

David E Shearouse

10/13/2014

The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: 2014-000406

Dear Clerk,

Enclosed please find a copy of
Petitioner's Pro Se response. Have you
any questions please contact me at
the below listed address.

RECEIVED

OCT 16 2014

S.C. SUPREME COURT

Edie P. Jones 3366
Lee Ct. A508
990 W. 1st St
Bishopville, SC 29010

State of South Carolina
In the Supreme Court

Eddie James Peltcher, R#30306

V.

PETITIONER **RECEIVED**

State of South Carolina,

OCT 16 2014

RESPONDENT S.C. SUPREME COURT

Appellate Case No. 2014-000106

Pro Se Response

The Petitioner received the Petition filed by Appellate lawyer B.S. TRIPP, on Sept. 15, 2014. The Petitioner would respectfully show that his App^o is not groundless, but rather has merit, but first pointing to argument his attorney B.S. TRIPP, briefed, regarding his Conflict of Interest, which he stated in his brief that [he] briefed the one arguable issue which arose during the Post Conviction relief Process. I will touch bases on the one issue that Mr. Tripp raised as well as argue more issues.

o Conflict of Interest

Plea Counsel testified that he told Petitioner that Cross was thinking about a Plea, but he was not sure he would be representing him because Cross was not comfortable.

I think that Mr. Hall or somebody was going to enter that Plea but after I represented Mr. Peltcher [sic]. And after the outcome of Mr. Peltcher's sentencing Mr. Cross decided he [d] go ahead and enter a Plea, so I took some time and prepared him for his Plea.

APP. 67, lines 10-14. Plea Counsel never informed me

of anything regarding his representing Mr. Cross.
Plea Counsel was asked:

Q-Before you entered Mr. Pitcher's Plea
were you talking with Mr. Cross as well?

A-I think I saw Mr. Cross in the jail
room. I may have seen him at the--
at the-- at the jail also. He may have
asked and approached me about his case,
but as far as any specifics, No.

APP. 11, Lines 6-11. Here let it be noted that during
Jonathan A. Cross's Guilty Plea on June 21, 2011,
Plea Counsel stated:

Mr. Cheeks: Yes, Sir, Your Honor. We spent a
considerable amount of time talking about
Coercion, and then after my discussion with
Your Honor, and going through the situation, he
decided he would enter a Plea, and I
will tell the Court that, of the three Co-
defendants, he saved a bus time as
to enter his Plea.

Guilty Plea transcript 135, Lines 22-25, 136, 1-2. This goes
to show that Plea Counsel's testimony at the P.C.R.
hearing as well as his entire strategy and plan-
ning in regards to Retkov's Case, and defe-
use was a premeditated disaster, leaving him
with no choice, but to betray Retkov. And
also that he spent more time with Mr. Cross
preparing his case and favoring him over
Retkov.

Furthermore, Plea Counsel was asked:

Q-Did Mr. Cross ever tell you that his family--
and his family after he was in the County
Detention Center-- that their lives were
threatened by Mr. Pitcher or by somebody other
than him?

A-He told me about 2 m.v. before we
came in here to enter the Plea. Mr. Pitcher
had already been entered before the Court.

APP. 117, Lines 11-17. According to Mrs. Wilel, Mr. Cross told his attorney Cheeks when he was arrested that Petitioner threatened him. APP. 116, Lines 20-21. While the standard practice is for a lawyer who's representing Co-defendants is to have them sign a release or a waiver of the conflict of interest. This never took place even tho Co-defendant [alleged] I threatened him & his family.

If one was to read APP. 140 Lines 19-25; 141 Lines 1-20, you'd see that Plea Counsel was always working on Mr. Cross Case.

Based on the foregoing reasons and the Agreement that Appellate Lawyer B.S. TRIP raised regarding Petitioner's Conflict of Interest claim, Petitioner request that His Honorable Court abide by the 6th Amend. of the U.S. Constitution, and reverse and remand his conviction for a new sentence and/or trial.

Petitioner contends that attorney J. Rosen Poole and James Cheeks violated his 6th & 14th Amendment rights of the U.S. Constitution by there simultaneously representing Petitioner and his Co-defendant throughout the entire case, and for James Cheeks simultaneously representing Petitioner and his Co-defendant during guilty Pleas which arose out of related offenses even though Co-defendant had written a statement against Petitioner in those alleged crimes in Spartanburg as well as Greenville Co.

