

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Rishawn Reeder,)
#316370,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

In The Court Of Common Pleas
Case No. 2012-CP-42-0509

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JAN 05 2015

Motion
(Alter or Amend, Rule 59(e))

S.C. SUPREME COURT

Pursuant to Rule 59(e) SCRPC the Applicant in the above entitled case respectfully request this Honorable Court to Alter or Amend its judgement that was issued on December 5, 2014 received by the Applicant on December 23, 2014. The Applicant would show this court that he is filing this Rule 59(e) pro se, within the 10 day time limit because counsel that was attached to this case on my behalf have automatically relieved himself of his continued duty pursuant to Rule 602(e)(3) Defense of Indigent.

The Applicant request this Honorable Court to Alter Judgment for the following reasons, that Court didn't list all the grounds I raised in the PCR Amendments with attached arguments/briefs filed by Attorney Wilkes on October 22, 2014, and refiled on November 3, 2014, at the PCR hearing to make sure that all grounds and relevant facts were raised and addressed at the PCR hearing, as well as the Court misperceived and misapplied law to relevant facts which, if fully reconsidered Applicant would be entitled to relief on the issues raised. Applicant request that a hearing be rescheduled to correct and reconsider the questions of fact and question of law to be applied in Applicant's case before this Honorable Court. The Order of Dismissal, it doesn't state none of the dates Attorney J. Falkner Wilkes filed the PCR Amendments with attached arguments/briefs, only the filed Amended application on January 6, 2014 by Attorney Brandt Rucker is documented in the Order of Dismissal. This error to state missing new issues filed by later Attorney J. Falkner Wilkes twice on October 22, 2014 and November 3, 2014 at the PCR hearing is a major issue

The following grounds that Applicant raised through Attorney J. Falkner Wilkes are missing in the Order of Dismissal by Hon. R. Keith Kelly

on December 5, 2014:

Applicant raised the following issues in his PCR Amendments with attached arguments/briefs:

Ineffective assistance of counsel

- a. failure to impeach SLED investigator Ila Simmons testimony on gunshot residue test results;
- b. objecting and redacting statements on affidavit of the photo identification by Mr. Dwight Jeter identifying Mr. Cathcart as the shooter;
- c. requesting self-defense charge;
- d. failure to inform to testify;

Due Process of Law

e. State withheld deal between State and allege codefendant

Those are 5 important and meritorious issues I need listed and preserved for the record, they show constitutional violations. Applicant as that you respectfully reconsider your ruling to redress these meritorious issues that aligned with law requires granting Applicant relief by this Honorable Court. I would like to show to the courts in this 59(e) the support facts to the meritorious issues overlooked do have pertinent facts requiring post-conviction relief to be granted to the Applicant.

(Of the foregoing issues, the Court's Order of Dismissal addresses 17 issues:

- 1) counsel failure to use exculpatory evidence; 2) counsel failed to object to allege non-testifying codefendant's out of court statements through investigator's testimonies; 3) Counsel failed to confront and cross-examine Officer Heather Forrestor; 4) counsel failed to conduct an independent investigation; 5) Counsel failed to interview alibi witnesses; 6) Counsel failed to present the Spartanburg Regional Hospital video; 7) Counsel failed to present allege codefendant identification of shooter; 8) Counsel failed to motion for a severance; 9) counsel failed to object to jury charge instructing malice could be inferred for the use of a deadly weapon; 10) counsel failed to present applicant and allege codefendant Gunshot Residue Analysis Information Forms; 11) counsel failed to call Loria Williams as a witness; 12) counsel failed to object to admission of applicant's gunshot residue test; 13) Counsel failed to motion to suppress applicant's gunshot test pursuant to S.C. Rules of Evidence Rule 403; 14) Counsel failed to motion to quash the indictment before the jury was sworn; 15) Counsel failed to

investigate alleged deal between State and alleged codefendant; 16) Due process violation, in that, violation of Sixth Amendment Confrontation Clause; 17) Prosecutorial misconduct in that, Brady violation. The Court's Order of Dismissal fails to identify, make specific findings, or rule specifically on the Applicant's other issues. As to the Court's ruling on the 17 issues addressed by the Order of Dismissal, the Applicant submits that the Court misperceived applicable law and overlooked pertinent facts which, if fully considered would entitle the Applicant to relief on those issues as well.

