

State of South Carolina  
In The Supreme Court

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DEC 17 2014

Certiorari to Kershaw County  
Robert E. Hood, Circuit Judge

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S.C. Supreme Court

Marcus Greene,

Petitioner,

v.

State of South Carolina,

Respondent.

Appellate case no. 2014-000720

Petition For writ of Certiorari

Now Comes petitioner in the above matter, acting pro-se, informing the court with his petition for writ of certiorari.

Respectfully Submitted,  
Marcus Greene

Marcus Greene  
Attorney For Petitioner

This 11<sup>th</sup> day of December, 2014.

State of South Carolina  
In The Supreme Court

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Certiorari to Kershaw County  
Robert E. Haul, Circuit Court Judge

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Marcus Greene,

Petitioner,

v.

State of South Carolina,

Respondent.

Appellate case no. 2014-000720

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Certificate of Service

I Marcus Greene certify that a true copy of petitioner's petition for writ of Certiorari has been served on Daniel E. Shearouse, Clerk of Court, Post office Box 11330, Columbia, South Carolina 29211 at the Supreme Court of South Carolina this 11<sup>th</sup> day of December 2014.

Sworn Before me this 11<sup>th</sup>  
day of December, 2014.

Nancy C. Michael  
Notary Public For (P.C. 1)

My commission Expires: 1-23-2023

Marcus Greene ✓

Marcus Greene  
Attorney For Petitioner

State of South Carolina  
In The Supreme Court

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Certiorari to Kershaw County

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Robert E. Hood, Circuit Court Judge

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Marcus Greene,

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Respondent.

Appellate case no. 2014-000720

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Petition For writ of certiorari

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Marcus Greene  
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430 Oaklawn Rd.  
Pelzer S.C. 29669  
Attorney For petitioner

## ISSUES PRESENTED

- ① Plea counsel failed to provide petitioner the opportunity to review the discovery materials in his case before requiring petitioner to make an decision about waiving his right to a jury trial; See App. page 128 lines 15-25, page 129 lines 1-7 Also see Exhibit in App on page 178.
- ② Plea counsel was ineffective for advising petitioner to enter pleas of guilty to charges on which he did not represent the petitioner and not had engaged in the investigation of and and not received discovery concerning; See App 115 (9-15), 116 (6-25), 117 (1-4), 132 (11-22), and 133 (1-21).
- ③ Petitioner alleges that his pleas of guilt were not voluntarily and intelligently entered inasmuch as they were coerced by misrepresentations made by the state concerning evidence that would be presented against him if he went to trial by jury; See App 160 (1-6), 150 (21-25), 151 (1-25), 152 (1-16), and 153 (1-11)
- ④ Plea counsel ineffective for advising Petitioner to plead guilty without disclosing or discussing inconsistencies present in the victim's two statements with petitioner and without advising him how those inconsistencies might be used to his advantage at trial by jury; See App. 125 (23-25), 126 (1-25) and 127 (1-5), see Exhibits (80-182)
- ⑤ Plea counsel was ineffective for failing to provide,

advise the petitioner of the problems with the victim's pretrial participation in the photo-lineup, and for failing to discuss with the petitioner how that evidence might be used to his defense at a trial by jury; See App. 124 (9-25), 125 (1-22) Also See Exhibit in App. on page 179

⑥ Plea counsel was ineffective for failing to obtain a preliminary hearing for the petitioner; See App. 117 (17-25), 118 (1-25), 119 (1-25) and 120 (1.)

⑦ Plea counsel was ineffective for advising petitioner to plead guilty to drug charges without first obtaining discovery concerning the chemical analysis of the evidence alleged to be controlled substances; See App. 116 (19-25), 117 (1-4), 130 (15-25), 131 (1-18), 132 (1-25) and 133 (1-19).