The record will reflect that attorney Poole was representing the Petitioner first, while Co-defendant wasn't arrested until

approx. 1 week later, and thereafter assigned to Mr. Rode's Case load in which Mr. Rode at that time undertook representation directly adverse to that of Petitioner without the Petitioner's informed consent.

Petitioner contends that there was an actual conflict of interest in regards to Counsel representing Petitioner and his Co-defendant in more than one respect.

- (1) Counsel was representing Petitioner first and Counsel never had Petitioner sign a release or a waiver of the conflict of interest.
- (2) Counsel took on the representation of Petitioner's Co-defendant even though he had given a statement against Petitioner stating that Petitioner was Armed, while Petitioner maintains that he wasn't.

Petitioner contends that his 6th Amendment right of the US. Constitution was violated because Petitioner never received conflict free assistance of Counsel, let alone effective assistance of Counsel for his defense, and investigating of the case and the preparing adequately for trial or guilty Plea by attorney Rode or Cheeks.

Petitioner's 14th Amendment right of the US. Constitution was violated because Petitioner was and still is being deprived of his liberty without due process of law, and Petitioner never received the equal protection of law. Petitioner was denied the assistance of Counsel which is among those Constitutional rights so basic to a fair trial that their violation-

S. Law never be treated as harmless error".

o Prosecutorial Misconduct

Petitioner contends that Plea Counsel J. Roger Poole filed a Request for Discoveries on Oct. 18, 2010 requesting that the state be required to disclose all exculpatory, impeachment and mitigations evidence known to the state in which they failed to do. Petitioner was denied due process of law in violation of South Carolina and the 5th, 6th and 14th Amendment of the United States Constitution insofar as the state failed to disclose material and exculpatory information or evidence, and failed to comply with Rule 5 of the S.C.R. Crim. Procedures and Brady v. Maryland.

Petitioner learned during his visit with his first P.C. attorney Ms. Lazebit that the prosecution agent Greer had written a Greer Police Department Supplemental Report Alleged that Petitioner had given a statement of the alleged incident and that it was audio recorded but it was never turned over to Petitioner's Plea Counsel which is a clear violation of S.C.R. Crim. ~~Procedure~~ Procedure Rule 5 & Brady, because Plea Counsel specifically requested it. The Prosecutor withheld this exculpatory evidence in which the Petitioner never had knowledge of this material evidence, so the Petitioner never had the opportunity to refute the States

Case against him.

Petitioner contends that if the State would have produced the audio recording Petitioner would have made the decision to proceed to trial instead of pleading guilty. Petitioner's guilty plea was not influenced by his appraisal of the Prosecution's case, but due to Plea Counsel's erroneous advice and lack of knowledge that he had about the case due to his failure to investigate.

"however a defendant's decision whether or not to plea guilty is often heavily influenced by his appraisal of the Prosecution's case. *Sanchez v. United States*, 50 F.3d 1118, 1153 (9th Cir. 1995); accord *Coastline v. State*, 325 So. 2d 125, 127-28, 1480 S.E.2d 444, 446 (1997) (Waiver of Constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences")

Petitioner will respectfully show that a Brady violation is based upon the requirement of due process and that Petitioner's claim is complete while demonstrating that (1) The evidence was favorable to the accused (2) It was in the possession of or known to the Prosecutor (3) It was suppressed by the Prosecutor, and (4) It was material to guilt or punishment. The evidence was favorable to the accused because Petitioner could have plead to a lesser charge. It was always in the possession of the Prosecutor, although Petitioner didn't have knowledge that he was being recorded, and the Prosecutor intentionally withheld this recording.

because had the Prosecutor turned it over ~~Reffner's~~ Plea Counsel would have been able to possibly ~~prove~~ accessory.

~~Furthermore~~ the 6th Amendment entails that the accused shall be informed of the nature and cause of the accusation against him. ~~Reffner~~ nor his Plea Counsel received his ~~judgments~~ (See Exhibit #101) which is a violation of the U.S. Const. Art. V, S.C. Const. Art. 1 § 3 because the required notice is a component of the due process that is accorded every criminal defendant.

Based on the ~~foregoing~~, ~~Reffner~~ Prays that this Honorable Court would uphold the law and Const. by reverse and remand ~~and~~ this case for resentencing and/or new trial.

I remain,
"A Blessed Child"

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7-07-7

~~Eddie Fletcher #383616~~

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The Supreme Court of South Carolina

Daniel E. Shearouse, Clerk of Court

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