STATE OF SOUTH CAROLINA, IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

CHRISTOPHER JOHNSON, PETITIONER,

RECEIVED

JAN 30 2015

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA, RESPONDENT

APPELLATE CASE NO. 2014-000592

PETITIONER'S PRO SE RESPONSE TO PETITION FILED BY APPELLATE DEFENDER AND ADDITIONAL, REVERSIBLE CLAIMS FOR THE COURT'S CONSIDERATION

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RECEIVED

JAN 30 2015

S.C. SUPREME COURT

ISSUES PRESENTED

'ALLOCUTION'

DID PCR COURT ERR IN ITS FINDING(S) THAT THE TRIAL COURT AND DEFENSE COUNSEL'S INTERRUPTION, AND 'FORCED' TRUNCATION, OF ALLOCUTION AT SENTENCING WAS "HARMLESS ERROR"?

DID PCR COURT ERR IN ITS FINDING THAT THE TRIAL COURT HAD PETITIONER'S ALLOCUTION STATEMENT IN ITS POSSESSION AT THE TIME OF SENTENCING?

WAS PLEA COUNSEL'S ACQUIESCENCE, AND SUBSEQUENT COMPLICITY, TO THE TRIAL COURT'S ORDER TO "PARE DOWN" THE PETITIONER'S ALLOCUTION CLEAR-CUT "INEFFECTIVE ASSISTANCE OF COUNSEL", ACCORDING TO THE TWO-PRONG 'STRICKLAND' TEST?; STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.CT. (1984)

THE 'ALFORD' PLEA

DID THE PCR COURT ERR WHEN IT FOUND THAT THE PETITIONER HAD "KNOWINGLY" AND "INTELLIGENTLY" ENTERED INTO AN 'ALFORD' PLEA?; NORTH CAROLINA V. ALFORD, 400 U.S. 25, 91 S.CT. 160 (1970)

DID PCR COURT ERR IN FINDING THAT TRIAL COUNSEL HAD NOT MADE ANY "PROMISES" IN EXCHANGE FOR THE PETITIONER'S ABANDONMENT OF HIS CONSTITUTIONAL RIGHT TO A TRIAL?

DID PCR COURT ERR IN FINDING TRIAL COUNSEL "EFFECTIVE," IN ALLOWING PETITIONER TO ENTER THE '<u>ALFORD</u>' PLEA, IN SPITE OF EVIDENCE <u>AND</u> TESTIMONY THAT INDICATES PETITIONER <u>CLEARLY</u> WANTED NOT ONLY A TRIAL, BUT ALSO A PRE-TRIAL '<u>FRANKS</u>' HEARING TO ADDRESS HIS FOURTH AMENDMENT CLAIMS?; <u>FRANKS V. DELAWARE</u>, <u>438 U.S. 154, 98 S. CT. 2674 (1978)</u>

'PERJURY'

DID TRIAL COUNSEL COMMIT PERJURY, AT THE PETITIONER'S PCR HEARING, WHEN HE TESTIFIED THAT HE HAD, IN FACT, DETERMINED JOYCE EVELYN EDWARDS (THE PETITIONER'S CO-ARRESTEE ON OCTOBER 7, 2010) HAD AGREED TO COOPERATE WITH THE STATE?

IF SO, DOES THE PERJURY, <u>INDEPENDENT</u> OF THE IMPLIED FAILURE TO INVESTIGATE POSSIBLE DEFENSES, CONSTITUTE "DEFICIENT PERFORMANCE"? DOES THE PERJURY, <u>IN CONJUNCTION WITH</u> THE IMPLIED FAILURE TO INVESTIGATE POSSIBLE DEFENSES, CONSTITUTE "DEFICIENT PERFORMANCE"?

ARGUMENTS

THE PCR COURT ERRED IN ITS FINDING THAT THE PETITIONER'S ALLOCUTION STATEMENT WAS AVAILABLE TO THE COURT AT THE TIME OF SENTENCING, AND THAT PLEA COUNSEL'S FAILURE TO OBJECT TO THE INTERRUPTION OF THAT ALLOCUTION (PLUS HIS OWN AGREEMENT TO ITS TRUNCATION) CONSTITUTED A "HARMLESS" ERROR.

PLEA COUNSEL WAS DEFICIENT AND INEFFECTIVE WHEN HE ACQUIESCED, AND SUBSEQUENTLY INSTRUCTED PETITIONER TO COMPLY, WITH AN INSTRUCTION TO "PARE DOWN" THE ALLOCUTION, JUST MOMENTS BEFORE PETITIONER WAS SENTENCED.

THE PCR COURT PLAINLY ERRED WHEN IT FOUND PETITIONER'S PLEA WAS "KNOWINGLY" AND "INTELLIGENTLY" MADE, AND THAT PLEA COUNSEL HAD NOT MADE ANY "PROMISES" IN EXCHANGE FOR THE PETITIONER'S ABANDONMENT OF HIS RIGHT TO JURY TRIAL.

THE PCR COURT ERRED IN FINDING TRIAL COUNSEL "EFFECTIVE", IN ALLOWING PETITIONER TO ENTER AN '<u>ALFORD</u>' PLEA, IN SPITE OF PETITIONER'S EXPRESSED DESIRE FOR NOT ONLY A TRIAL, BUT A PRE-TRIAL '<u>FRANKS</u>' HEARING; DESPITE PETITIONER'S MERITORIOUS AND PERSPICUOUS FOURTH AMENDMENT CLAIMS; AND, IN SPITE OF PETITIONER'S CLAIMS OF PROSECUTORIAL MISCONDUCT, BASED ON PETITIONER'S DISCOVERY THAT <u>RACE</u> WAS A LIKELY FACTOR, NOT ONLY IN HIS ARREST, BUT ALSO HIS

PROSECUTION.

THE PLEA COUNSEL'S PERJURY, AT THE PCR HEARING, IS SO INDICATIVE OF "DEFICIENT PERFORMANCE", THAT THE PCR COURT NOT ONLY ERRED IN FINDING COUNSEL "EFFECTIVE", BUT IN FINDING HIM <u>CREDIBLE</u>.

