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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2014-000925
Circuit Court Case No. 2012-CP-23-07837

Gerald Brown, #174505,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

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II. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE A VALID AND PRESERVED ARGUMENT IN BROWN'S DIRECT APPEAL.

STATEMENT OF THE CASE

Petitioner Gerald Brown was indicted in the Greenville County Court of General Sessions on the following charges: possession of a weapon during the commission of a crime; assault and battery of a high and aggravated nature; impersonating law enforcement; malicious injury to a police dog; burglary in the first degree; armed robbery; three counts of kidnapping; and resisting arrest.

Maintaining his innocence of these crimes, Petitioner was tried by a jury April 14 – 16, 2009, in front of the Honorable Edward Miller. He was convicted of all counts. Based on a notice of enhancement filed by the State, Brown was sentenced to life without parole, plus five years consecutive.

Brown appealed to the South Carolina Court of Appeals, raising one issue related to his sentence. On May 2, 2012, the Court of Appeals affirmed the trial court in a per curiam opinion. *State v. Brown,* Unpub.Op.No. 2012-UP-262 (Ct.App. May 2, 2012).

Brown filed a motion for post-conviction relief on December 14, 2012, alleging ineffective assistance of both trial and appellate counsel. A hearing on Brown's allegations was held February 19, 2014 in front of the Honorable G. Edward Welmaker. By written order dated April 9, 2014, Judge Welmaker denied relief and ordered Brown's action dismissed.

Brown filed a timely notice of appeal and this petition follows. Based on the following arguments, Brown requests this Honorable Court grant certiorari to the Greenville County Court of Common Pleas and reverse the decision denying post-conviction relief.

STATEMENT OF FACTS

The Trial

Brown's trial began on April 14, 2009, in the Greenville County Court of General Sessions. It was immediately apparent there was a serious problem between Brown and his trial counsel. Brown explained that he was unhappy with the amount of time he was able to spend with his trial counsel prior to his trial.

Brown initially met with his trial counsel in February of 2012. (App. p.8, ll.16-18) The attorney explained it would be a year or more before Brown's case was called for trial. (App. p.8, ll.16-20) The next time Brown met with his attorney was the Wednesday prior to his trial. (App. p.8, ll.20-24) There were two more meetings prior to trial, on Friday and Sunday the weekend before trial began. (App. p.8, l.25 – p.9, l.1) In response to Brown's complaint, the trial judge informed Brown he could proceed to trial that day with his assigned counsel or represent himself. (App. p.11, ll.5-9) The trial judge refused to entertain any motion for a continuance and ordered Brown's trial to begin. He was not receptive to Brown's complaints and was unconcerned with the brief amount of time trial counsel had spent preparing for a trial involving a potential life without parole sentence.

This case involved a home invasion. A number of facts were hotly disputed as the trial progressed. The home invasion began when the victim came home and was approached outside of his house by a masked man with a gun. (App. p.94, ll.6-11) The man allegedly stole $23,000 from the victim. (App. p.101, ll.18-20)

The first issue at trial was the inability of any of the witnesses to identify Petitioner Brown as the man who was inside the house. The victim was unable to identify the man who tied him up and never saw the man's face. (App. p.100, ll.22-25) A responding police officer, Dan Accord, arrived while the robbery was in progress and was able to see what was going on in the house. (App. p.139, l.1 – p.140, l.5) Accord could not identify the person committing the robbery inside the house. (App. p.152, ll.12-19)

The suspect exited the house and was immediately confronted by police officers. (App. p.141, ll.4-9) The suspect had exited in the front of the house. (App. p.141, ll.10-12) The suspect ran around the house, through the backyard, and into the woods. (App.p.141, ll.21-25; p.142, ll.8-16) The suspect was described as wearing a police-issued bulletproof vest over a blue shirt with gold lettering that appeared to say "police", as well as a mask covering his face. (App. p.142, ll.17-23) After the man ran into the woods, a K-9 officer was dispatched after him. (App. p.143, ll.6-7)