⑧ The petitioner alleges that his pleas were entered in violation of his rights to the equal protection of the law where his co-defendants received the benefit of full disclosure of the discovery materials which resulted in their right to jury trial and their eventual acquittal. See App. 142-152 (1-25), 170-174 (1-25)

# Statement

## Indictments

On October 12, 2011, Petitioner Marcus Greene was indicted by the Kershaw County Grand Jury for First Degree Burglary, armed robbery and kidnapping arising out of an alleged invasion into the home of Alex English which occurred on or about August 1, 2011. App. 201-202; 204-205. Petitioner was also charged and waived presentment to the Grand Jury for possession of Percocet and possession or attempt to possess crack cocaine second offense during an incident arising on September 14, 2011. App. 213-214; 216-217.

Petitioner was also charged with failure to stop for Blue light arising out of an incident that occurred on January 8, 2012. App. 219-220. Also petitioner was charged and waived presentment to the Grand Jury for failure to stop for a blue light and resisting arrest arising out of an incident that occurred on February 13, 2012. App. 207-208; 210-211.

## Guilty Pleas

On February 27, 2012, Petitioner pled guilty to the following charges before the Honorable J. Ernest Kinard, Jr.: (1) second degree burglary, nonviolent; (2) strong arm robbery; (3) the two failure to stop for a blue light charges; (4) resisting arrest; and (5) the two drug possession charges. App. 1-19. Petitioner

was represented by Charlie Johnson, and the state was represented by Deputy Solicitor Brett Perry. App. 1. Judge Kinard sentenced Petitioner to (1) fifteen years for second degree burglary nonviolent; (2) five years for strong armed robbery which was ordered to run consecutive to the burglary sentence; (3) three years each for the two failure to stop for a blue light charges to run concurrent to the burglary sentence; (4) one year for resisting arrest to run concurrent to the burglary sentence; and (5) one year each for the two drug possessions charges to run concurrent to the burglary sentence. The total sentence was therefore twenty years. App. 17, 1. 20. - 18, 1. 20; 200; 203; 206; 209; 212; 215; 218. Petitioner did not file a direct appeal.

### Application for Post-Conviction Relief and Evidentiary Hearing

Petitioner filed his application for post-conviction relief ("PCR") on November 6, 2012. App. 22-31. The state filed its return on or about June 21, 2013. App. 32-37. Petitioner filed an amended PCR application on November 20, 2013 where he asserted, among other things, the following:

1. Plea counsel failed to provide petitioner the opportunity to review the discovery materials in his case before requiring petitioner to make an decision about waiving his rights to a jury trial;

2. Petitioner alleges his pleas were not voluntarily and intelligently entered inasmuch as they were the product of ineffective assistance of counsel prior to and during his plea proceeding.

3. Plea counsel was ineffective for advising the petitioner to enter pleas of guilty to charges on which he did not represent the petitioner and had not engaged in the investigation of and had not received discovery concerning.

4. Petitioner alleges that his pleas of guilty were not voluntarily and intelligently entered inasmuch as they were coerced by misrepresentations made by the state concerning evidence that would be presented against him if he went to trial by jury.

5. Plea counsel was ineffective for advising the petitioner to plead guilty without disclosing and discussing the inconsistencies present in the victim's two statements with the petitioner, and without advising him how those inconsistencies might be used to his advantage at a trial by jury.

6. Plea counsel was ineffective for failing to advise the petitioner of problems with the victim's pre-trial participation in a photo-lineup, and for failing to discuss with the petitioner how that evidence might be used in his defense at a trial by jury.

7. Plea counsel was ineffective for failing to obtain a preliminary hearing for the petitioner.

8. Plea counsel was ineffective for advising the petitioner to plead guilty to drug charges without first obtaining discovery concerning the chemical analysis of the evidence alleged to be controlled substances.

9. Petitioner alleges that his pleas were entered in violation of his right to equal protection under the law where his co-defendants received the benefit of full disclosure of the discovery materials which resulted in their exercise of their right to trial by jury and their eventual acquittal. App. 38-41.