As to the issues that were ruled on, no further argument is required. Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it. Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939). As to those issues or sub-issues not ruled upon, a Rule 59(e) motion is appropriate and necessary to obtain ruling and/or preserve those issues for appellate review.

The Applicant submits that the evidence submitted at the hearing, including those matters in record establish that the Applicant is entitled to post-conviction relief based on the following:

The Applicant alleges that he received ineffective assistance counsel. For an applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 114 S.Ct. 2052 (1984).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 117, 385 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

a. The evidence shows trial counsel failed to impeach Ila Simmons SLED investigator testimony on gunshot residue test results. The prosecutor had SLED investigator Ila Simmons testify as a state witness to gunshot residue test results on applicant, Darius Carthcart, Duncan Jeter, Dwight Jeter, and Bryant Miller the evidence shows. During SLED investigator Ila Simmons

testimony, she testified to the amount of gunshot residue level found on the victims and defendants. (See trial transcript pg. 328 line 15 - pg. 329 line 25; pg. 330 line 1-19; pg. 341 line 1 - pg. 342 line 25.) The prosecutor in his closing argument use the aggravating evidence to point out to the jury that applicant had to be the shooter (See trial transcript pg. 424 line 12-23). Trial counsel was ineffective for failure to impeach SLED investigatory Ila Simmons establish deficient performance to allow the false evidence to go unrebutted when Ila Simmons testimony on the gunshot residue test results that was a misstatement of the facts (See SLED forensic services laboratory report as Exhibit #3). The trial counsel deficient performance prejudiced the defense being denied effective assistance of counsel and due process of law.

Trial counsel failed to render effective assistance of counsel during the adversarial testing of a state witness. If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of 6th Amendment rights that makes the adversary process itself presumptively unreliable. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039. Trial counsel failed to rebut the false aggravating evidence of the facts to the case. A criminal defense attorney has a duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably evidence tending to rebut any aggravating evidence introduced by State, McKnight v. State, 661 S.E.2d 354.

The law firmly established that the fourteenth amendment to the Constitution of the U.S. cannot tolerate a state criminal conviction obtained by knowing use of false evidence or improper manipulation of material evidence. Troedel v. Wainwright, 785 F.2d 1457; U.S. v. Bagley, 473 U.S. 677, 105 S.Ct. 3375. The term "false evidence" includes the introduction of specific misleading evidence important to the prosecution's case in chief or the nondisclosure of specific evidence valuable to the accused's defense. Troedel v. Wainwright, 667 F.Supp 1456; Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868.

Absent counsel's errors, had trial counsel impeach SLED investigator Ila Simmons testimony the state had no evidence to point at applicant as the shooter. It is a reasonable probability without the misleading evidence being submitted to the jury that the proceeding would have a different outcome and applicant would receive a fair trial.

b. The evidence shows trial counsel ineffective for objecting and redacting statements on affidavit of the photo identification by Mr. Dwight Jeter identifying Mr. Cathcart as shooter. The solicitor was cross-examining one of the victims Dwight Jeter about his out-of-court identification of Mr. Cathcart. Trial counsel objecting and redacting rebuttal material evidence on the affidavit by Mr. Dwight Jeter identifying Mr. Cathcart as the shooter. (See trial transcript pg. 187 line 24 - pg. 188 line 21; pg. 189 line 1-7; pg. 189 line 17 - pg. 190 line 9.) See also (Exhibit #8). This shows deficient performance by trial counsel that results to Applicant suffering prejudice to the defense being denied effective assistance of counsel and due process of law.

Trial counsel redacted relevant evidence that exonerated applicant as the shooter was disloyal to client. Counsel's function in representing a criminal defendant is to assist defendant, and hence counsel owes client duty of loyalty, a duty to avoid conflict of interest. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears. Hicks v. State, 443 S.E.2d 907. Victim Dwight Jeter identified allege codefendant Mr. Cathcart as the shooter during pre-trial investigation exonerating applicant and jury should of known of this relevant evidence to determine whose the truth lies.