Accord described the officers on the scene waiting for the dog to begin pursuing the suspect before they continued the chase. (App. p.143, ll.7-11) It appears the officers took off after the suspect once the dog had entered the woods in pursuit of the suspect. (App. p.143, ll.11-14)

It was eventually Brown who was located fighting with the police dog, who had caught him and attacked him. (App. p.202, l.6 – p.203, l.10) Police officers testified the bulletproof vest and police shirt where either on Brown or near where Brown was found with the police dog. This would become another major point of contention during the trial.

Trial counsel pointed out through cross-examination of police officer Michael Bryan that the police shirt and bulletproof vest were listed on a forensics reports as having been found in front of the house. (App. p.190, l.20 – p.191, l.9) Another law enforcement witness, Chuck Porter, was questioned about the location of these items at the time of the arrest and admitted his report did not mention the location of the items at the time of the arrest. (App. p.186, ll.9-19) The same witness testified he was not aware of these items being carried to the front of the house where these events occurred. (App. p.286, ll.20-23)

Bryan testified he believed all of the witnesses would testify the vest and the shirt were found in the front of the house, based on the forensics report. (App. p.232, ll.21-25) He also stated no one else would claim to have removed the items from the woods. (App. p.233, ll.1-2) Bryan was unclear as to whether he actually carried the items out of the woods or whether he claimed to have carried the items out of the woods in order to match the location of the evidence with the various stories told by law enforcement related to the items. (App. p.233, ll.2-25)

Other witnesses testified all of these items were found in the front of the residence, not in the woods where Brown was ultimately apprehended. (App. p.246, ll.1-10)

Gerald Brown testified in his own defense. Though the victim had denied knowing Brown at the scene of his arrest, Brown testified he and the victim had known each other their whole life. (App. p.315, l.18 – p.316, l.5) In addition to growing up together, Brown and the victim had conducted drug deals together in the past. (App. p.316, ll.5-6; p.317, ll.5-18) On the night in question, Brown took $23,000 to Howard's house to buy 54 ounces of cocaine. (App. p.318, ll.17-21)

Brown testified he noticed someone tied up on the floor when he approached the door of Howard's house. (App. 319, ll.2-11) Brown then called his cousin, who had dropped him off at the house. (App. p.319, ll.11-12) Brown's cousin told him to wait in the woods behind the house and he would pick him up as soon as he could return. (App. p.319, ll.13-17) Brown entered the woods behind Howard's house to wait for his cousin. (App. p.319, ll.18-19)

As Brown waited in the woods, he heard police yelling and loud noises and he saw flashing lights. (App. p.322, ll.1-5) Brown ran away from the commotion and was chased and ultimately attacked by a dog. (App. p.322, ll.5-19) Brown testified he was wearing a white shirt at the time of his arrest and it was covered in blood and bite marks from the dog attack. (App. p.324, ll.12-20)

Additional facts relevant to the Petitioner's claims are described in the argument portion of this petition.

ARGUMENT

I. TRIAL COUNSEL WAS INEFFECTIVE AT PETITIONER BROWN'S TRIAL.

The standards for considering an application for post-conviction relief are well-settled. The applicant has the burden of proving the allegations in the application. *Butler v. State,* 286 S.C. 441, 442 (1985). This Court should uphold the PCR court's finding if it is supported by any evidence of probative value. *Cherry v. State,* 300 S.C. 115, 119 (1989).

There are two familiar prongs for determining whether trial counsel has rendered ineffective assistance of counsel to an applicant. Petitioner Brown must show that counsel's performance was deficient and that he was prejudiced by counsel's deficient performance. *Strickland v. Washington,* 466 U.S. 668 (1984); *Porter v. State,* 368 S.C. 378, 383 (2006).

