

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lexington County

William Jeffrey Young, Circuit Court Judge S.C. Supreme Court

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DEC 12 2014

RANDALL S. TYLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000795

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SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Randall Scott Tyler,  
Petitioner,

vs.

The State of South Carolina  
Defendant.

2012 JUN -6 PM 12:00  
CLERK OF COURT  
LEXINGTON SC

IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH JUDICIAL CIRCUIT

2012-CP-32-0907  
MOTION FOR RECONSIDERATION  
AND MOTION TO ARREST  
JUDGMENT/HOLD ORDER IN  
ABEYANCE PENDING RECEIPT OF  
TRANSCRIPT

TO: KALEON E. MAY, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that Petitioner, pursuant to applicable case and statutory law, claimant hereby moves for an order arresting the Courts Order of Dismissal and holding issuance of order in abeyance pending Petitioner's receipt of a transcription of the February 1, 2012 hearing, which Petitioner asserts is vital to his ability to properly prepare a detailed Rule 59(e) motion setting forth all of Petitioner's allegations of deficiencies and or errors in the Order of Dismissal. Petitioner would request that a transcript of the proceedings be provided to him for purposes of preparing a detailed 59(e) motion at no cost to him, inasmuch as he is incarcerated and without means of obtaining of the transcription.

Alternatively, pursuant to Rule 59(e), SCRPC, Petitioner hereby moves for reconsideration of the Court's order dismissing Petitioner's Post Conviction Relief Action for the following reasons in addition to any other reasons which may become evident upon receipt of the requested transcription of the Proceedings:

1. The trial court erred in failing to find that Petitioner's trial counsel rendered ineffective assistant of counsel in failing to object to, and in fact actually *eliciting* trial testimony of prior crimes, wrongs and/or bad acts for which the Petitioner was not on trial and with which the Petitioner had not been charged. Specifically, Petitioner's

trial counsel injected Petitioner's involvement with drugs through cross-examination of State's witness Donna Hutto (Tr. 187), and effectively injected or "opened the door" to the State's theory of robbery through trial counsel's own direct examination of Petitioner (Tr. 259 L. 24-25). Trial counsel's failure to render effective assistance of counsel in this regard was particularly egregious and highly prejudicial inasmuch as trial counsel effectively articulated motive" and "intent for Petitioner to have harmed the victim through introduction of unadjudicated offenses. Further compounding the prejudicial effect of trial counsel's ineffective assistance in this respect, counsel also failed to object to the State's mischaracterization during closing arguments of the testimony of James Williams, to include allegations that Petitioner indicated to Williams that he was angry with the victim over drugs despite the fact that Williams never offered such testimony. As well, trial counsel failed to object to, or seek clarification of, the trial court's jury charge on prior bad acts, which failure allowed the jury to consider the aforementioned uncharged acts as evidence of motive and intent to commit murder.<sup>1</sup>

2. Petitioner further respectfully moves this Court, pursuant to Rule 59(e), SCRPC, to reconsider the court's ruling from the bench that certain photographs, offered by Petitioner as crime scene photos, were inadmissible because they could not be authenticated. At the hearing on this matter, Petitioner called Vikki Hallman to testify as to the authenticity of the crime scene photos. Both at the hearing on Petitioner's PCR application, and during the underlying trial, Vikki Hallman testified

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<sup>1</sup> Amendment of the Pleadings to specifically include this allegation was the subject of a prior motion to the court made by Petitioner's PCR counsel. The Court informed the parties via email that the requested Amendment was unnecessary as there was no objection to evidence offered or arguments made in this regard at the hearing on this matter.

she worked for the sheriff's department during the relevant time period and that she took pictures of the crime scene. Although Ms. Hallman testified she could not recall whether the specific photographs Petitioner offered into evidence were among the 200 photographs she took of the crime scene in 2002, she did not deny that the pictures offered into evidence were in fact copies of the crime scene photographs. In any event, Petitioner would assert that because the photographs were obtained by Petitioner's counsel from the Lexington County Sheriff's Department pursuant to the December 30, 2010 order of Judge Knox McMahan allowing discovery in this PCR action, the photographs should be deemed authenticated due to the process by which they were obtained. Alternatively, Petitioner would respectfully request that the Court order copies of all the crime scene photographs to be provided to the Court directly from the Lexington County Sheriff Department's file, such that the proffered photographs can be authenticated by direct comparison to photographs whose authenticity is not in question.

3. The trial court erred in failing to rule on Petitioner's motions that the hearing be reconvened in order to allow additional testimony/evidence and that SLED documentation inadvertently omitted from entry into evidence at trial be admitted and considered by the trial court prior to issuing a final order.
4. Due to the lack of a transcription of the February 1, 2012 proceedings, Petitioner craves reference to each and every allegation contained in his original and amended Petitions and Memorandum in support of Petitions for post conviction relief, in addition to testimony offered at Petitioner's PCR hearing, with respect to issues of

ineffective assistance of counsel, error preservation, and/or errors and deficiencies in the Order of Dismissal including, but not limited to, the following:

- a. Despite Vicky Hallman's testimony at the hearing that she only photographed Petitioner's hands once, photographs offered or proffered into the record at the PCR hearing establish that TWO sets of photos of Plaintiff's hands exist, taken at different times. The trial court erred in failing to find that trial counsel was deficient in failing to investigate and prevent the prosecution from falsely advising the jury that photos of Petitioner's hands offered into evidence at trial depicted claimant's hands after the passage of significantly more time than had actually passed at the time the first set of pictures was taken. Failure in this regard resulted in extreme prejudice against Petitioner inasmuch as the jury was intentionally misled into believing that the injuries to Petitioner's hand were more severe than the injuries actually were in order to bolster the State's case against Petitioner. Petitioner asserts ineffective assistance of counsel as well as prosecutorial misconduct in this respect.
- b. Trial counsel failed to effectively challenge the unqualified testimony of Vicky Hallman regarding blood splatter evidence pertaining to untested blood, resulting in the jury being allowed to infer that Petitioner's blood was found throughout the crime scene, when such assumption was rebuttable via reference to SLED Id 23.

