CHRISTOPHER JOHNSON #350430
P.O. BOX 1151
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JANUARY 28, 2015

DANIEL E. SHEARHOUSE - CLERK OF COURT
P.O. BOX 11330
COLUMBIA, SC. 29211

RE: CHRISTOPHER JOHNSON V. STATE
APPELLATE CASE NO. 2014-000592

TO THE HONOURABLE CLERK:

PLEASE FIND ENCLOSED PETITIONER CHRISTOPHER JOHNSON'S PRO SE RESPONSE IN THE ABOVE-ENTITLED MATTER. AS OF TODAY'S DATE, THIS IS THE SECOND SUCH RESPONSE TENDERED AND SUBMITTED TO THE MAILROOM STAFF AT ALLENDALE CORR. INST. FOR FORWARDING TO THE SUPREME COURT FOR CONSIDERATION. THE FIRST, PLACED IN THE MAIL ON MONDAY, JANUARY 26, 2015, CANNOT BE LOCATED BY THE STAFF AT A.C.I. AND HAS APPARENTLY BEEN LOST. THE PETITIONER CANNOT SAY WHETHER OR NOT HIS FIRST PETITION WILL MAKE IT TO THE HONOURABLE COURT OR NOT.

THEREFORE, THE PETITIONER IS SUBMITTING A SECOND PROSE

RESPONSE IN THE ABOVE-ENTITLED MATTER, VARYING SOMEWHAT IN LANGUAGE, BUT VIRTUALLY IDENTICAL IN CONTENT AND SUBSTANCE.

IF, IN THE INTERIM, THE CLERK RECEIVES THE PETITIONER'S FIRST AND ORIGINAL RESPONSE, THE PETITIONER HUMBLY REQUESTS THAT THE CLERK FILE THAT DOCUMENT, AS WAS ORIGINALLY INTENDED. ON THE OTHER HAND, IF THE OTHER DOCUMENT DOES NOT MATERIALIZE, THE PETITIONER HUMBLY REQUESTS THAT THIS SECOND RESPONSE BE FILED IN ITS STEAD, UPON ITS RECEPTION.

RESPECTFULLY SUBMITTED,

CHRISTOPHER JOHNSON #350430
P.O. BOX 1151
FAIRFAX, SC 29827

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY

G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

CHRISTOPHER JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITIONER'S PRO SE RESPONSE

APPELLATE CASE NO. 2014-000592

CHRISTOPHER S. JOHNSON #350430

P.O. BOX 1151

FAIRFAX, SC. 29827

ISSUES PRESENTED

-"ALLOCUTION"

"DID PCR COURT ERR WHEN IT FOUND THE INTERRUPTION/TRUNCATION OF PETITIONER'S ALLOCUTION STATEMENT, AND PLEA COUNSEL'S COMPLICITY IN SAID INTERRUPTION/TRUNCATION, TO BE "HARMLESS ERROR?"

-"THE 'ALFORD' PLEA"

"DID PCR COURT ERR WHEN IT FOUND THE PETITIONER HAD ENTERED HIS 'ALFORD' PLEA "KNOWINGLY" AND "INTELLIGENTLY"?"

"DID PCR COURT ERR WHEN IT FOUND THAT THE PETITIONER HAD NOT BEEN "PROMISED" ANYTHING, IN EXCHANGE FOR HIS CHANGE OF PLEA?"

"WAS PLEA COUNSEL "INEFFECTIVE" IN ALLOWING PETITIONER TO PLEA, INSTEAD OF PURSUING HIS MERITORIOUS FOURTH AMENDMENT CLAIMS?"

-"PERJURY"

"DID PLEA COUNSEL'S PERJURY AT PCR HEARING ESTABLISH A PRIMA FACIE CASE FOR "INEFFECTIVE ASSISTANCE OF COUNSEL"?

"DID PCR COURT ERR WHEN IT FOUND PLEA COUNSEL'S TESTIMONY MORE CREDIBLE THAN THAT OF THE PETITIONER, AND THAT HE HAD RENDERED HIM EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE TWO-PART 'STRICKLAND' TEST?"

ARGUMENTS

THE PCR COURT ERRED WHEN IT FOUND THAT THE INTERRUPTION/TRUNCATION OF PETITIONER'S ALLOCUTION STATEMENT WAS A "HARMLESS ERROR" AND THAT THE PLEA COUNSEL'S ROLE IN HELPING INTERRUPT AND TRUNCATE IT, DID NOT PREJUDICE THE PETITIONER.