Plea counsel testified that he did not provide petitioner with the discovery materials or gave petitioner the opportunity to review the discovery before advising petitioner about entering pleas of guilty. Appendix 128, 15.25. - 129, 1.7. Also see Exhibit 178.

Plea counsel admitted that he advised petitioner to enter pleas of guilt to charges he did not represent the petitioner and not had engaged in the investigation of and not received discovery concerning. Appendix 115, 9.15. - 116, 6.25. - 117, 1.4. - 132, 11.22. and 133, 1.21.

Plea counsel testified that he never discussed the inconsistencies present in the victim's two statements with petitioner and without advising petitioner how those inconsistencies could be used at his advantage at trial by jury. Appendix 125, 23.25. - 126, 1.25. - 127, 1.5. Also Exhibits 180-181-182.

Plea counsel admitted that he failed to provide, advise the petitioner of the problems with the victim's pre-trial participation in the photo-lineup, and that he failed to discuss with the petitioner how that evidence could be used to petitioner's defense at a trial by jury. Appendix 124, 9.25. - 125, 1.22. Also Exhibit 179.

Plea counsel admitted that he failed to obtain a preliminary hearing for the petitioner. Appendix 117, 17.25. - 118, 1.25. - 119, 1.25. - 120, 1.

Plea counsel testified that he represented petition-

er on drug charges but failed to obtain discovery concerning the chemical analysis of the alleged to be controlled substances before advising petitioner to enter a guilty plea. Appendix 116, 19.25. - 117, 1.4. - 130, 15.25. - 131, 1.18. - 132, 11.25. - 133, 1.19.

Plea counsel testified that he advised petitioner he would have to meet with the police and give a statement before he received the discovery in this case. Appendix 118, 3.25. - 119, 1.5.

Plea counsel testified that he advised petitioner that his co-defendant was willing and going to testify against petitioner and petitioner informed him that he went forward off his advice to go forward. 135, 23.25. - 136, 1.9.

Moak testified that when petitioner was brought from department of corrections he and investigator Eric Tisdale met with petitioner at the Kershaw County detention center to prepare for petitioner's co-defendant's trial and petitioner asked to view the evidence in his case and after viewing the evidence petitioner became upset and angry. Appendix 143, 17.25. - 144, 1.23.

Moak testified that petitioner was angry because of the fact that he had been told that his co-defendant had given a statement against him and there was no such statement in the discovery. Appendix 145, 2.7.

Moak testified that petitioner told him he  
give a statement against Jarvis (co-defendant)  
because he was mad at Jarvis and he thought  
Jarvis had given a statement against him.  
Appendix 146, 5.9.

# Arguments

Petitioner in this petition for writ of certiorari; case number: 2014-000720; would assert an (6<sup>th</sup>) Sixth Amendment Ineffective Assistance of counsel claim.

- Petitioner would set forth of his plea counsel: "Ineffectiveness of Assistance of Counsel," "Prejudice of Counsel Performance," and "How the outcome would have been different;" due to counsel deficiency.
- Petitioner in short, would assert in this petition a claim cognizable for relief, in opposition to: SCRP: Rule 12(b)(6).
- Petitioner would cite: "Strickland v. Washington," 466 U.S. 668, 104 S. Ct. 2052 (U.S. May-14<sup>th</sup> 1984) ("Plea counsel Ineffectiveness") to show by the: South Carolina Federal Rules of civil Procedure Rule: 56(c), that there is an "Genuine Issue" of "material Fact," to warrant a New Trial.
- Petitioner was arrested and detained on: 8/3/2011; Petitioner was arrested within the "Kershaw" Jurisdiction. Petitioner retained counsel for representation: "Mr. Charlie Jay Johnson;" For:
  - 9). First Degree Burglary
  - 99). Armed Robbery
  - 999). KidnappingCounsel was in Full Representation on 8/8/2011.

