

State of South Carolina  
In The Supreme Court

Certiorari to Spartanburg County  
Robin B. Stilwell, Circuit Court Judge

Delonte Carroll,

PETITIONER,

v.

State of South Carolina,

RESPONDENT,

NOTICE OF APPEAL  
PETITION FOR WRIT OF CERTIORARI

Mr. Delonte Carroll #347422  
LFE-C-I-SMU-NORTH #99  
990 Wisatchy Hwy  
Bishopville, South Carolina, 29010

Pro-Se Petitioner

INDEX

Index..... 1

Issue Presented..... 2

Statement..... 3

Argument

The (PCB) judge abused his discretion in finding that Petitioner Counsel during the Guilty Plea phase, was Not Ineffective by allowing Petitioner to be Sentence and Convicted under the Wrong Statute of law..... 4

Conclusion..... 12

## ISSUE PRESENTED

Did the (PCB) judge abused his discretion in denying Petitioner relief from his Conviction and Sentence, when Guilty Plea Counsel Robert Hall, esq. rendered Ineffective Assistance of Counsel in allowing Petitioner to be Sentence and Convicted under the Wrong Statute of law?

## STATEMENT

Petitioner was indicted within the Spartanburg jurisdiction by the grand jury for: Two Counts of possession of a weapon during the commission of a violent crime; Two Counts of armed robbery; and Assault with intent to kill; during the "July (2010)" term.

Before The Honorable Judge A. Derham Cole, Petitioner and Codefendant Ms. Andrea White, was represented by L Robert Hall and Richard Wilhelmel with an recommendation of sentencing to Twenty Years both. Each sentence was respectfully sustain August-22nd (2011).

After said conviction and sentence, Petitioner Petition for direct Review L C/A No.: 2011-197906 being dismissed and remitted to the lower Courts November-29th 2011. Direct Review was perfect by Att. Robert Hall.

Subsequently; Petitioner made filing of an Application for Post-Conviction Relief August-27th 2014; as adjudication was before the Honorable Robin B. Stillwell, November-15th 2013, as Petitioner being represented by "Lauren Barnwell".

The Honorable Judge Stillwell, issued an final order Dismissing Petitioner from Relief of his sentence and conviction "March-6th 2014".

This Writ of Certiorari is ripe before this Honorable Courts, and timely follows.

## ABSTRACT

The (Pc3) Judge did abused his discretion in failing to Grant Petitioner relief from his Sentence and Conviction when Evidence was over Whelming of Plea Counsel Ineffectiveness in allowing the Petitioner to be Sentenced and Convicted under the Wrong Governing Statute.

### • "Factual Grounds During Plea":

During the "August-22<sup>nd</sup> 2011", hearing, there are "Novel Questions of Law" and "Substantial Constitutional Issues Are Directly Involved" to Grant Writ of Certiorari pursuant to: "Appellate Court Rules Rule 242(a) (b)(1) & (4)"...

On: "August-22<sup>nd</sup> 2011", The Honorable Judge J. Derham Cole, was presented with Petitioner and His Co-Defendant Ms. White, charges of: "Assault with Intent to Kill; Two Counts of Armed Robbery; And Two Counts of Possession of A Weapon During The Commission of A Violent Crime". See: "Appendix Tr.p.# 3 Lines (1-25)" Following "Appendix Tr.p.# 4 Lines (1-18)"...

As Each Victims: "Ms. Jasmine Pearson; Terria Mayes; and Officer Ms. Ashley Smith"; being represented by the Attorney for the State "Zachary David Ellis, esq.;" Willingly dismissed (Two Counts) to leave only an Sentence and Conviction for the Armed Robbery. See: "Appendix Tr.p.# 4 Lines (19-25)" Following "Appendix Tr.p.# 5 Lines (1-4)"...

During The Plea Arrangement; South Carolina Statute of: Crimes And Offenses Section 16-11-330(A), reads as follows:

§ 16-11-330. Robbery and attempted Robbery While armed with deadly Weapon.

(A). A person who commits robbery while armed with a pistol, dirk, sling shot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

Furtherly; During the Plea Arrangement, Petitioner had attested that there was no "Gun" involved during the Crime. See: "Appendix Tr.P.# 32 Line (1-25)" Following "Appendix Tr.P.# 33 Lines (1-25)" Through "Appendix Tr.P.# 34 Lines (1-8)"...