BLACK'S LAW DICTIONARY (8TH ED., 2004) DEFINES 'ALLOCUTION' AS "FORMALITY OF COURT'S INQUIRY OF PRISONER AS TO WHETHER HE HAS ANY LEGAL CAUSE TO SHOW WHY JUDGMENT SHOULD NOT BE PRONOUNCED AGAINST HIM ON VERDICT OF CONVICTION." DENIAL OF THE "...TRADITIONAL RIGHT OF A CRIMINAL DEFENDANT TO ALLOCUTION PRIOR TO THE IMPOSITION OF SENTENCE..." <u>GROPPI V. LESLIE</u>, <u>404 U.S. 496</u>, <u>92 S.CT. 582 (1972)</u>, HAS BEEN RECOGNIZED AS REQUIRING REVERSAL AS EARLY AS 1689. <u>BOARDMAN V. ESTELLE</u>, <u>957 F.2D. 1523</u>, <u>1526 (1992)</u>. THE SIXTH AMENDMENT "...DOES NOT PROVIDE MERELY THAT A DEFENSE SHALL BE MADE FOR THE ACCUSED; IT GRANTS TO THE ACCUSED <u>PERSONALLY</u> THE RIGHT TO MAKE HIS DEFENSE..." (EMPHASIS ADDED). <u>FARETTA V. CALIFORNIA</u>, <u>422 U.S. 806</u>, <u>95 S.CT. 2525 (1975)</u>. IN <u>ASHE V. NORTH CAROLINA</u>, <u>586 F.2D. 334 (1978)</u>, <u>CERT. DEN. 441 U.S. 966</u>, <u>99 S.CT. 2416 (1979)</u>, THE FOURTH CIRCUIT FOUND THAT THE RIGHT OF ALLOCUTION WAS CONSTITUTIONALLY GUARANTEED. IT IS DESIGNED TO TEMPER PUNISHMENT WITH MERCY IN APPROPRIATE CASES, AND TO

ENSURE THAT SENTENCING REFLECTS INDIVIDUALIZED CIRCUMSTANCES. U.S. V. DE ALBA PAGAN, 33 F.3D. 125 (1994).

AS WAS SET FORTH IN THE 'JOHNSON' PETITION, SUBMITTED BY PETITIONER'S APPELLATE COUNSEL, ON APRIL 9, 2012, THE PETITIONER, AFTER A MISINFORMATIVE MEETING WITH HIS THEN-COUNSEL, CHRISTOPHER POSEY, ENTERED AN 'ALFORD' PLEA IN FRONT OF THE HONOURABLE LETITIA H. VERDIN.

AT THE MEETING, CONDUCTED IN A VISITATION ROOM WITHIN THE GREENVILLE COUNTY COURTHOUSE, THE PETITIONER DISCUSSED VARIOUS ASPECTS OF HIS UPCOMING TRIAL, FOR TRAFFICKING HEROIN AND POSSESSING METHAMPHETAMINE WITH THE INTENT TO DISTRIBUTE, INCLUDING PETITIONER'S DESIRE FOR JURY TRIAL AND A 'FRANKS' HEARING. THE REASONING FOR THIS WAS DUE TO PETITIONER'S CERTAINTY THAT HIS CASE COULD BE DISMISSED BECAUSE OF MULTIPLE FOURTH AND FOURTEENTH AMENDMENT VIOLATIONS.

ALSO DISCUSSED AT THE MEETING WERE THE PETITIONER'S CONCERNS ABOUT BEING 'SELECTIVELY PROSECUTED' AND THE LIKELIHOOD OF AN INVIDIOUSLY DISCRIMINATORY, CLASS-BASED ANIMUS BEING A COMPONENT OF HIS PROSECUTION, GIVEN THE ARRESTING / INVESTIGATING OFFICERS' USE OF RACIAL SLURS DURING AND AFTER THE PETITIONER'S ARREST.

AFTER THE PETITIONER EXPLAINED THE DETAILS OF HIS CASE

TO THE PLEA COUNSEL, HE WAS DISMAYED TO HEAR THE PLEA CO-UNSEL INFORM HIM THAT A TRIAL ON HIS MERITORIOUS ISSUES WAS NOT GOING TO BE FORTHCOMING (SEE APP. 115, LL. 24 - APP. 116, LL. 6) AND HIS BEST CHANCES IN A TRIAL SETTING WOULD BE TO "... MUDDLE THE ISSUES AND HOPE FOR A MISTRIAL ..." ID.

AT THAT SAME MEETING, COUNSELOR POSEY DISCUSSED WITH THE PETITIONER THE STATE'S PLEA 'OFFER' OF FIFTEEN YEARS, WHICH THE PETITIONER HAD PREVIOUSLY, CONTINUOUSLY, AND CONSISTENTLY REJECTED, OUT OF HAND, SINCE IT WAS FIRST PROPOSED BY THE PETITIONER'S FIRST INEFFECTIVE COUNSELOR, CAROLINE HORLBECK, IN LATE-APRIL, 2011.

AFTER REFUSING TO ENTERTAIN, FOR THE UMPTEENTH TIME (INCLUDING THE ATTEMPTS BY CAROLINE HORLBECK), THE IDEA OF SIGNING A "GUILTY" PLEA FOR FIFTEEN YEARS, COUNSELOR POSEY 'STEERED' THE CONVERSATION TOWARDS AN 'ALFORD' PLEA (SEE APP. 123, LL. 18-22). ALTHOUGH THE PETITIONER WAS NOT, AND HAD NOT BEEN, INTERESTED IN TAKING ANY SORT OF PLEA (SEE APP. 108, LL. 5-7; APP. 110, LL. 8-12; APP. 111, LL. 6-9; APP. 111 LL. 24-25), HE EVENTUALLY RELENTED AND AGREED TO TAKE A PLEA AFTER CONSIDERING SEVERAL FACTORS: COUNSELOR POSEY'S SEEMING UNWILLINGNESS TO CHALLENGE THE PETITIONER'S ARREST AND FOURTH AND FOURTEENTH AMENDMENT VIOLATIONS; COUNSELOR POSEY'S SEEMING UNWILLINGNESS TO INVESTIGATE AND/OR RAISE THE SPECTRE OF A RACE-BASED 'SELECTIVE PROSECUTION'; AND COUNSELOR POSEY'S DISCL-

OSURE THAT A "GUILTY" OR 'ALFORD' PLEA WOULD ALLOW PETITIONER TO RETAIN PAROLE ELIGIBILITY, WHEREAS A JURY OR BENCH TRIAL, WITH AN ADVERSE DETERMINATION, WOULD CAUSE HIM TO FORFEIT THE ELIGIBILITY. THIS DECISION TO PLEA, EVEN AT THE MOMENT OF SENTENCING, WAS NOT WHAT THE PETITIONER WAS WANTING, BUT WHAT HE HAD TAKEN, AS A SECOND, ALTERNATIVE CHOICE (SEE APP. 29, LL. 3-10), AND EVEN THEN ONLY AFTER BEING TOLD PAROLE WAS POSSIBLE.