From petitioner arrest, and counsel retaining; Counsel was ineffective in his failure to motion for an right to an "Preliminary Hearing," within it's<sup>(s)</sup> ten (10) days.

- Petitioner assert that if Counsel Performance was functioning of the (6<sup>th</sup>) Sixth Amendment norms of the Effectiveness of the United States Constitution; Petitioner would have proceeded as an right to an "Preliminary Hearing." U.S.C.A. Const. Amend. (6<sup>th</sup>)
- By counsel Ineffectiveness; by not taken that right for petitioner, counsel could have had the victim identification suppressed due to it's<sup>(s)</sup> Inconsistency as the victim: "Jessica Kyzer," circled (2) two person<sup>(s)</sup> From the photo-Lineup. (See Appendix 179)  
This would have been an Likelihood of misidentification in the photo lineup. (See: "Neil v. Biggers," 409 US 188.
- In addition...: As the photo lineup was Inconsistent, Petitioner's victim statement on: 8/11/2011, at 1:43 am was Inconsistent (See Appendix 180); To an Follow up statement by: "Jessica Kyzer," on: 8/11/2011, at 2:16 pm, (See Appendix 181-182)
- Petitioner asserts that if counsel had taken petitioner right before the limitation expired; An Preliminary Hearing, would have governed that this Testimony was indeed Prejudice to petitioner, and far outweighed it's<sup>(s)</sup> probative value as prejudicing petitioner. See:

"State v. Smith," 308 SE. 2d. 794 (S.C. 1983) also:  
"State v. Bailey," 308 SE. 2d. 795 (S.C. 1983).. Also:  
S.C. Fed. Rules of evidence: Rule: 103 (a) (1) & (2)  
Also: "Berryman v. Morton," 100 F. 3d 1089 (3<sup>rd</sup> cir.-  
1996) Also: "Lofton v. Whitley," 905 F. 2d. 885 (5<sup>th</sup>.  
cir. 1990).

For the above Reason<sup>(s)</sup>; Petitioner scope<sup>(s)</sup>:  
"Strickland v. Washington," 466 U.S. 668 (U.S. 1984),  
by counsel rendering ineffective assistance of coun-  
sel; counsel conduct was so undermined the prop-  
er functioning as Guaranteed by the (6<sup>th</sup>) Sixth Amen-  
dment of Effectiveness to request for an Preliminary  
Hearing.

- Petitioner showed that counsel "Mr. Johnson," Perf-  
ormance was deficient, as such errors so serious,  
that counsel was not functioning. This Ineffective  
Performance prejudiced the defense as to deprive  
petitioner of a Fair Trial.
- As petitioner satisfy the prejudice prong of "Strick-  
land," Petitioner has proved through the presentation  
of probative and credible evidence, that petitioner  
would have gone to trial instead of pleading guilty).  
"But for counsel Deficient Advice to plea guilty".  
U.S.C.A. Const. Amend. (6<sup>th</sup>)
- Petitioner assert<sup>(s)</sup> that the outcome of his Guilty  
Plea would have been different if his counsel had

went to trial as both of petitioner<sup>(s)</sup> co-defendant<sup>(s)</sup> had received Acquitting results due to the victim Identification and the Inconsistency of each statement.

- Petitioner assert<sup>(s)</sup> that his Guaranteed Right to Effective Assistance of counsel Governed by his (6<sup>th</sup>) Sixth Amendment was violated. Petitioner attest that by counsel Ineffectiveness; that petitioner "Life and Liberty" was deprived to be free from the custody of the South Carolina Department of Corrections.. This Deprivation violated not only his "Life and Liberty," by the (5<sup>th</sup>) Fifth and (14<sup>th</sup>) Fourteenth Amendment; but also as a citizen, petitioner Equal protection Right was violated.
- Petitioner furtherly assert<sup>(s)</sup> that his Plea counsel: Mr. Johnson was ineffective for not disclosing his "Brady" discovery.