In Ofc. Heather Forrester police report Dwight Jeter told her he seen the shooter (See Ofc. Heather Forrester police report). (See Exhibit #7 and Exhibit #8). A criminal defense attorney has a duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably evidence tending to rebut any aggravating evidence introduced by the state. McKnight v. State, 661 S.E.2d 334. Absent counsel's errors, it is reasonable probability had exonerating evidence been presented to the jury, the proceeding would of ended with a different outcome. Victim identification of another person as the shooter instead of applicant was relevant evidence to the defense.

c. The evidence shows trial counsel requesting self-defense charge was deficient performance that resulted in prejudice to applicant being denied right effective assistance of counsel and the right to present a defense. Applicant's defense was noninvolvement in the shooting crime. Counsel had no reason to pursue self-defense, when applicant informed counsel that he didn't have, possess any firearm on the evening that he was shot. Counsel placed at the scene after I informed him that I was in Crescent Hills Apartment the Night I got shot and never at

the crime scene. For counsel to request self-defense jury charge he disloyal client and doesn't advocate my defense to the jury.

The adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate," United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039. Effective assistance of counsel requires that an attorney adhere to his duty of undivided loyalty to his duty of undivided loyalty to his client. Strickland v. Washington, 466 U.S. 678, 104 S.Ct. 2052. A criminal defendant's right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutor's to the jury so it may decide where the truth lies, this right is a fundamental element of due process of law. State v. Inman, 700 S.E.2d 31.

Counsel raising self-defense is inconsistent with my defense of noninvolvement and my version of the facts. Counsel admits this to judge after alleged codefendant's confession that he cooperated with police for promises in a deal. (See trial transcript pg. 478 line 3-7; line 12-18.) Counsel failed to interview, contact, and present alibi witnesses to support my defense. Trial counsel poor trial strategy placed me on the scene and made me the shooter. Trial counsel bolstered the prosecution's case abandoning his client's defense.

Absent counsel's errors it is a reasonable probability had counsel request an alibi charge instead of self-defense charge the proceeding would of ended with a different outcome. Prosecution case was circumstantial and alibi charge held state to its burden of proof while also advocating applicant's defense of noninvolvement. An alibi charge is required where the defendant claims to be elsewhere at the time the crime was committed. State v. Robbins, 271 S.E.2d 319. Applicant informed counsel that he had no knowledge of this crime. To raise self-defense excludes my defense of noninvolvement. If counsel would of raise no jury charge it would of still advocated applicant's defense. Applicant was denied a fair trial in accord with due process of law from trial counsel deficient performance.

d. The evidence shows trial counsel failed to inform to testify when Applicant informed counsel that he had no knowledge of the crime and was in Crescent Hills Apartments where applicant was shot was deficient performance. The deficient performance

was established for trial counsel not informing client to testify knowing with counsel's professional norms that client needed evidence to support Applicant's defense instead of presenting no defense when State introduced aggravating evidence in trial. The result of trial counsel deficient performance in prejudice to Applicant being denied effective assistance and the right to present a complete defense, as well as right to due process of law. Trial counsel presented no evidence to support his client's defense. (See trial transcript 478 line 3-7; line 12-18.)

Instead counsel informed applicant that he has a criminal record and allege codefendant said you was with him so there is no need to testify. Regardless of State's evidence of allege codefendant statement, applicant still has a right to present a complete defense, to present my version of the facts to the jury. A criminal defendant's right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutor's to the jury to determine where the truth lies, this is a fundamental element of due process of law. State v. Inman, 720 S.E.2d 31. It was poor trial strategy and deficient performance for trial counsel to not advocate client's version of the facts.

The adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." Faretta v. California, 422 U.S. 806, 45 S.Ct. 2525. Absent counsel's errors, had applicant testified to present his version of the facts and defense, it is a reasonable probability the proceeding would of ended with a different outcome. It was denial of effective assistance of counsel and due process of law for counsel to not give applicant professional norms in letting applicant go to trial with no evidence to support and advocate applicant's defense shows and establish prejudice to Applicant.

e. The evidence shows state withheld deal between State and allege codefendant was a brady violation that prejudice Applicant being denied due process of law. This resulted in an unfair trial to not disclose impeachment evidence. Applicant went to trial with allege codefendant in joint trial. State introduced an out-of-court statement by the non-testifying allege codefendant, that was the only state witness linking Applicant to crime.