AFTER HIS INITIAL MEETING WITH COUNSELOR POSEY, DURING WHICH THE PETITIONER WAS UNABLE TO FORM A CONCLUSION ABOUT HIS ATTORNEY'S POTENTIAL COURTROOM PROWESS, THE PETITIONER BEGAN DRAFTING HIS ALLOCUTION STATEMENT, IN CASE THE JURY TRIAL, WHICH THE PLAINTIFF STILL WANTED AT THAT TIME, WAS NOT FAVOURABLE TO HIM. IT WAS THIS SAME "ROUGH DRAFT" THAT THE PETITIONER ATTEMPTED TO READ AT HIS SENTENCING. IT WAS STARTED SOMETIME AFTER APRIL 2, 2012 (PETITIONER'S FIRST MEETING WITH COUNSELOR POSEY), AND COMPLETED THE WEEKEND PRIOR TO THE SENTENCING ON APRIL 9, 2012. THE PETITIONER HAD HIS ALLOCUTION STATEMENT WITH HIM ON APRIL 9, 2012, NOT BECAUSE HE HAD PLANNED ON BEING SENTENCED THAT DAY, BUT BECAUSE HE CARRIED EVERYTHING HE CONSIDERED TO BE 'LEGAL' OR 'PRIVILEGED' OR 'CONFIDENTIAL' TO COURT WITH HIM. EVEN THE RECORD REFLECTS THIS "ROUGH DRAFT" (SEE APP. 12, LL. 19-20, 23).

ALSO IN THIS ALLOCUTION IS LANGUAGE THAT CLEARLY INDICATES THE PETITIONER'S DENIAL OF BEING A DRUG OR NARCOTICS "TRAFFICKER" (SEE APP. 15, LL. 23-25; APP. 16, LL. 4-5), AND HIGHLY SUGGESTIVE OF THE FACT THAT THE PETITIONER HAD NOT WANTED, OR INTENDED, AT ANY TIME, TO ENTER INTO A PLEA AGREEMENT, OR OTHERWISE ACCEPT ONE; SEE ALSO APP. 10, LL. 15-16.

LATER, WHEN THE PLEA JUDGE WAS ACCEPTING THE PETITIONER'S PLEA, THE PETITIONER WAS ASKED IF HE HAD BEEN "PROMISED" ANYTHING (SEE APP. 6, LL. 4-5) IN EXCHANGE FOR HIS PLEA, THE PETITIONER ANSWERED "ABSOLUTELY NOT" (SEE APP. 6, LL. 6) BECAUSE IT WAS THE TRUTH. HE HAD NOT BEEN "PROMISED" ANYTHING. AS FAR AS HE KNEW, AND WAS CONCERNED, BEING TOLD HE WOULD BE 'PAROLE ELIGIBLE,' IF HE PLED, WAS NO DIFFERENT THAN BEING TOLD 'TRAFFICKING' COULD RESULT IN A 7-25-YEAR SENTENCE. IT WAS A MATTER OF LAW AND NOTHING MORE. THE PETITIONER HAS NEVER ALLEGED THAT HE PROMISED HE WOULD BE GIVEN OR GRANTED PAROLE, AND THE PCR COURT, WHEN IT FOUND PLEA COUNSEL'S TESTIMONY MORE CREDIBLE THAN THE PETITIONER'S, ERRED.

AFTER THE 'ALFORD' PLEA WAS ACCEPTED, THE PETITIONER ATTEMPTED TO READ HIS ALLOCUTION STATEMENT. AT THAT TIME, THE PETITIONER FELT THAT HIS ONLY HOPE AT MITIGATING HIS SENTENCE LAY IN HIMSELF, AFTER ALL, HIS APPOINTED COUNSEL HARDLY KNEW ANYTHING ABOUT HIM, INCLUDING (BUT NOT LIMITED TO): PETITIONER'S EDUCATIONAL BACK-

GROUND; EMPLOYMENT HISTORY; ANY PAST PHYSICAL, EMOTIONAL, SEXUAL, OR CHEMICAL ABUSE; HISTORY OF MENTAL ILLNESS, ETC. FOR THE RECORD, PETITIONER, BY LISTING THE AFOREMENTIONED POTENTIALLY MITIGATING FACTORS, IS NOT IMPLYING THAT ALL OF THE FACTORS APPLIED TO HIS SITUATION, ONLY THAT HIS PLEA COUNSEL WOULD NOT HAVE KNOWN THE DIFFERENCE. AFTER ALL, HE HAD ONLY MET THE PETITIONER A SINGLE WEEK PRIOR TO THE SENTENCING (SEE APP. 6, LL. 17-18; APP. 106, LL. 22-APP. 107, LL. 13; APP. 125, LL. 19-22) AND KNEW ABSOLUTELY NOTHING ABOUT HIM, SAVE FOR WHAT HE HAD READ IN THE POLICE REPORTS. EVEN THE 'MITIGATION' THAT COUNSELOR POSEY ATTEMPTED TO OFFER THE COURT, ON BEHALF OF THE PLAINTIFF, WAS 'GENERIC,' AND COULD ALMOST FIT THE MITIGATION OF ANY CLIENT, CHARGED WITH A DRUG CRIME OR NOT.

ARTICLE ONE, SECTION FOURTEEN, OF THE SOUTH CAROLINA BILL OF RIGHTS READS: "THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED INVIOLATE. ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY; TO BE FULLY INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO BE FULLY HEARD IN HIS DEFENSE BY HIMSELF OR BY HIS COUNSEL OR BY BOTH." (EMPHASIS ADDED).

WHEN THE PETITIONER BEGAN HIS ALLOCUTION, IT WAS, AT

THE LAST PART OF HIS DEFENSE TO BE MADE, BEFORE SENTENCE WAS IMPOSED. "ROUGH DRAFT" OR NOT, THE PETITIONER OBVIOUSLY WAS TRYING TO EXERCISE HIS SIXTH AMENDMENT RIGHT(S), AFTER ALL, THE STATE HAD HAD EIGHTEEN MONTHS TO 'VILIFY' HIM. IN THE END, THE PETITIONER WAS NOT EVEN AFFORDED A LIKE NUMBER IN MINUTES TO UNDO THE "DAMAGE" THE STATE HAD A YEAR-AND-A-HALF TO INFLICT.

