own behalf unless he goes through counsel, or its pro se filing would be deemed hybrid.

However in this case, petitioner was ordered by the court to file a pro se brief on his own behalf, taking any hybrid representation analysis away from petitioner pro se filing because as the record reflects, petitioner was ordered by the courts to do so. See: See: **EXHIBIT #1**

Petitioner further argues that its unclear if it was in petitioner best interest for the court to allow Attorney Pachak to re file a initial brief which is identical to petitioner Johnson petition, in all; leaving petitioner meritorious pro se issues out to dry.

Petitioner ask this Honorable Court to correct unjust because if justice is not serve to petitioner, this court would be allowing petitioner to pursue his next course which would be Federal Habeas Corpus with no issues preserve for federal review because this court has rule in the ~~highest~~ state court that petitioner claim is not preserve for appellate review. See: O'Sullivan v. Boerckel, 119 S.Ct. 1728 (1999)

Finally, petitioner suggest that it was no fault of his own that his pro se brief was not ruled on the merits. Its obvious

that petitioner pro se brief had merits in order for the court to grant writ of certiorari following from petitioner's pro se brief and its also obvious that it rendered petitioner for appellate counsel to not honor and fully litigate petitioner petition as instructed by the court. **See: Exhibit #2**

### QUESTION

On June 25, 2014 The South Carolina Court of Appeals ruled on Raymond Edmonds v. State, No. 2010-168749, writ of certiorari stating:

In this appeal from the circuit court's denial of post conviction relief (PCR), Petitioner argues defense counsel was ineffective in failing to provide an adversarial challenge to the state's case. Petitioner did not raise an argument of per se prejudice at the pcr hearing and this issue was not ruled on by the pcr court. Thus, this issue is not preserved. See: kolle v. State, 690 Se.E.2d 73, 79 (2010) (noting an issue that was neither raised to nor ruled upon by the pcr court is not preserve for appellate review). Petitioner was required to demonstrate "he was prejudice by counsel's performance in such a manner that but for counsel's error, there is a reasonable probability the result of the proceeding would have been different." Taylor v. State, 745 S.E. 2d 97, 102 (2013). However, petitioner failed to challenge the pcr court's determination that he was not prejudiced by the defense counsel's representation. Accordingly, this determination is the law of the case. See: Caprood v. State, 525 S.E.2d 514, 518 (2000)(Stating an unappealed ruling is the law of the case and will not be considered by the courts).

### ARGUMENT

Petitioner contentions is that his claim of "Defense Counsel was ineffective in failing to provide an adversarial challenge to

the state's case" was preserved for appellate review.

As stated and outline in petitioner's initial brief on pg. 6 and pg. 7, The appellate Counsel pointed to many arguments that supported, "The defense counsel was ineffective in failing to provide an adversarial challenge to the state's case". In other-words, petitioner claims were preserve for appellate review. See: pg. 6 of 7 of initial brief.

To support petitioner argument, petitioner points to Glover v. Miro, 262 F.3d 268 (4th Cir. 2001) and Graves v. Padula, 73 F. Supp.2d (D.SC. 2010)

In Glover v. Miro, supra, Glover made rigourous arguments that his trial counsel was ineffective for failing to contact any of his albi witness prior to trial, citing United States v. Cronic, 104 S.Ct. (1984) analysis.

The point of the matter, in Glover v. State, 458 S.E.2d 538 (1995), Glover never argued the Cronic analysis, however; the merits of the issue was all the same and preserve for appellate and federal review.

Even in Graves v. Padula, Supra, Graves main objection was both the pcr court and the magistrate judge improperly analyzed his claim under the test announced in Strickland v. Washington, 104 S.Ct. 2052 (1984), when the claim should have been analyzed under United States v. Cronic, 104 S.Ct. 2039.

However, under an opinion issued the same day as Strickland,

United States v. Cronic --- in rare instances, a court may forgo an individual inquiry into whether but for counsel's deficient performance, the result of the proceeding would have been different, and may presume prejudice.

Petitioner argues his case is identical to Graves and Glover on the background of steps on the legal argument from a claim reviewed under Strickland in the pcr court and reviewed under Cronic in the appellate Court.

### Conclusion

The point of the matter is, if petitioner would have never filed a pro se brief as instructed by the courts, this court would have not remanded counsel to do an initial brief following from Attorney Pachek Johnson petition, and as stated in Graves v. Padula, supra, a cronic claim is only a analysis that the court has the option to forgo, as in strickland.

Therefore, for the following reason petitioner has stated, petitioner ask this case to be readdressed.

Sincerely,

Raymond Edmonds

July 7, 2014

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Raymond Edmonds,

Petitioner,

VS.

State of South Carolina,

Respondent.

Appellate Case No. 2010-168749

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CERTIFICATE OF SERVICE

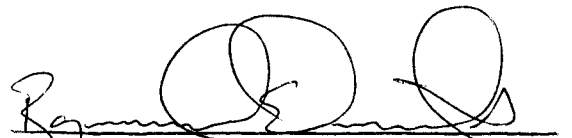
The undersigned Petitioner hereby certifies that he has served the below listed parties to the Appeal, by depositing a true copy of the attached PETITION FOR REHEARING AND REMITTUR PURSUANT TO RULE, 221 SCACR in the U.S. Mail, postage prepaid, addressed as follows:

The Honorable, Kenneth A. Richstad  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Mr. Alan Wilson, Att. General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211

Robert M. Pachak, Esq.  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, South Carolina 29211-1589

This 07 day of July, 2014.



RAYMOND EDMONDS 304228

Florence - North - 1128  
Lee Correctional Institution  
990 Wiscoky Highway  
Bishopville, South Carolina 29010.

pro se Petitioner.

To: The Honorable, Kenneth A. Richstad  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

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**SC Court of Appeals**

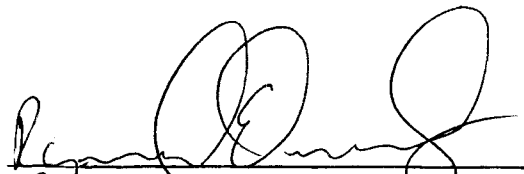
July 07, 2014

Re: Raymond Edmonds vs. The State

Dear, Honorable Clerk,

" TAKE NOTICE: Enclosed for filing is an petition,  
PETITION FOR REHEARING AND REMITTUR PURSUANT  
TO RULE, 221 SCACR"; pertaining to Appellate Case  
No. 2010-168749. Please return front page as  
Clock-Stamped filed.

Thanks.



RAYMOND EDMONDS 204228

Florence-North-1128

Lee Correctional Institution

990 Wilsack Highway

Columbia, South Carolina 29010.

pro se Petitioner.

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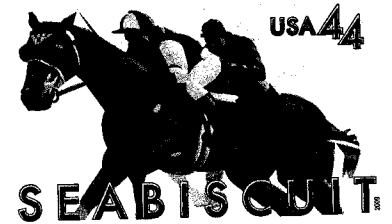
Raymond Edwards  
Lee Correctional Institution  
Florence - North - 1128  
990 Wisacky Highway  
Bishopville, South Carolina 29010

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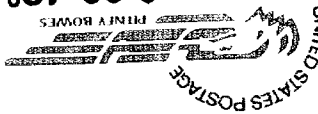
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