

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

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DEC 22 2014

S.C. SUPREME COURT

Dianne S. Goodstein, Circuit Court Judge
(Trial)

Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497
Opinion NO.: 2014-MO-049

Tiffany Sanders, Petitioner,

vs.

State of South Carolina Respondent,

MOTION FOR REHEARING

As authorized by Rule 221(a) of the *South Carolina Rules of Appellate Practice*, the
Petitioner requests a rehearing and oral argument to review Opinion No. 2014-MO-049 because
in affirming the conviction and 30-year sentence, the Court overlooked the following points:

I Logical inconsistency in the Opinion

In deciding to affirm the conviction and sentence on direct appeal, the Court holds that trial counsel was effective¹ and that the Court cannot consider matters raised on appeal that were not raised to the trial judge: "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." This is a correct statement of law, but Petitioner respectfully submits that the statement is a logical contradiction when applied to a case in which the Petitioner challenges the effectiveness of her trial counsel. Trial Counsel's failure to raise all pertinent issues to the trial judge is the best evidence of a trial counsel's failure to provide a defense adhering to a constitutionally required minimum standard. Therefore, the Court's opinion disposing of the direct appeal is premised upon a mutually exclusive and logically incompatible legal premise/conclusion. The Court cannot simultaneously find the trial counsel failed to preserve issues for appeal and that trial counsel performed to a constitutionally required minimum standard. Logic requires that it be one or the other. Thus, the Court should revisit this important principle and grant the Petitioner oral argument to address the inconsistency and the merits of the appeal because the case raises an important issue on a case that involves incarceration of the Petitioner for up to 30 years of her life. (To put the seriousness of this case in perspective, DeJuan Jenkins, who 1) drove the murderer to the scene, 2) participated in the murder, and 3) drove the murderer from the scene served a youthful offender's sentence of 13 months:

Q. . . . you did plead guilty to accessory after the fact, because you did in fact see Sean Kammerer shoot Jessie Ham to death, let him get in the car, and drove him back to his house?

¹ Petitioner is aware that Rule 221(a) prohibits petitions for rehearing from the Court's denial of a petition for certiorari under Rule-242.

A. Yes, sir.

Q. Didn't call the cops?

A. No, sir.

Q. And you pled guilty and got a youthful offender, did what, a year/13 months?

A. Yes, sir.

Appendix Vol. II, pages 209-210

Thus, the stakes are high in this case, and it is a miscarriage of justice for the Petitioner to be serving a 30 year sentence in a case in which the State proved that Tiffany Sanders was not at the scene of the crime. See testimony of Jessica Hans at Vol. II at pages 195 – 197, where she testified on direct examination that there were only 2 men present at the time of the murder.

II Directed Verdict Standard of Review

In the Opinion under review, the Court recites the correct standard of review on an appeal from a jury conviction, and the Petitioner has never quarreled with the standard of review in this case. (See page 9 of Petitioner's brief.) However, it is an undisputed fact that the State proved that the Petitioner:

- Was not present at the time of the murder
- Did not know there was a gun present
- Took no action either before or after the murder to assist Sean Kammerer

These are all facts proved by the State in its case-in-chief. There is not a *scienter* of evidence in this record that Petitioner knew about a plan to kill the victim or knew there was a gun present. Petitioner's written statement is in the record at Vol. II, page 343 and makes clear

she knew "Shawn wanting to fight Jessi because of Jessi beating Shawn in the head with a baseball bat." Jessica Hans, the State's witness, testified Petitioner was not present at the scene at the time of the shooting. The closest the State comes to proving mere presence is DeJuan Jenkins testimony at Vol. II, page 203 of the record that Sean Kammerer "walked up" to the car and started shooting when Kevin King got out of the car.² According to DeJuan Jenkins, the State's witness, he was shocked when Sean Kammerer started shooting—even though the two boys had been together the entire day. He testified that Jessie Ham got out of the car second, after the shooting started with Kevin King as the target. This is as close as the State gets to proving the elements of accomplice murder, and there is therefore no evidence of the essential element of malice aforethought. Thus, there is nothing in this record to support a guilty verdict of accomplice murder, and the trial court erred in submitting that charge to the jury. The jury was left to speculate without a shred of evidence that the Petitioner had put into action a plan to kill the victim.

Therefore, the imposition of a 30-year sentence on these facts is a miscarriage of justice, and the Court should grant, at the very least, an opportunity to address these issues in an oral argument. For these reasons, the Petitioner asks this Court to vacate its December 17th Memorandum Opinion and grant the Petitioner a rehearing.

Respectfully submitted,

² Kevin King testified at Vol. II, page 137, line 11 that he got in the back-seat. DeJuan Jenkins says Sean Kammerer started shooting at the first person out of the car (Kevin King) and missed, and that after the shooting started, Jesse was trying to get out of the car from the back-seat. At page 141, King explains he was able to push past Jessie because Jessie is "real skinny." This confusion in the testimony is unresolved.

December 19, 2013



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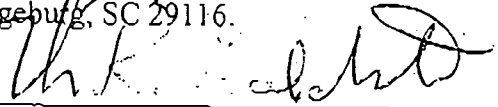
Tiffany Sanders, Petitioner,

vs.

State of South Carolina Respondent,

PROOF OF MAILING

I certify that I have served the Motion for Rehearing on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on December 22, 2014, addressed to its attorneys of record, Salley W. Elliott, P.O. Box 11549, Columbia, SC 29211 and Hon. Harrison Bell, P.O. Box 1525, Orangeburg, SC 29116.



December 22, 2014

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FACSIMILE COVER SHEET

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DATE: December 22, 2014

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TO: Janet Johnson

S.C. SUPREME COURT

FROM: Rebekah Toppin with Tommy Goldstein's office

REFERENCE / CLIENT / FILE NO.: Tiffany Sanders

FACSIMILE NO. CALLED: 803-734-1499

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COMMENTS: Motion for Rehearing. Thank you! Happy Holidays!

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S.C. SUPREME COURT

Hon. Daniel E. Shearhouse
Clerk of Court
Supreme Court of South Carolina
P. O. Box 11330
Columbia, S.C. 29211

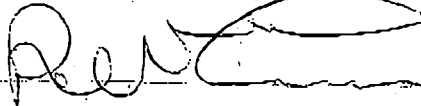
Re: Tiffany Sanders adv. State of South Carolina, 2011-CP-18-1497

Dear Mr. Shearhouse,

I enclose an original and 7 copies of a Petition for Rehearing in the above case. Would you be so kind as to file the Petition with the Court and return a filed stamped copy to me in the envelope provided? By copy of this letter, I am serving a copy upon opposing counsel. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.



Rebekah Lambooy, Paralegal to
Thomas R. Goldstein, Esq.
Dale T. Cobb, Jr., Esq.

enclosure: as stated

cc: Sally W. Elliott, Esq. (with enclosure)
Harrison Bell, Esq. (with enclosure)