IN ABOUT NO CONCEIVABLE SCENARIO COULD A PUBLIC DEFENSE ATTORNEY, ESPECIALLY ONE WHO HAD MET HIS CLIENT A MERE SEVEN DAYS BEFORE SENTENCING, BE EXPECTED, OR LAY CLAIM, TO KNOW MORE ABOUT THAT CLIENT'S PARTICULARS THAN THE CLIENT THEMSELVES. "THE MOST PERSUASIVE COUNSEL MAY NOT BE ABLE TO SPEAK FOR A DEFENDANT AS THE DEFENDANT MIGHT, WITH HALTING ELOQUENCE, SPEAK FOR HIMSELF." GREEN V. U.S., 365 U.S. 301, 304 (1961); THE ENTIRE CONCEPT PROMOTED BY THE IDEA AND RIGHT TO ALLOCUTION IS THAT A DEFENDANT, NOT HIS COUNSEL, MIGHT BE OFFER SOME SORT OF 'INSIGHT' THAT ALLOW THE COURT TO VIEW HIM IN A DIFFERENT LIGHT, AND THUS PROVIDE THE CATALYST TO MITIGATE HIS SENTENCE.

"TO ACHIEVE FUNDAMENTAL EQUIVALENCY, IT IS NOT ENOUGH THAT THE SENTENCING COURT ADDRESSES A DEFENDANT ON A PARTICULAR ISSUE (SEE U.S. V. WALKER, 896 F.2D. 295, 300-301 (1990)), AFFORDS COUNSEL THE OPPORTUNITY TO SPEAK (SEE U.S. V. POSNER, 868 F.2D. 720, 724 (1989)), OR HEARS THE DEFENDANT'S SPECIFIC OBJECTIONS TO THE PRE-

SENTENCE REPORT (SEE U.S. V. PHILLIPS, 936 F.2D 1252, 1255-1256 (1991)). RATHER, THE COURT, THE PROSECUTOR, AND THE DEFENDANT MUST AT THE VERY LEAST INTERACT IN A MANNER THAT SHOWS CLEARLY AND CONVINCINGLY THAT THE DEFENDANT KNEW HE HAD A RIGHT TO SPEAK ON ANY SUBJECT OF HIS CHOOSING PRIOR TO THE IMPOSITION OF SENTENCE. DE ALBA PAGAN, SUPRA, 33 F.3D. AT 129 (EMPHASIS ADDED).

WHEN THE SENTENCING COURT INSTRUCTED THE PETITIONER TO "PARE DOWN" HIS ALLOCUTION STATEMENT (SEE APP. 21, LL. 4-5), THE INSTRUCTION WAS SIXTH AMENDMENT-VIOLATIVE AND NOT A "HARMLESS ERROR", AS THE PETITIONER WAS SENTENCED TO FIFTEEN YEARS ON BOTH CHARGES (THE MAXIMUM FOR THE "PWID" CHARGE, AND EIGHT YEARS ABOVE THE MINIMUM SEVEN YEARS FOR "TRAFFICKING"), AND BECAUSE THE COURT DID NOT HAVE ITS OWN COPY OF THE ALLOCUTION STATEMENT PRIOR TO, OR DURING SENTENCING PHASE. IT WAS NOT UNTIL AFTER THE SENTENCING THAT THE PETITIONER HANDED HIS "ROUGH DRAFT" TO HIS PLEA COUNSEL (SEE APP. 21, LL. 4-11). THE FACT THAT THE SENTENCING COURT DID NOT HAVE ITS OWN COPY, PRIOR TO OR DURING SENTENCING, IS BOLSTERED BY COUNSEL POSEY'S ADMISSION, IN PCR COURT, THAT, WHILE HE KNEW THAT THE PETITIONER HAD "...PREPARED A STATEMENT...", HE WAS UNAWARE OF "...HOW LONG THIS STATEMENT WAS..." (SEE APP. 125, LL. 2-3). IT IS PLAIN THAT, IF A COPY OF THE ALLOCUTION STATEMENT HAD BEEN PREPARED FOR THE COURT'S CON-

SIDERATION, COUNSELOR POSEY WOULD HAVE KNOWN ABOUT ITS "LENGTH", GIVEN THE FACT HE WOULD HAVE HAD TO ENTER IT INTO THE COURT'S FILE OR SUBMIT IT TO THE CLERK HIMSELF. THEREFORE, THE PCR COURT ERRED IN ITS FINDING THE TRIAL COURT HAD A COPY OF THE ALLOCUTION STATEMENT BEFORE IT PRIOR TO, OR DURING, THE SENTENCING.

IN THE COURTROOM, WHEN THE COURT INSTRUCTED THE PETITIONER TO "PARE DOWN" HIS ALLOCUTION, COUNSELOR POSEY, INSTEAD OF PROTESTING OR OBJECTING TO WHAT SHOULD HAVE BEEN A READILY APPARENT SIXTH AMENDMENT VIOLATION, NOT ONLY FAILED TO OBJECT, BUT ACTUALLY HELPED <u>PROMOTE</u> THE VIOLATION, TELLING THE PETITIONER TO TAKE "ABOUT A MINUTE MORE" (SEE <u>APP. 21, LL. 4-11</u>). THIS WAS A CLEARLY HARMFUL ACT BY THE PETITIONER'S PLEA COUN- AS HE HIMSELF FAILED TO PROTECT THE PETITIONER'S RIGHT TO ALLOCUTION <u>AND</u> BECAUSE THE PETITIONER RECEIVED MORE THAN THE 'MINIMUMS' ON <u>BOTH</u> COUNTS.

REGARDING THE '<u>STRICKLAND</u>' TEST AND COUNSELOR POSEY'S ACQUIESCENCE TO, AND COMPLICITY IN, THE <u>IN COURT</u>, SIXTH AMENDMENT VIOLATION, THE RESULT IS CLEAR: COUNSELOR POSEY WAS DEFICIENT. PERIOD. IN <u>STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.CT. 2052 (1984)</u>, THE COURT OUTLINED A TWO-PRONGED TEST TO DETERMINE WHETHER OR NOT AN ATTORNEY'S PERFORMANCE WAS DEFICIENT: 1) A PETITIONER WOULD HAVE TO

DEMONSTRATE 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.