In this case, there is no question trial counsel rendered deficient performance based on the inadequate time available for pretrial investigation and preparation. Because of this failure to properly prepare for Petitioner's trial, Petitioner was prejudiced in a number of ways described below.

a. Trial counsel was ineffective for failing to conduct meaningful pretrial investigation and preparation.

Brown complained prior to the start of his trial that he did not feel comfortable with the amount of time he spent with his trial counsel. At the PCR hearing, Brown reiterated those complaints and expanded on his issues with his trial attorney.

Brown first met his trial counsel in the jail with a group of eight or nine guys. (App. p.629, ll.5-6) They then met for a few minutes individually. (App. p.629, ll.7-8) Brown testified his trial counsel told him he would probably go to trial in a year or a year and a half. (App. p.629, ll.8-9) A few months later, trial counsel returned on a Wednesday and informed Brown they would be going to trial in his case the following Monday. (App. p.629, ll.11-14) He met with Brown a few times over the next several days and trial began. (App. p.629, ll.14-16)

Brown was very concerned about going to trial because he had not sufficiently discussed the case with his attorney. (App. p.631, ll.10-13) He did not get an opportunity to listen to an important 911 tape because his attorney's laptop died before they could listen to the entire tape. (App. p.631, ll.13-16) Brown had not discussed any discovery or the facts of his case with his trial attorney prior to the meeting the week before trial. (App. p.632, l.21 – p.633, l.14) Though he was able to discuss his theory of the case with his attorney right before trial, he and his attorney could not agree on what needed to be done to prepare his defense. (App. p.633, ll.15-23) Obviously, there was no time to resolve these disagreements or develop an appropriate attorney-client relationship when the relevant meetings were taking place the weekend prior to the trial.

Brown's trial counsel testified at the PCR hearing and did not have a significantly different version of events from Brown. Brown had previously been represented by a lawyer he had hired. (App. p.657, ll.17-21) The attorney was appointed to Brown's case in January. At the time, the matter was not set for trial. (App. p.658, ll.8-18) This case came up for trial shortly after the trial attorney was appointed. (App. p.658, ll.19-21)

The trial attorney testified regarding his meetings with Brown. His description of the initial meeting was the same as Brown's description. (App. p.659, ll.2-21) There was apparently another brief meeting that Brown did not testify about. The trial attorney testified they met regarding plea negotiations but it did not last long and there was not a lot of substantive discussion. (App. p.660, ll.3-10)

Brown's trial counsel agreed his next meeting was the Wednesday before trial. He was surprised that the matter was set for trial so quickly. (App. p.660, ll.14-16) He had another trial the week before that was very serious and took up a significant amount of his time. (App. p.660, ll.20-23) Trial counsel also agreed that he had only been informed of a potential witness, Andrell Terry, immediately prior to the trial, though it was not clear in which meeting this took place. (App. p.661, ll.1-8) Though he attempted to have an investigator contact Terry, he was unable to find him. (App. p.661, ll.7-18)

The meetings between Brown and his trial attorney were fairly hostile, as Brown was intent on firing his attorney. (App. p.662, ll.23-25) The lack of time the attorney spent with Brown became critical as he explained the defense asserted at trial. Brown's defense developed as the trial progressed. (App. p.663, ll.6-10) Trial counsel heard a number of relevant facts for the first time because Brown had not been forthcoming with him in the few meetings that took place right before the trial. (App. p.663, ll.21-24) While Brown eventually began to trust his attorney more as the trial progressed, the defense was evolving during the trial. (App. p.664, ll.9-11)

It is clear that only a few hours were spent preparing to defend Brown against charges that carried a sentence of life without parole. There was no evidence to dispute this. Brown's trial attorney was unable to investigate his defense, build a proper attorney-client relationship, or properly discern the details of Brown's trial defense. Even Brown's trial attorney felt that Brown should not have been forced to go to trial under these circumstances. (App. p.663, ll.10-18)

The Court of Appeals has considered a similar issue and determined that the brevity of a trial attorney's preparation is not, by itself, ineffective assistance of counsel. *Smith v. State,* 404 S.C. 493 (Ct.App. 2012). However, the *Smith* case demonstrates that Brown is entitled to relief under in this case.