In criminal action<sup>(s)</sup>: The defendant requires the guiding hand of counsel at every step in the proceedings against him. ["w"]ith out it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. See: "Powell v. Alabama," 287 U.S. 45, 68-69, 53 S. Ct. 55, 77 L. E. d. 158 (1932).

- Petitioner would show cause of Ineffectiveness

as Petitioner<sup>(s)</sup> counsel was retained on: 8/6/2011,  
and entry of Guilty Plea was: 2/27/2012, and  
Counsel Disclosed Discovery materials on: 10/7/2012...  
(See Appendix 178)

- Petitioner asserts by: "Brady v. Maryland," 373 U.S. 83, 83 S. Ct. 1194, 10 L. E. d. 2d. 215 (1963); That if Counsel would have made disclosure of these Exculpatory Evidence to petitioner before his plea of Guilt. Petitioner would have had that split second to make an demand for an Jury Trial to Impeach the prosecutorial witness Testimony and Identification, of each ones Inconsistencies. See: S. C. Fed. Rule of Evidence Rule: 607, and Rule: 608 (a) & (b) and Rule: 613 (a) & (b).....
- Never the less; this issue could have been all together disposed of during the Preliminary Hearing.
- This is an clear violation of Petitioner<sup>(s)</sup> (6<sup>th</sup>) Sixth Amendment right, to Effective, Functioning counsel. Petitioner<sup>(s)</sup> counsel Ineffectiveness was so Deficient, that his Advice to Petitioner to Plead Guilty without scoping any evidence, Prejudiced petitioner to an Jury Trial. This plea violated petitioner<sup>(s)</sup> "Life and Liberty Interest," to be free from unwanted punishment by the South Carolina Department of corrections.
- Petitioner cites: "Boria v. Keane," 83 F. 3d. at 52-53

(2<sup>nd</sup> Cir. 1996). ("The American Bar Association's<sup>(5)</sup> standard on the precise question before us is simply stated in its<sup>(5)</sup> model code of Professional Responsibility, Ethical Consideration 7-7 (1992)")

- "A defense lawyer in a criminal case has the duty to advise his client Fully on whether a particular Plea to a charge appears to be desirable." (emphassis added)
- Petitioner assert<sup>(5)</sup> that: Mr. Johnson could not have given an Effective decision to advise petitioner to plea With out any evidence, of the "Brady" materials...
- Petitioner assert<sup>(5)</sup> that he would have taken an Jury trial if the action of his counsel advice was functioning. If an Jury trial was taken; the out come would have been different. See: "Strickland v. Washington", 466 U.S. 668 (1984) U.S.C.A. Const. Amend (6<sup>th</sup>)
- Petitioner would show that counsel was within the statutory Limitation of filing for an Preliminary Hearing. (See Appendix 177) Petitioner counsel had functioning time to Provide Discovery for his defense, before the Plea of Guilt. Petitioner assert<sup>(5)</sup> that there were no reason<sup>(5)</sup> why counsel level was below the constitutional norms (6<sup>th</sup>) Sixth Amend.
- Petitioner assert<sup>(5)</sup> that counsel was Ineffective by allowing petitioner, advising petitioner to plead guilty to charges that he didn't represent petitioner and had not engaged in the investigation of and not

received discovery concerning. (See Appendix 115, 9. 15. - 116, 6. 25. - 117, 1. 4. - 132, 11. 22 and 133, 1. 21. which would include:

1). Resisting Arrest

2). Possession / Attempt to possess Crack cocaine 2<sup>nd</sup> offense.

3). Possession of Schedule I-V Drug 1<sup>st</sup> offense.