THE FIRST PRONG OF THE TEST IS EASILY MET. WHEN THE PLEA COURT ENCROACHED UPON THE PETITIONER'S SIXTH AMENDMENT RIGHTS, COUNSELOR POSEY NOT ONLY FAILED TO OBJECT OR PROTEST, HE EXACERBATED AND AGGRAVATED THE SITUATION BY AGREEING WITH THE COURT AND TELLING THE PETITIONER HE SHOULD REDUCE HIS STATEMENT TO "ABOUT A MINUTE MORE" (SEE APP. 21, LL. 4-11). IF THE COURT HAD FELT THAT SOME PORTION OF THE PETITIONER'S ALLOCUTION STATEMENT WAS IRRELEVANT, IT HAD THE OPTION OF DISREGARDING IT AFTER IT HAD BEEN OFFERRED, NOT BEFORE IT HAD BEEN UTTERED. THIS WAS AN ERROR THAT WAS OF CONSTITUTIONAL MAGNITUDE, REVERSIBLE, AND COUNSELOR POSEY WAS ACCOMPLICE TO IT. THIS FACT IS SUFFICIENT TO MEET THE FIRST PRONG OF THE 'STRICKLAND' TEST. AND, IF IN THE ALTERNATIVE COUNSELOR POSEY FAILED TO RECOGNIZE THE VIOLATION OF THE SIXTH AMENDMENT, HE AGAIN WOULD BE DEFICIENT, BECAUSE A "REASONABLE", "PROFESSIONAL", AND "EFFECTIVE" COUNSELOR PRACTICING CRIMINAL LAW WOULD HAVE, OR BE EXPECTED TO HAVE, AT LEAST FUNDAMENTAL AND RUDIMENTARY KNOWLEDGE OF SOMETHING AS BASIC TO THE PRACTICE OF LAW AS THE CONSTITUTION OF THE UNITED STATES, AS WELL AS THE AMENDMENTS TO IT.

CONCERNING "PRONG TWO" OF THE 'STRICKLAND' TEST, THE RESULTING PREJUDICE OF PLEA COUNSEL'S DEFICIENT PERFORMANCE IS CLEAR AND OBVIOUS: THE PETITIONER WAS SENTENCED TO FIFTEEN YEARS ON EACH COUNT, A FAR CRY FROM THE MINIMUM SENTENCES FOR EITHER CHARGE.

AT THE PCR HEARING, PLEA COUNSEL WAS QUESTIONED ABOUT WHETHER OR NOT HE BELIEVED THE TRUNCATION OF PETITIONER'S ALLOCUTION STATEMENT AFFECTED PETITIONER'S SENTENCE (SEE APP. 125, LL. 11-14) BY THE STATE AND BY PETITIONER'S COUNSEL (SEE APP. 129, LL. 22 - APP. 130, LL. 1-14). THE SHORT ANSWER IS THIS: IT DOES NOT MATTER. PLEA COUNSEL WAS NO MORE QUALIFIED TO PRESUME THE DISPOSITION OF THE COURT THAN HE WOULD HAVE BEEN IN DECIDING WHAT PARTS OF PETITIONER'S ALLOCUTION STATEMENT WERE PERTINENT AND WHICH WERE NOT. AS SUCH, THE PCR COURT ERRED WHEN IT DID NOT FIND THAT PLEA COUNSEL'S PERFORMANCE WAS DEFICIENT AND THAT HE HAD RENDERED "INEFFECTIVE ASSISTANCE OF COUNSEL," ACCORDING TO THE TWO-PRONG, 'STRICKLAND' TEST. (SEE NANCE V. OZMINT, 626 S.E. 2D. 646 (2008) - THE COURT FOUND THAT [TRIAL] COUNSEL'S FAILURE TO INVESTIGATE, PLAN, AND PRESENT A DEFENSE CONSTITUTED "A CLASSIC EXAMPLE OF A COMPLETE BREAKDOWN IN THE ADVERSARIAL PROCESS". AMONG DEFENSE COUNSEL'S FAILINGS WAS FAILING TO PRESENT MITIGATING SOCIAL HISTORY EVIDENCE.; IN PETITIONER'S CASE, PLEA COUNSEL COULD OFFER NO MITIGATING SOCIAL HISTORY, ON

BEHALF OF THE PETITIONER, BECAUSE COUNSEL HAD NONE. HE HAD FAILED TO INVESTIGATE THE PETITIONER'S BACKGROUND, MORE OR LESS LEAVING THE PETITIONER TO 'FEND FOR HIMSELF.' AND, WHEN AT THE PLEA HEARING THE PETITIONER ATTEMPTED TO DO JUST THIS, PLEA COUNSEL HIMSELF WAS COMPLICIT IN SEEING THIS ATTEMPT AT A DEFENSE THWARTED.

ON APRIL 9, 2012, JUST PRIOR TO HIS CHANGE OF PLEA AND SENTENCING, PETITIONER WAS INFORMED BY HIS PLEA-COUNSEL THAT PAROLE WAS <u>AVAILABLE</u> FOR THE MORE 'SERIOUS' OF THE TWO CHARGES, "TRAFFICKING HEROIN", <u>IF</u> HE PLED "GUILTY", OR ENTERED AN '<u>ALFORD</u>' PLEA, BUT THE <u>POSSIBILITY</u> WOULD BE FORFEIT IF THE PETITIONER INSISTED ON A TRIAL AND SUBSEQUENTLY 'LOST.'

DURING THE PLEA PROCEEDINGS, WHEN THE PLEA COUNSEL WAS ADDRESSING THE COURT (SEE <u>APP. 12, LL. 5-8</u>), HE STATED THAT: "...HE UNDERSTANDS THE CONSEQUENCES OF IT BEING VIOLENT AND THE NON-PAROLE. WE WENT OVER THAT..." AFTERWARDS, THE COURT FAILED TO CLARIFY THIS 'AMBIGUOUS' STATEMENT, AND DID NOT ASK THE PETITIONER IF <u>HE</u> KNEW, OR UNDERSTOOD, THAT THE "TRAFFICKING" CHARGE, PLED TO OR NOT, WAS A NON-PAROLEABLE OFFENSE. AT THE PLEA HEARING, THE PETITIONER HIMSELF RAISED NO QUESTIONS OR OBJECTIONS TO THIS STATEMENT BECAUSE IT SEEMED TO REINFORCE <u>EXACTLY</u> WHAT HE HAD BEEN TOLD AT THE PRE-PLEA MEETING: THE "TRAFFICKING" CHARGE <u>WAS</u> VIOLENT,

AND, IF THE PETITIONER INSISTED ON TRIAL, A NON-PAROLEABLE OFFENSE. ALTHOUGH TRIAL COURT ERROR IS NOT COGNIZABLE IN A PCR HEARING, THE PCR COURT NONETHELESS ERRED WHEN IT FOUND THAT THE PETITIONER HAD BEEN "MISADVISED" AND ATTEMPTED TO PLAY WITH SEMANTICS WHEN IT NOTED THE PETITIONER HAD ANSWERED "ABSOLUTELY NOT" WHEN HE WAS ASKED BY THE PLEA JUDGE IF HE HAD BEEN PROMISED ANYTHING "IN EXCHANGE FOR HIS GUILTY PLEAS" (SEE APP. 138).