After allege codefendant was unsatisfied with his guilty verdict, he approach the court with newly discovered evidence that a promise, cooperation or agreement that was not disclosed to defense. (See trial transcript pg. 471-475 line 1-12.) His mother also joined in to verify the cooperation allege nontestifying codefendant did with State. State inadmissibly entered allege nontestifying codefendant untested confession into trial hindering applicant from confronting allege codefendant about any promises, cooperation, or agreement for his confession to police. (See trial transcript pg. 153 line 16-25; pg. 154 line 1-16; pg. 158 line 17-25; pg. 159 line 1-14; pg. 161 line 18-25; pg. 273 line 3-21.)

Trial counsel wrote applicant after trial, stating he spoke with allege codefendant previous defense counsel Mr. Turnipseed who disclosed to him for the first time since Applicant's trial, that there indeed was a meeting with Mr. Cathcart, the Turnipseeds, and Deputy Solicitor Balsa. (See letter to Applicant by Michael Brown, trial attorney) Applicant was unable to fully prepare due to violation of due process of law.

A brady claim is based upon the requirement of due process of law. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, and (3) it was material to guilt or punishment. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555. This rule applies to impeachment evidence as well as exculpatory evidence. U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985). Suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1197. When the reliability of a given witness may well be determinative of guilt or innocence, "nondisclosure of evidence affecting the credibility falls within rule that suppression of material evidence justifies a new trial irrespective of good faith or bad faith of the prosecution." Giglio v. U.S., 405 U.S. 150, 92 S.Ct. 763.

The nondisclosed cooperation or deal with State and allege nontestifying codefendant was impeachment evidence that was crucial to allege codefendant credibility. Allege

codefendant was the only evidence linking applicant to crime. Had jury been able to know of the cooperation, jury could of use it to determine state's only adverse witness against applicant credibility to decide where the truth lies. An important issue in the case is allege codefendant's credibility and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it. It is reasonable probability had the material evidence been disclosed to applicant the proceeding would of been different resulting in a fair proceeding to allow applicant to fully prepare for trial. (See trial transcript pg. 476 line 3-19.)

Based on the evidence present the Applicant submits that the Court has misperceived relevant law and overlooked pertinent facts. Applicant further submits that the Court's Order of Dismissal fails to list and address all of the issues raised in the PCR Amendments with attached arguments/briefs filed by Attorney J. Falkner Wilkes on October 22, 2014 and refiled on November 3, 2014, at the PCR hearing of this case. The Applicant submits that through the evidence and testimony in record he has met his burden of proving the allegations set for in his Post-Conviction Relief Application and Amendments for Post-Conviction Relief Application.

Accordingly, this Applicant moves this Honorable Court to enter a ruling on the issues raised that not ruled upon to preserve those overtook pertinent to facts presented in Applicant's Amendments with attached arguments/briefs filed twice and tried at the PCR hearing. That the Applicant be granted relief pursuant to Strickland based on a finding that trial counsel failed to render effective assistance under prevailing professional norms and, that the Applicant was prejudiced by that failure.

CONCLUSION

Based on the foregoing, the Applicant moves to have his convictions and sentences vacated, and a new trial granted.

Respectfully submitted
Rishawn Reeder
Rishawn Reeder

December , 2014

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }
Rishawn Reeder, }
#316370, }
Applicant, }
V. }
State of South Carolina, }
Respondent }

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
Case No. 2012-CP-42-0509

CERTIFICATE OF SERVICE

I certify that I, Rishawn Reeder, have on the 30th day of December, 2014, served the Applicant's Motion pursuant to Rule 59(e) on the Respondent, State of South Carolina, by placing a copy of same in the United States Mail, postage prepaid, addressed to all below addresses as follows:

- 1) Suzanne White
Office of Attorney General
P.O. Box 11549
Columbia, S.C. 29211
- 2) M. Hope Blackley, Clerk
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, S.C. 29304
- 3) The Honorable R. Keith Kelly
180 Magnolia Street, 2nd Floor
Spartanburg, S.C. 29304
- 4) South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Respectfully submitted
Rishawn Reeder
Rishawn Reeder

Sworn to before me this 30th day of December, 2014.
Nancy C. Mendenhall
Notary Public for South Carolina
My commission expires: 1-23-2023

Rishawn Reeder # 316370
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AMS

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DEC 30 2014

P.C.I. MAILROOM