Specifically, the *Smith* case cites several other cases that demonstrate a petitioner must show the length of time spent consulting with a defendant and preparing for a trial caused actual prejudice. Speculation is not enough; the applicant must show how the outcome of the trial would have been different if counsel had spent more time with the defendant. *Harris v. State.* 377 S.C. 66, 75-76 (2008).

In another case, the Court found trial counsel's lack of preparation did not prejudice an applicant because he did not show any evidence that counsel could have discovered additional defenses or that he had asked for a particular witness to be called at trial. *Jackson v. State,* 329 S.C. 345, 353-54 (1998). The instant case is entirely different. Brown did inform trial counsel he wanted to call a particular witness. As discussed in detail below, the witness was willing to testify

and could have offered a reason for Brown's presence at the scene of his arrest, as well as corroborating Brown's testimony. In addition, trial counsel was clear that he was unable to properly develop a defense in Brown's case prior to trial. He testified he was learning about the case as it progressed, which is a clear indication he was not adequately prepared for the trial. This Court cannot approve of an attorney "winging it" in a life without parole case.

Unlike other cases South Carolina appellate courts have considered involving a failure to adequately investigate a criminal case, an appropriate amount of investigation in this case would have made a difference. See *Skeen v. State,* 325 S.C. 210, 214-15 (1997). Trial counsel clearly testified he was not entirely prepared for trial and did not have the trust of his client. Had counsel spent enough time with Brown to develop a proper attorney-client relationship, Brown's attorney would have been aware of his potential defenses and able to present a competent and effective defense.

b. Trial counsel was ineffective for failing to locate and call an exculpatory witness at Brown's trial.

Brown's defense centered on being in the wrong place at the wrong time. While he had a witness who could have corroborated his story, the witness was never called to testify at trial. Brown informed trial counsel his cousin, Andrell Terry, could confirm that he was at the victim's house to buy drugs, not rob the victim. Trial counsel testified he could not locate Terry prior to the trial. However, he did not make an attempt to locate Terry until just a few days before trial. He was unable to conduct this search earlier because it was only a few days before Brown's trial that counsel met with Brown and began preparing for the case.

Terry testified at the PCR hearing that he would have been able to testify that the victim and Brown had known each other for most of their lives. (App. p.600, ll.13-17) This was an important point because the victim testified he did not know Brown when he observed Brown after his arrest. The victim's credibility was an issue, as he claimed he was robbed of a similar amount of money to the amount Brown brought to buy drugs from him. Strangely, it appears the

cash was returned to the victim with little or no question as to whether he actually owned it or its source. (App. p.102, ll.2-12)

Terry also testified about his willingness to explain he had dropped Brown off at the victim's house. (App. p.601, ll.20-22) Brown had shown the $23,000 in his possession to Terry as they drove the victim's house. (App. p.602, ll.9-19) Terry also described Brown's clothing. He was wearing a white T-shirt and jeans. (App. p.604, ll.2-4) Brown was not wearing a bulletproof vest or a dark police shirt, nor was he carrying anything in which such items could have been concealed. (App. p.604, ll.11-25; p.605, ll.1-4) Terry did not see any type of mask. (App. p.605, ll.5-23) Brown did not have a pistol and it did not appear there was anywhere to conceal a pistol. (App. p.605, l.24 – p.606, l.7) Finally, Brown was not carrying a Taser when Terry dropped him off, which was one of the weapons alleged to have been used against the victim during the robbery. (App. p.606, ll.8-14)