THE TESTIMONY OF PLEA COUNSEL, AT THE PCR HEARING, DIRECTLY CONTRADICTS THE COURT'S FINDING. DURING THE CROSS-EXAMINATION OF THE PLEA COUNSEL, BY THE PETITIONER'S PCR COUNSEL, THE PLEA COUNSEL WAS ASKED (IN REFERENCE TO POSSIBLE 'PAROLE ELIGIBILITY') IF HE HAD, IN ESSENCE, "... ADVISED MR. JOHNSON THAT IF HE EXERCISED HIS CONSTITUTIONAL RIGHT TO A TRIAL THAT HE MIGHT BE PENALIZED?..." (SEE APP. 128, LL. 5-7). PLEA COUNSEL THEN RESPONDED "... I DON'T KNOW IF I SAID HE WOULD BE PENALIZED IF HE WENT TO TRIAL. I SAID HE COULD BE GIVEN — I THINK HE WOULD BE GIVEN SOMEWHAT OF A BREAK IF HE DECIDED TO ENTER HIS PLEA, I THINK IS THE WAY I PUT IT..." (SEE APP. 128, 8-11; EMPHASIS ADDED). ALTHOUGH PLEA COUNSEL EXPLICITLY CONTENDS THAT HE DID NOT INFORM PETITIONER HE WOULD GARNER "PAROLE ELIGIBILITY" IN THE EVENT OF A PLEA, THE PCR COURT CLEARLY ERRED WHEN IT FOUND THE PETITIONER'S PLEA COUNSEL HAD NOT MADE HIM ANY

"PROMISES" IN EXCHANGE FOR HIS PLEA. AFTER ALL, WHAT IS "...I SAID...I THINK HE WOULD BE GIVEN SOMEWHAT OF A BREAK IF HE DECIDED TO ENTER HIS PLEA..." (EMPHASIS ADDED) IF NOT A "PROMISE" CLOAKED IN METAPHOR? THIS STATEMENT CLEARLY INDICATES THAT, PRIOR TO THE CHANGE OF PLEA, PETITIONER'S COUNSEL WAS EITHER: MAKING HIM "PROMISES", THEREBY VITIATING THE ADVERSARIAL PROCESS BY CAUSING HIM TO FOREGO THE ADVERSARIAL PROCESS BY WAY OF PLEA, OR MISADVISING HIM, PREVENTING HIM FROM "KNOWINGLY" OR "INTELLIGENTLY" ENTERING INTO HIS 'ALFORD' PLEA.

LASTLY, ALTHOUGH THE COURT 'OUTLINED' THE POTENTIAL SENTENCING RANGE FOR THE "PWID" AND "TRAFFICKING" CHARGES, THERE WAS NO MENTION BY THE COURT OR THE SOLICITOR, AND NO CLARIFICATION BY PLEA COUNSEL, THAT THE "TRAFFICKING" CHARGE WAS A NON-PAROLEABLE OFFENSE (SEE APP. 4, LL. 17-22; THEN SEE APP. 12, LL. 6-8). HAD THIS DISCLOSURE TAKEN PLACE, THE PETITIONER'S PLEA COULD HAVE BEEN WITHDRAWN, AND HE COULD HAVE EXERCISED HIS RIGHT TO A TRIAL. THIS FAILURE, BY THE TRIAL/PLEA COURT, TO ENSURE THAT THE PETITIONER WAS FULLY COGNIZANT OF THE FULL SPECTRUM OF PENALTIES INVOLVED, WERE A PLEA ENTERED, OR, AT TRIAL, "GUILT" DETERMINED, IS PRIMA FACIE EVIDENCE THAT THE PETITIONER DID NOT ENTER INTO HIS PLEA "KNOWINGLY" OR "INTELLIGENTLY" ENTERING INTO HIS 'ALFORD' PLEA. SEE ALEXANDER V. STATE, 402 S.E.2D.

484 (1991) - TRIAL COUNSEL FOUND INEFFECTIVE FOR ADVISING CLIENT THAT HE WOULD FACE POTENTIAL LIFE SENTENCE IF HE PROCEEDED TO TRIAL WHEN HE WOULD HAVE ACTUALLY FACED A SEVEN-TO-TWENTY-FIVE YEAR SENTENCE FOR ONE CHARGE AND A TWENTY-FIVE YEAR SENTENCE FOR THE SECOND CHARGE. BASED ON COUNSEL'S ADVICE, DEFENDANT PLED GUILTY; SEE ALSO RAY V. STATE, 401 S.E. 2D. 151 (1991).

AT BOTH MEETINGS WITH PLEA COUNSEL, THE PETITIONER CLEARLY INDICATED THAT HE HAD BEEN SUBJECTED TO A FOURTH AND FOURTEENTH AMENDMENT - REPUGNANT SEARCH, SEIZURE, AND ARREST; HAD BEEN DEPRIVED OF HIS RIGHT TO A 'RIVERSIDE' HEARING (COUNTY OF RIVERSIDE V. MCLAUGHLIN, 111 S.CT. 1661 (1991), 500 U.S. 44, 114 L.ED. 2D. 49, ON REMAND 943 F.2D. 36); HAD HAD HIS RIGHT TO A PRELIMINARY HEARING "WAIVED," WITHOUT HIS KNOWLEDGE OR CONSENT; AND STILL WANTED A 'FRANKS' HEARING, PRIOR TO A TRIAL. INSTEAD OF EVEN ATTEMPTING AN INVESTIGATION OF PETITIONER'S CLAIMS, PLEA COUNSEL SIMPLY PUSHED THE PETITIONER TOWARDS A PLEA, ALTHOUGH THE MERITS OF THE PETITIONER'S CLAIM WERE PLAIN, AND ALL OF THE EVIDENCE AGAINST HIM WAS THE DIRECT RESULT AND FRUIT OF AN ILLEGAL SEIZURE, SEARCH, AND ARREST. SEE SIKES V. STATE, 448 S.E. 2D. 560 (1994) - TRIAL COUNSEL FOUND INEFFECTIVE FOR FAILING TO RAISE A MERITORIOUS FOURTH AMENDMENT CLAIM THAT DEFENDANT WAS IMPROPERLY DETAINED WHERE THE ONLY EVIDENCE OF DEFENDANT'S GUILT