The trial judge for the plea arrangement made an examination with petitioner Co-Defendant Mrs. White, about the "gun". See: "Appendix Tr.p.# 36 Lines (11-25)" Following "Appendix Tr.p.# 37 Lines (1-25)" Following "Appendix Tr.p.# 38 Lines (1-25)" Through "Appendix - Tr.p.# 39 Lines (1-2)".

Petitioner [Co-Defendant] did not deny any relations of Not having in her [Mrs. White] persons the [Gun]...

Petitioner [Co-Defendant] Mrs. White, even asserted for the record that [Petitioner] had [No] knowledge of [Mrs. White] having Any [Gun]. See: "Appendix Tr.p.# 39 Line (3-5)"...

Petitioner [Co-Defendant] Mrs. White, also attested that [Petitioner] Did not [see] any [Gun], when Mrs. White, pulled it out. See: "Appendix Tr.p.# 39 Line (6-8)"...

Petitioner [Co-Defendant] re-affirmed an showing that [Petitioner] could have not seen her [Mrs. White] with any weapon or even that [Gun]. See: "Appendix Tr.p.# 39 Line (9-16)"...

The Conversation proceeded. The Honorable Judge Cole, Questioned Petitioner Co-Defendant [Mrs. White] of the [Agreement / Discussions] of the Tobacco.

[Mrs. White], asserted exceedingly throughout the Questioning; that [Petitioner] moved by him self; with "No" premeditation to be accompanied by [Mrs. White]. See: "Appendix Tr.p.# 39 Line (17-25)" Following "Appendix Tr.p.# 40 Line (1-25)", Following "Appendix Tr.p.# 41 - (

Line(1-25). Through "Appendix Tr.p.#42 Line(1-15)"...

In Short; [Ms. White], Was again questioning the factual facts of the event by the Honorable Judge Cole, whether both [Petitioner] and the said [Ms. White], were [Adopting] [S]eparately; and [Ms. White] stated: [Lies] [S]ir... See: "Appendix Tr.p.#42 Lines (16-19)".

Petitioner turns briefly to Petitioner Post-Conviction-Belief Hearing dated: "November-13<sup>th</sup>-2013"; Before the Honorable Judge Robin B. Stilwell, as Petitioner was represented by; Lauren W. Barnwell.

Petitioner was Crossed with an Direct Examination by Ms. Barnwell, of the nature of which this (PCB) hearing was held, and of whom represented petitioner during the guilty plea. See: "Appendix Tr.p.#63 Line (4-25)".

Petitioner and Ms. Barnwell; refreshed the event as from: "July (2010) till - "Plea Arrangement"- August (2011); that Mr. Hall, visited petitioner twice, with the first engagement to be (5) to (7) minutes with no documents of the case; upto plea arrangement. See: "Appendix Tr.p.#64 Line (1-25)" Following "Appendix Tr.p.#65 Line (1-25)" Following "Appendix Tr.p.#66 Line (1-25)" Through "Appendix Tr.p.#67 Line (1-7)".

Petitioner furtherly attested that he knew Nothing about an [Lion]. See: "Appendix Tr.p.#67 Line (8-13)"...

Petitioner also elected that Mr. Hall, failed to advise petitioner that Co-Defendant ["Ms. White"] had long stated that the use of an "Gun" was used as Ms. White, tool ownership, with out Mr. Hall, informing petitioner... Petitioner furtherly attested that for that cause if known Ms. White, was indeed in possession of an weapon ["Gun"], with-out petitioner knowle- edge during the robbery; and would have asserted the same; petitioner addressed that he would have taken this issue to trial and not have plead. See: "Appendix Trp. # 71 Line (12-21)".

• "Legal Standard<sup>(S)</sup>"

This Court has previously held that it will not uphold the findings of a (PCR) judge if there is no probative evidence to support those findings. "Pierce v. State", 338 Sc. 139 (2000); "Holland v. State", 322 Sc. 111 (1996).

Clearly noted; the (PCR) Judge with-in this case abused his discretion as an fact of eviden- tiary support to find that Guilty Plea Counsel was not ineffective by the state presentment.

["Abuse of discretion occurs when the Trial Court's decision lacks evidentiary support or is controlled by an error of Law." State v. Lopez, 332 Sc. 373 (Ct. App. 2002)"]...