Terry would have testified to all of these facts at Brown's trial. He was not contacted by Brown's attorney. (App. p.607, ll.7-15) His phone number had not changed and he testified he was fairly easy to get in touch with, as he answered his phone regardless of whether he knew who was calling. (App. p.607, l.16 – p.608, l.1) Terry lived at the same address he did during the trial and never had any idea someone was trying to contact him regarding the trial. (App. p.608, ll.2-12)

There was no question Brown intended for Terry to testify at his trial. In fact, he discussed it on the record with his trial counsel during his jury trial. After the solicitor appeared to have implied Terry was available as a witness and had not been called, Brown testified he and his lawyer had discussed calling Terry as a witness, but were unable to locate him. (App. p.355, l.24 – p.356, l.5)

As discussed earlier, mere speculation about what would have happened differently with more time to prepare is not enough. An applicant must present affirmative evidence of what would have been different. *Harris,* 377 S.C. at 75-76. Brown did just that at his PCR hearing. He presented a witness who would have corroborated his story and theory of defense. There was no

question this was a favorable witness. Terry would have testified about what Brown was wearing, which became a critical issue in the trial. It is clear from the testimony of both Terry and trial counsel that the extremely limited time counsel had to locate Terry prevented him from being called as a witness. This is directly related to counsel's failure to meet with his client until a few days before trial and constitutes ineffective assistance of counsel.

c. Trial counsel was ineffective for failing to discovery and point out serious inconsistencies in the victim's testimony.

As mentioned earlier, the victim in this case claimed he did not know Brown prior to his arrest. As demonstrated by Terry's testimony, Brown and the victim had grown up together and he was obviously familiar with Brown. In addition to Terry, Brown had other witnesses that could testify Howard knew Brown and had grown up with him. In fact, Brown's sister used to date Howard. (App. p.636, ll.19-25)

The victim's failure to admit knowing Brown was important evidence in his trial. Had he believed it was Brown that robbed him, it would have made no difference whether or not he admitted to knowing Brown. On the other hand, if Brown was going to the victim's house to buy a large amount of drugs, it would have made perfect sense for the victim to deny knowing Brown. This denial allowed him to keep the large amount of money found outside of his house and avoid any trouble over involvement in the drug trade.

This evidence should have been brought out in front of the jury in order to support Brown's testimony. Because the defense was evolving, based on the lack of pretrial preparation, trial counsel did not effectively make this point, which would have bolstered Brown's defense.

d. Trial counsel was ineffective for failing to introduce critical evidence at Brown's trial.

At trial, the clothing Brown was wearing at the time of his arrest became one of the most important areas of dispute. The police officers all testified to different versions of where the bulletproof vest and police shirt Brown was alleged to have been wearing were found after Brown's

arrest. The jury picked up on this dispute and it was a relevant factor for the jury in reaching a verdict.

The jury asked several questions during deliberations. The jury first wanted to know how the dark blue shirt was removed. (App. p.443, ll.20-25) The trial court correctly declined to answer the first question because it could not comment on the facts. (App. p.444, ll.13-22) The second question was a request to hear all law enforcement testimony related to the blue police shirt supposedly found in the woods. (App. p.445, ll.14-20) The jury also wanted to see each officer's report from day of the incident. (App. p.446, ll.4-6) This request was denied, as none of those reports had been entered into evidence. (App. p.446, l.7)

Brown had testified at trial he was wearing a white t-shirt that ended up covered in blood and bite marks after the struggle with the police dog. (App. p.324, ll.12-20) The shirt was never entered into evidence by the State. (App. p.324, ll.21-23) At the PCR hearing, Brown testified he was wearing the white t-shirt and when he was arrested it was soaked in blood and torn from the police dog. (App. p.627, ll.7-12) At the time of his arrest, the shirt was taken as evidence by the police, (App. p.627, ll.18-22) It is unclear from the PCR testimony whether the police retained the shirt or denied possessing it. (App. p.627, l.23 – p.628, l.1)