WAS DISCOVERED AS A RESULT OF THE UNLAWFUL DETENTION. ALTHOUGH HE ACKNOWLEDGES HE WAS MADE AWARE OF THE PETITIONER'S FOURTH AMENDMENT CLAIMS (SEE APP. 123, LL. 24 - APP. 124, LL. 1-6), AND THE PETITIONER'S DESIRE FOR A 'FRANKS' HEARING, PLEA COUNSEL BLAMED HIS FAILURE TO INVESTIGATE ON THE PETITIONER, STATING: "... HE NEVER ASKED ME TO GO OUT AND INVESTIGATE ANYTHING..." (SEE APP. 125, LL. 15-18).

THIS WAS PLAINLY DEFICIENT PERFORMANCE. ONCE THE ISSUES WERE RAISED, INVESTIGATION OF THE CLAIMS WAS IMPLIED. THIS IS AN INTRINSIC COMPONENT OF THE ADVERSARIAL PROCESS. AS PLEA COUNSEL HIMSELF STATED: "... HE AND I DISCUSSED THE CASE THOROUGHLY. WENT OVER HIS VERSION OF EVENTS. I SPENT SEVERAL HOURS WITH HIM THE FIRST TIME WE MET AND AGAIN ANOTHER HOUR AND A HALF PLUS THE DAY HE PLED..." (SEE APP. 125, LL. 18-21). THERE IS ABSOLUTELY NO MENTION OR CLAIM OF PLEA COUNSEL INVESTIGATING THE PETITIONER'S CLAIMS OF CONSTITUTIONAL RIGHTS' VIOLATIONS. THIS IS THE REAL REASON THE PLEA COUNSEL COULD NOT DEFEND [illegible] PETITIONER ON THE MERITS OF HIS CASE AND, IN THE EVENT OF A TRIAL, NEEDED "TO MUDDLE THE ISSUES", EXACTLY AS THE PETITIONER CLAIMED AT THE PCR HEARING (SEE APP. 115, LL. 24 - APP. 116, LL. 1-6). THE PLEA COUNSEL TOOK ABSOLUTELY NO STEPS TO CORROBORATE OR DISPROVE THE PETITIONER'S CLAIMS. THIS INDIFFERENCE MEETS BOTH PRONGS OF THE 'STRICKLAND' TEST.

LASTLY, PETITIONER WISHES TO ADDRESS PLEA COUNSEL'S <u>PERJURY</u> AT THE PCR HEARING, AND THE PRIMA FACIE <u>PROOF</u> OF "INEFFECTIVE ASSISTANCE OF COUNSEL" THAT IT REPRESENTS.

WHEN PETITIONER MET WITH PLEA COUNSEL, ON BOTH APRIL 2, 2012 <u>AND</u> APRIL 9, 2012, HE INDICATED THAT HE BELIEVED AN INVIDIOUSLY DISCRIMINATORY, RACE-BASED ANIMUS WAS AT PLAY, AND THAT HE WAS NOT ONLY BEING 'MALICIOUSLY PROSECUTED' (BASED ON THE IDEA THAT THE PETITIONER HAD BEEN FALSELY ARRESTED), BUT <u>'SELECTIVELY</u> PROSECUTED' (BASED ON THE IDEA THAT A <u>WHITE</u> CO-ARRESTEE, USED AS 'BOGUS' "PROBABLE CAUSE" TO ARREST, SEIZE, AND SEARCH THE PETITIONER, HAD SOMEHOW AVOIDED PROSECUTION).

FOR THE <u>ENTIRE</u> ELEVEN MONTHS THAT HE WAS IN POSSESSION OF HIS 'DISCOVERY' MATERIALS, THE PETITIONER WAS UNDER THE <u>MISTAKEN</u> IMPRESSION THAT JOYCE EVELYN EDWARDS, HIS WHITE CO-ARRESTEE, HAD BEEN <u>CHARGED</u> WITH THE SAME "TRAFFICKING" AND "PWID" THAT <u>HE</u> HAD. THE BASIS FOR THIS WAS POLICE REPORT OF JOSEPH PARRISH, ONE OF THE ARRESTING DEPUTIES IN THE PETITIONER'S DRUG CASE, SAID REPORT <u>APPEARING</u> TO INDICATE THAT MS. EDWARDS FACED THE SAME CHARGES AND $ 80,000 BAIL (SEE <u>APP. 88</u>) AS THE PETITIONER (SEE <u>APP. 89</u>).

IN <u>REALITY</u> HOWEVER, MS. EDWARDS FACED ABSOLUTELY <u>NO</u>

CHARGES IN CONNECTION WITH THE CASE. THE POLICE REPORT CONTAINED A MISPRINT, AND THE WARRANT NUMBERS ATTACHED TO THE MISPRINT WERE ACTUALLY THOSE OF THE PETITIONER (SEE APP. 81 - "SUBJ. #1" IS MS. EDWARDS AND "SUBJ. #2" IS PETITIONER; SEE APP. 84; SEE APP. 86; SEE ALSO APP. 91).

AT THE DECEMBER 18, 2013 PCR HEARING, BOTH THE PETITIONER (SEE APP. 109, LL. 13 - APP. 110, LL. 1-3) AND PLEA COUNSEL (SEE APP. 121, LL. 25 - APP. 122, LL. 1-13) TESTIFIED THAT THE PETITIONER HAD REQUESTED THAT THE PLEA COUNSEL INVESTIGATE THE FACT THAT THE CO-ARRESTEE'S CASE HAD "BASICALLY EVAPORATED" (SEE APP. 110, LL. 2). AGAIN, AT THIS TIME, PETITIONER WAS STILL UNDER THE IMPRESSION THAT MS. EDWARDS HAD BEEN CHARGED WITH "PWID" AND "TRAFFICKING", BUT, FOR WHATEVER REASON, WAS NOT IN JAIL AWAITING TRIAL. ALTHOUGH PLEA COUNSEL TESTIFIED THAT THE PETITIONER NEVER ASKED HIM TO "GO OUT AND INVESTIGATE ANYTHING" (SEE APP. 125, LL. 17-18), HE NONETHELESS CLAIMED, UNDER OATH, TO HAVE INVESTIGATED THIS 'CONCERN' OF THE PETITIONER'S.