When Counsel Hall, failed to advance on the issue of the: §16-11-330(A) - Armed Robbery-; Statute was "Contrary" to the nature of Petitioner offense, as Petitioner and Ms. White, acted in separately dispositions, with Admissions from each Parties; this did constitute Mr. Hall; an Ineffective Counsel.

"In some instances counsel may be held ineffective with-out a showing of prejudice when he fails to subject the prosecutions case to a meaningful adversarial test. In such cases prejudice is presumed." Nance v. Ozmit, 367 S.C. 547 (2006)"

To Scope; There is an Great Gulf between an "Lion", and the Non-use of an "Lion"; during any Criminal act.

As Petitioner and Ms. White, was acting on "separate Accords; Petitioner was with-out an "Lion", to constitute only an: "Common law Robbery".

S.C. Crimes And Offenses §16-11-325. Common Law Robbery Classified as Felony; Penalty.

The Common law offense of robbery is a Felony. Upon Conviction, a person must be imprisoned not more than fifteen years".

In this Cause, Counsel Hall, provided no evidence for the employment of not challenging this litany omission in Statute; which did prejudice the Petitioner of: "Effective Assistance Of Counsel".

"In addition, Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of Ineffective". "Roseboro v. State", 317 S.E. 292 (1995) "...

Petitioner Did make factual finding of Counsel Robert Hall, rendering Ineffectiveness pursuant to "Strickland v. Washington", 466 U.S. 668 (1984).

1). Petitioner Showed Counsel Hall, Performance Was deficient as such error was so serious as Counsel failure to challenge the Statute of Petitioner Warrant and Indictment, ending Petitioner with (20) years, prejudicing Petitioner of an Guaranteed Sixth amendment right of Effective assistance of Counsel, as Counsel deficient Performance fell below the governing level deemed by the U.S.C.A. Const. Amend. 6<sup>th</sup> and 14<sup>th</sup> ...

2). Petitioner did affirmatively sustain an showing that if Counsel was acting under those Sixth Amendment Constitutional norms; the out come would have been different and Petitioner would have taken an jury trial in challenging the Statutory offenses of the indicted Armed Robbery.

For these Cause, the (PCB) judge ruling was in "Contrary" to our "United States Supreme Courts" decision in "Strickland v. Washington", 466 US. 668 (1984); by applying an "Unreasonable Application", in dismissing Petitioner Merits of Counsel Hall, Ineffectiveness. See: "Williams v. Taylor", 120 S.Ct. 1493 (2000). also: "3C. Appellate Court Rules 24A (a) and (b)(3)" "Where a Federal question is included and the decision of the Court of Appeals conflict with a decision of the United States Supreme Court." d.

Petitioner Relief from an Federal Constitutional Violation should have been granted by the (PCB) judge according to: "Uniform Post Conviction Relief Procedure Act Section 17-27-20 (a)(1)(2)(3)(4)(5) and (6)" d, See: "Case v. Nebraska", 381 US. 336 (1965).

WHEREFORE; Each argument was ruled on by the (PCB) judge. Petitioner Comes Filing Pursuant to: "3C. Code. Ann. § 17-27-100 (1985); Rule 71.1(c), SCRPC; Rule 227, SCACR; in granting writ of certiorari for relief as Petitioner was abridged of his Constitutional Right of liberty with-out Due Process. "U.S.C.A. Const. Amend. 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup>....

CONCLUSION

THEREFORE, Petitioner prays this Honorable Courts  
to Grant this Writ of Certiorari to enable Petitioner  
the perfection of Full briefing on each matter.

Respectfully  
Submitted;

Delonte Carroll # 347422  
Delonte Carroll # 347422  
LEE-C-I-370-NORTH #99  
990 Wisahby Hwy  
Bishopville, SC, 29010

Dated: November 17/2014.

State of South Carolina  
In The Supreme Court

**RECEIVED**

NOV 24 2014

Certiorari to Spartanburg County  
Robin B. Stilwell, Circuit Court Judge **S.C. SUPREME COURT**

Delonte Carroll,

PETITIONER,

v.

State of South Carolina,

RESPONDENT,

Proof of Service

Petitioner has furnished each parties: "Supreme Court" and "Attorney General"; of each disclosed document for review, by: "LX-C-I"; Mail Room for Service.

Respectfully  
Submitted;

Delonte B. Carroll # 347422  
Delonte B. Carroll # 347422

Dated: November/17/2014.