Trial counsel testified he remembered testimony about the white t-shirt. (App. p.664, ll.20-23) When questioned about why he did not put this shirt into evidence, trial counsel could not remember a specific reason for failing to do this and testified "maybe [he] should have" put the bloody white t-shirt into evidence. (App. p.664, l.24 – p.665, l.3) Trial counsel stated the law enforcement witnesses were inconsistent, and possibly lying, about the clothes Brown was wearing and where they were found. (App. p.665, ll.11-20)

When questioned in more detail about the bloody shirt, trial counsel candidly admitted his argument to the jury would have been more effective had he introduced the shirt into evidence. (App. p.675, ll.16-23) Counsel's argument that there was no blood on the blue police shirt would have been far more powerful if he had been able to show the significant amount of blood that was

on the shirt Brown was wearing. The lack of blood on the police shirt, compared with the amount of blood on the white t-shirt would have made a far more compelling point in favor of the defense theory that Brown was not the man who had committed the robbery. (See App. p.389, ll.2-25)

This was a major issue at trial. The police officers who testified had inconsistent stories about the clothing and where it was located. Even trial counsel agreed much of the testimony and evidence at trial was more consistent with Brown's version of events. (App. p.665, ll.18-20) The entire defense was hamstrung by the lack of time spent preparing for trial. Because the defense was evolving as the trial progressed, there was no chance Brown's trial counsel would be able to present a well-organized, coherent defense to the charges.

II. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE A VALID AND PRESERVED ARGUMENT IN BROWN'S DIRECT APPEAL.

Brown was entitled to effective assistance of counsel on his direct appeal. *Evitts v. Lucey,* 469 U.S. 387 (1985). South Carolina has recognized this right. *Southerland v. State,* 337 S.C. 610, 615 (1999). Appellate counsel is not required to raise all non-frivolous issues that appear in the record. *Jones v. Barnes,* 463 U.S. 745, 752 (1983). However, appellate counsel was required to meet the *Strickland* standard for effective assistance of counsel.

In the instant case, appellate counsel failed to raise the trial court's instruction on accomplice liability when there was no evidence of any accomplice relationship between two or more parties. The trial court initially asked whether an accomplice liability instruction was appropriate, but both the State and the defense agreed it was not. (App. p.358, ll.21-25) The State recognized the issue was whether Brown was in the house or not during the commission of the robbery. (App. p.358, ll.24-25)

The State later requested a charge on accomplice liability. The State requested the charge on the theory there had been testimony the person inside the house made a phone call during the robbery. (App. p.366, ll.16-22) The State appeared to be arguing either Brown could have been the person on the other end of the phone call or that "Duke" was somehow involved in the robbery.

(App. p.367, ll.4-11) The defense objected to the charge, arguing that the State's theory and evidence claimed Brown was the person in the house and involved in the robbery by himself. (App. p.367, ll.13-22) Trial counsel pointed out there was no evidence of an accomplice in this case. (App. p.367, ll.20-22) The trial court agreed to charge accomplice liability without explanation. (App. p.368, l.12)

The witnesses and the prosecutor all agreed there was only one person involved in this crime. Responding officers arrived on the scene prior to the completion of the robbery. Officer Accord testified there was only one person in the house not restrained. (App. p.140, ll.6-13) Chuck Porter testified only one person came out of the house. (App. p.170, ll.10-17) Michael Bryant testified only one man was in the house with a gun according to the information he was receiving at the scene. (App. p.196, ll.3-9) Travis Wyatt testified there was no one else in the house after the initial person ran out. (App. p.280, ll.5-12) Even the solicitor in his closing argument argued to the jury there was only one person committing this crime. (App. p.420, ll.23-24; p.421, ll.16-18)

Trial counsel properly objected to this charge, preserving the matter for appeal. (App. p.440, ll.19-20) Appellate counsel was not called as a witness at the PCR hearing, though the PCR court allowed an exhibit from Brown which in part stated his claim regarding the failure to raise the issue of accomplice liability on appeal. (App. p.649, ll.12-20) It appears appellate counsel declined to raise this issue because he felt there was evidence of more than one person involved in the crime. (App. p.687) This opinion was not supported by the record. All eyewitnesses and the solicitor agreed there was only one person present at the scene who could have committed this crime.