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JULIA A. WARRING  
CLERK OF COURT  
LEXINGTON SC

- c. The Court erred in failing to find that trial counsel was ineffective in failing to introduce conflicting statements made by Donna Hutto. Ms. Hutto's statements were conflicting on several issues, including her brother, a felon, being at the crime scene with a firearm before the police were summoned, as well as varying accounts of what Ms. Hutto was allegedly able to hear, discern, and/or hear at the time of incident. In any event, trial counsel advised the jury in opening statements that they would be shown evidence that the State's witnesses made conflicting statements to police; however, because counsel failed to offer the statements into evidence, the promised statements were not available when specifically requested by the jury for purposes of deliberation. Petitioner asserts the prejudicial effect of failing to have the conflicting statements available to the jury was profoundly prejudicial.
- d. The court erred in considering, as an apparent exemption from a finding of ineffective assistance of counsel or prosecutorial misconduct, that the State made a "strategic decision" not to try the defendants together. Whatever the State's rationale for doing so, the State's claim that "rules prevented the state from trying the co-defendants together" was false, misleading, amounted to prosecutorial misconduct, and trial counsel was deficient in failing to object to the statements, resulting in extreme prejudice to Petitioner.

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JULIA GARRISS  
CLERK OF COURT  
FLEMINGTON SC

- e. The Order of Dismissal is deficient as a whole in that Petitioner's three hours' worth of testimony is not sufficiently referenced in any substantive manner and is in several instances mischaracterized, and the order fails to address the 34 exhibits Petitioner offered into evidence in support of his Post conviction relief claims, specifically including but not limited to trial counsel's failure to properly investigate. Again, in the absence of a transcription of the PCR proceedings, Petitioner craves reference to his PCR application and amended application, his actual testimony at the PCR proceedings, and his memorandum submitted in support of his application and amended application.
- f. The Order erroneously refers to Vicky Hallman as a forensic scientist in determining Trial Counsel did not err in failing to properly challenge her testimony - The record evidences the fact that Ms. Hallman was an ID officer and was not, nor did she claim to be, qualified as a forensic scientist.
- g. The Order fails to address Petitioner's assertion that trial counsel failed to object to Assistant solicitor Moses' statement to the jury that Jimmy Williams testified Petitioner was angry with the victim regarding drugs. Critically, Mr. Williams never offered any such testimony. Failure on the part of trial counsel to object to this mischaracterization resulted in extreme prejudice to Petitioner and also amounted to prosecutorial misconduct.

- h. The Order fails to address Petitioners allegations that trial counsel was ineffective in failing to object to the Prosecution arguing evidence not in the record, such as suggesting that police reports were "sanitized" to exclude certain evidence (See e.g.: Trial Tr. 355).
- i. Petitioner asserts that at the PCR hearing, he was prevented from fully arguing and establishing the effects of trial counsel's deficiencies, and craves reference on reconsideration to specific factual findings regarding each and every allegation of deficiency and resulting prejudice.
- j. The order fails to adequately address Trial Counsel's failure to object to only part of Travis Harsey's statement being admitted into evidence. While trial counsel may have been "concerned" that the statement contained evidence adverse to Petitioners position, the statement(s) would have, without question, solidified much of Petitioner's defense theory, such as there being another person at the scene, Harsey giving false information regarding ownership and disposal of the murder weapon, and Harsey's denial of a conspiracy.
- k. Petitioner specifically alleges that none of the issues he raised in his Petition, Amended Petition, or post hearing motions were abandoned as set forth in the Order at Page 22.

For the foregoing reasons, Petitioner respectfully requests an order arresting the Court's initial order in this matter pending Petitioner's ability to obtain a transcript of the PCR hearing and prepare a more detailed 59(e) motion fully fleshing out all allegations of

error and/deficiency in the order. Alternatively, Petitioner respectfully requests that the Order be reconsidered on the grounds set forth above and/or on any other appropriate grounds.

FILED

2012 JUN -5 PM 12:12

WILLIAM A. GARRIGUE  
CLERK OF COURT  
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

The State of South Carolina,

Plaintiff,

vs.

Randall Scott Tyler

Defendant.

IN THE COURT OF COMMON PLEAS  
OF THE ELEVENTH JUDICIAL CIRCUIT

C.A. No.: 2007-CP-32-00907

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing, Motion for Reconsideration and/or to Arrest Judgment, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to their office as shown below this 4<sup>th</sup> day of June, 2012.

The Honorable W. Jeffrey Young  
141 N. Main Street  
Sumter, SC 29150

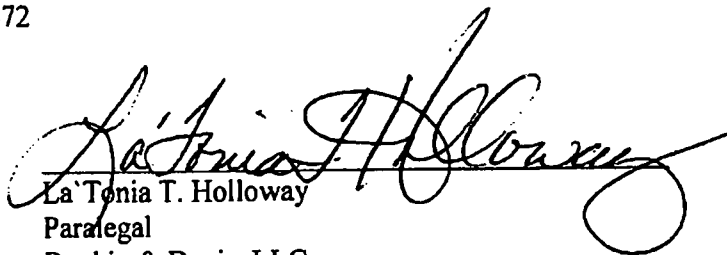
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KEITH A. CARRIAGE  
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LEXINGTON SC

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