UNDER DIRECT EXAMINATION BY THE STATE'S ATTORNEY, PLEA COUNSEL TESTIFIED THAT AFTER BEING ASKED BY THE PETITIONER ABOUT THE 'STATUS' OF MS. EDWARDS' CHARGES, HE HAD BEEN TOLD (BY SOLICITOR JOYCE K. MONTS) THAT "SHE (EDWARDS) WAS PREPARED TO TESTIFY AGAINST HIM" (SEE APP. 122, LL. 3), AND THAT SHE WAS "EITHER GOING TO GET A SWEET DEAL OR THEY'RE GOING TO DISMISS HER CHARGES" (SEE APP. 122, LL. 8-9).

WHEN HE WAS CROSS-EXAMINED BY PETITIONER'S PCR COUNSEL, PLEA COUNSEL AGAIN REITERATED THAT HE HAD CONFIRMED, IN CONVERSATION WITH SOLICITOR MONTS, THAT MS. EDWARDS HAD AGREED TO TESTIFY (AND/OR COOPERATION) AGAINST THE PETITIONER IN EXCHANGE FOR "LENIENCY" (SEE APP. 126, LL. 18 - APP. 127, LL. 1-18). HE FURTHER EXPLAINED THAT HE HAD DONE NOTHING TO "REVEAL THE DEAL" OR FIND OUT WHAT MS. EDWARDS HAD BEEN "PROMISED" BECAUSE HE HAD ONLY BEEN (AT THAT TIME) PLEA COUNSEL FOR APPROXIMATELY "THIRTY-SIX HOURS" (SEE APP. 127, LL. 15-21). THIS TESTIMONY, BY PLEA COUNSEL, AMOUNTED TO NOTHING MORE THAN A SHAMELESS, BALD-FACED ATTEMPT TO COVER HIS LEGAL (AND CONSIDERABLE) 'BACKSIDE'.

AFTER THE CONCLUSION OF THE HEARING, PETITIONER SPENT THE NIGHT AT THE "KIRKLAND CORRECTIONAL INSTITUTION", THEN RETURNED TO THE "LIEBER CORRECTIONAL INSTITUTION" (HIS ASSIGNED FACILITY AT THAT TIME) THE FOLLOWING AFTERNOON. IMMEDIATELY, UPON HIS RETURN TO HIS 'HOUSING UNIT', THE PETITIONER CONTACTED MS. EDWARDS (WHO HE ENJOYED REGULAR CONTACT WITH) AND BEGAN EXCORIATING HER ABOUT 'COOPERATING' AGAINST. AFTER PETITIONER'S RAILING, RANTING, AND RAVING SUBSIDED (AS THE PETITIONER NEEDED TO CATCH HIS BREATH), MS. EDWARDS EXPLAINED, VERY CALMLY, THAT SHE HAD NEVER, IN FACT, BEEN CONTACTED ABOUT 'COOPERATING', TESTIFYING, ANY "SWEET DEALS", ETC., BECAUSE THERE WAS NO NEED FOR ANY — SHE HAD NEVER BEEN CHARGED WITH, ARRESTED FOR, OR HAD A BAIL

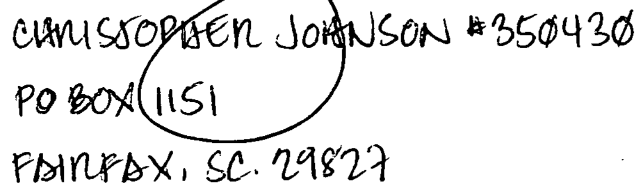
IMPOSED OR SET, IN CONJUNCTION WITH, THE EVENTS OF OCTOBER 7, 2010. AFTER PLAINTIFF REVEALED THAT PLEA COUNSEL HAD CLAIMED, IN OPEN COURT, AND UNDER OATH, THAT HE HAD DETERMINED SHE HAD DECIDED TO 'COOPERATE', SHE CALLED HIS TESTIMONY BY ITS RIGHTFUL NAME, "B.S.", AND INVITED THE PETITIONER TO REVIEW HIS RECORDS, ESPECIALLY THE POLICE REPORTS TO VALIDATE THAT SHE HAD NOT, IN FACT, BEEN ARRESTED FOR, OR CHARGED WITH, ANYTHING OTHER THAN BEING A FUGITIVE. PETITIONER DID, AND FOUND THE TRUTH.

PLEA COUNSEL'S PERJURED TESTIMONY, REGARDING COOPERATION, IS IRREFUTEABLE, CLEAR-CUT EVIDENCE OF "INEFFECTIVE ASSISTANCE OF COUNSEL", NOT TO MENTION MISREPRESENTATION AND MALPRACTICE. IF HE HAD REALLY INVESTIGATED THE PETITIONER'S CLAIMS, HE HIMSELF COULD HAVE CORRECTED THE PETITIONER'S CONFUSION ABOUT MS. EDWARDS' "CHARGES" (OR LACK THEREOF) BY SIMPLY REVIEWING THE POLICE REPORTS. AS A DEFENSE ATTORNEY, THE KIND OF MISTAKE THE PETITIONER MADE IN MISREADING A POLICE REPORT DETAIL OR TWO, SHOULD NOT HAVE BEEN MADE BY HIM. AND, LASTLY, IF PLEA COUNSEL HAD REALLY INVESTIGATED HIS 'SELECTIVE PROSECUTION' CLAIM, PLEA COUNSEL HIMSELF WOULD HAVE KNOWN NO DEAL WAS IN PLACE, BECAUSE, AS MS. EDWARDS HERSELF PUT IT, NO PERSON, WITHOUT A CHARGE PENDING AGAINST THEM, NEEDS TO BE CONCERNED WITH LAWYERS, COURT DATES, CO-DEFENDANTS, BONDS, COMMUNITY SERVICE, AND/OR INCARCERATION,

AND, IN REGARD TO 'COOPERATION', BEING UNCHARGED WITH A CRIME BASICALLY RENDERS THAT A MOOT POINT. PETITIONER AGREES, AND PLEA COUNSEL WAS PLAINLY DEFICIENT.

WHEREFORE PETITIONER, HAVING PRESENTED THE AFOREMENTIONED MERITORIOUS CLAIMS / GROUNDS, HUMBLY PRAYS THAT THE COURT REVERSE HIS CONVICTION.

RESPECTFULLY SUBMITTED THIS 23RD DAY OF JANUARY, 2015.



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