This identical situation was recently considered by the Court of Appeals. In *Wilds v. State,* the Court considered the claim appellate counsel was ineffective for failing to raise the issue of an improper jury instruction on accomplice liability. *Wilds v. State,* 407 S.C. 432 (Ct.App. 2014). In order to properly charge accomplice liability, there must be "equivocal" evidence as to who was involved in the crime. *Id.,* at 439 (citing *Barber v. State,* 393 S.C. 232, 236 (2011)). In contrast to

Barber, there was no evidence in *Wilds* that there was more than one person involved in the relevant crime. *Id.,* at 439.

In *Wilds,* the Court of Appeals found that appellate counsel only raised one unpreserved issue on appeal and the State presented no evidence this was a valid tactical decision. *Id.,* at 440. The instant case involved the same situation. Appellate counsel raised one issue on direct appeal that was unpreserved. (App. p.535) The PCR application clearly raised this issue, placing the State on notice the representation of appellate counsel was an issue. (App. p.548) Despite this notice, the State failed to present any evidence to refute Brown's allegations.

The authority found in *Wilds* is directly on point in the instant case and requires this Court to grant relief. Appellate counsel, by failing to raise the issue regarding the accomplice liability instruction, was ineffective and the PCR court should have granted relief.

CONCLUSION

South Carolina's post-conviction procedures should represent an important protection for not just individuals, but the entire criminal justice system. This case presents a clear opportunity for the Court to recognize this protection.

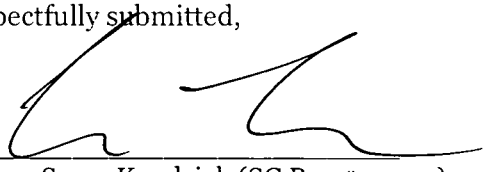
There is no question trial counsel was ineffective by failing to spend the proper amount of time preparing for trial in this matter. Brown faced life without parole. His charges were serious and deserved a serious defense. Trial counsel was unable to mount an appropriate defense with only a few hours of preparation.

The decision of the PCR court effectively approves of such limited preparation in a serious trial. This Court has the opportunity to recognize such approval is improper. Because the limited amount of preparation led to obvious prejudice to Brown, as described in this petition, the Court must reverse the decision of the PCR court and grant Brown relief from his conviction and life sentence.

Appellate counsel was also ineffective for failing to raise a valid issue that would have entitled Brown to relief. By raising only one unpreserved issue, appellate counsel was ineffective. There was no evidence presented at the hearing to the contrary.

For all of the above reasons, this Court should reverse the decision of the PCR court and order post-conviction relief for Petitioner Brown.

Respectfully submitted,



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Greenville, South Carolina
January 19, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward G. Welmaker, Circuit Court Judge

Case No. 2012-CP-23-07837
Appellate Case No. 2014-000925

RECEIVED
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S.C. Supreme Court

Gerald Brown, 174505,

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State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies a copy of the attached PETITION FOR WRIT OF CERTIORARI AND APPENDIX was hand delivered on opposing counsel at the following address, this 20th day of January, 2015, by United States Mail:

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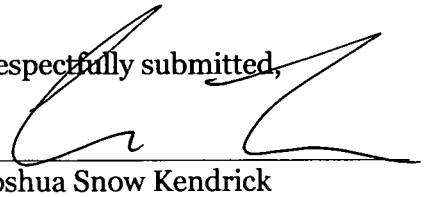
Respectfully submitted,



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January 20, 2015
Greenville, South Carolina