4). (2) Two counts of Failure to stop for Blue Light / Siren 1<sup>st</sup> offense

- Petitioner asserts<sup>(s)</sup> that if counsel was Effective as the (6<sup>th</sup>) Amendment warrant<sup>(s)</sup> as an Functioning Assistance of counsel; Petitioner<sup>(s)</sup> counsel would have not only requested an Preliminary Hearing pursuant to the "S. C. Rule of Criminal Procedure Rule: 6 (a) (b) (c) (d) and (e)" but would have requested for petitioner<sup>(s)</sup> "Brady" Discovery; Also would have tested For "chemical Analysis" pursuant to Rule: 6 (a) (b) & (d).
- Petitioner<sup>(s)</sup> counsel through by his Ineffectiveness, allowed petitioner to waive that right by counsel advice, to scope determination of the state<sup>(s)</sup> evidence. For this cause, Petitioner<sup>(s)</sup> counsel prejudiced petitioner to an Jury Trial by failure to adequately assist petitioner with the due Effectiveness assistance of counsel by the (6<sup>th</sup>) Sixth Amendment.

But for this advice; Petitioner would have went to trial as his co-defendants and gained Relief. Petitioner had shown that the outcome would have been different if petitioner had an Functioning counsel that would have been Functioning to effectively assist from an guilty plea, to advice of an Faithful Jury trial. U.S. C. A. Const. Amend. (6<sup>th</sup>)

- Petitioner assert<sup>(s)</sup> that he made many unknown waiver<sup>(s)</sup> of his constitutional Rights as being a "Layman" of the Law. (See Appendix 201-202-204-205-207-208-210-211-213-214-216-217-219-220.

- Your Honor; As petitioner Attorney Mr. Johnson, being an Attorney at Law; Mr. Johnson, would be required to take full responsibility of his Ineffectiveness Assistance of Representation to Petitioner; as even a Lay Jury would have not found petitioner Guilty; as both of petitioner<sup>(s)</sup> co-defendant<sup>(s)</sup> attorneys were Functioning as the (6<sup>th</sup>) Sixth Amendment requires. See: Appellate court Rule: 407

## Conclusion

For the reasons set forth herein, Petitioner Marcus Greene respectfully requests that this Court grant his petition for writ of Certiorari with an Redress from his conviction as an Guaranteed (1<sup>st</sup>) First and (6<sup>th</sup>) Sixth Amendment Right, that upon reviews that an motion For an New Trial would be warranted by an conditional Order.

Respectfully submitted

Marcus Greene

This 11<sup>th</sup> day of December 2014

Marcus A. Greene

Mailing Address

P.O. 117-D-X4

430 Oaklawn Rd.

Pelzer S.C. 29669

December 11, 2014

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
Post office Box 11330  
Columbia, South Carolina 29211

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DEC 17 2014

**S.C. SUPREME COURT**

Dear Mr. Shearouse

I have enclosed a copy of my petition for writ of certiorari. I'm requesting that this Court forward a copy of my petition upon opposing counsel Megan E. Harrigan, Assistant Attorney General. I'm also requesting that this court clock and stamp this petition and return a copy to petitioner within thirty (30) days of the date of this letter.

Marcus Greene

Sworn Before me this 11<sup>th</sup>  
day of December, 2014.

Marcus Greene

Nancy C. Murchison

Notary Public For South Carolina (P.C.1)  
my Commission Expires: 12/31/2021

List of Documents from petitioner

1. Cover letter, notarized by mailroom at P.C.I...  
(1 page)
2. Certificate of Service, notarized by mailroom  
at P.C.I.. (2 pages)
3. Petition For writ of certiorari signed by  
Petitioner. (18 pages)

(s) Marcus Greene  
Marcus Greene  
# 309647

Sworn Before me this 11<sup>th</sup>  
day of December, 2014.

Nancy C. Mulholland

Notary Public For South Carolina (P.C.I.)

My commission Expires: 1-23-2023

MARCUS A. GREENE, #309647  
Perry Correctional Institution  
430 Oaklawn Rd  
Pelzer SC 29669

AMS

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
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Columbia, South Carolina

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