THE PCR COURT ERRED WHEN IT FOUND THAT THE PLEA COUNSEL HAD NOT MADE THE PETITIONER ANY PROMISES IN EXCHANGE FOR HIS PLEA, THAT HE HAD ENTERED HIS 'ALFORD' PLEA "KNOWINGLY" AND "INTELLIGENTLY"; AND THAT THE PETITIONER HAD BEEN GIVEN EFFECTIVE ASSISTANCE OF COUNSEL, EVEN IN LIGHT OF THE FACT PLEA COUNSEL WOULD NOT HELP PETITIONER PURSUE HIS MERITORIOUS FOURTH AMENDMENT CLAIMS.

AT THE PCR COURT HEARING, PLEA COUNSEL PERJURED HIMSELF (WHICH PETITIONER CAN ILLUMINATE AND DEMONSTRATE), SUBSTANTIATING PETITIONER'S CLAIMS OF "INEFFECTIVE ASSISTANCE", AND PCR COURT ERRED IN FINDING PLEA COUNSEL'S TESTIMONY "CREDIBLE".

'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 JUDGEMENT SHOULD NOT BE PRONOUNCED AGAINST HIM ON VERDICT OF CONVICTION," AND IS NOT TO BE CONFUSED WITH A "CLOSING ARGUMENT." "ALLOCUTION IS THE DEFENDANT'S RIGHT TO SPEAK ON HIS OWN BEHALF AFTER THE FACT FINDER DETERMINES GUILT, BUT BEFORE THE JUDGE PRONOUNCES SENTENCE. DEFENDANT'S CLOSING ARGUMENT IS NOT ALLOCUTION, BUT IS HIS OPPORTUNITY TO PRESENT ARGUMENTS IN MITIGATION BEFORE THE FACT FINDER DELIBERATES." STATE V. STOKES, 345 S.C. 368, 548 S.E.2D. 202 (2001), QUOTING BASSETT V. COMMONWEALTH, 222 VA. 844, 284 S.E.2D. 844 (1981).

THE FOURTH CIRCUIT, IN ASHE V. NORTH CAROLINA, 586 F.2D. 334 (1978), CERT. DEN. 441 U.S. 966, 99 S.CT. 2416 (1979), FOUND THAT THE RIGHT OF ALLOCUTION WAS CONSTITUTIONALLY GUARANTEED. THE SIXTH AMENDMENT "DOES NOT PROVIDE MERELY THAT A DEFENSE SHALL BE MADE FOR THE ACCUSED; IT GRANTS TO THE ACCUSED PERSONALLY THE RIGHT TO MAKE HIS DEFENSE." FARETTA V. CALIFORNIA, 422 U.S. 806, 95 S.CT. 2525 (1975). DEFENDANT WHO CHOOSES TO BE REPRESENTED BY COUNSEL DOES NOT WAIVE HIS RIGHT TO ALLOCUTION BEFORE SENTENCING. BOARDMAN V. ESTELLE, 957 F.2D. 1523 (1992). "THE RIGHT OF ALLOCUTION 'CONTEMPLATES AN OPPORTUNITY FOR THE DEFENDANT TO BRING MITIGATING CIRCUMSTANCES TO THE ATTENTION OF THE COURT'." ID., QUOTING SHERMAN V. U.S., 383 F.2D. 837, 839 (1967). DENIAL OF THE "TRADITIONAL RIGHT OF A CRIMINAL DEFENDANT TO ALLOCUTION

PRIOR TO THE IMPOSITION OF SENTENCE" GROPPI V. LESLIE, 404 U.S. 496, 92 S.CT. 582 (1972), WAS RECOGNIZED AS REQUIRING REVERSAL AS EARLY AS 1689, BOARDMAN AT 1526.

ALLOCUTION 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). THE RIGHT OF ALLOCUTION ALLOWS A DEFENDANT TO PERSONALLY ADDRESS THE COURT BEFORE SENTENCING IN AN ATTEMPT TO MITIGATE PUNISHMENT. U.S. V. BARNES, 948 F.2D. 325, 328 (1991). WHEN A COURT "HAS DISCRETION TO IMPOSE SENTENCE SHORTER THAN ONE SELECTED, DENIAL OF DEFENDANT'S RIGHT OF ALLOCUTION IS NOT HARMLESS ERROR". U.S. V. CARPER, 24 F.3D. 1157 (1994). ARTICLE ONE, SECTION FOURTEEN OF THE SOUTH CAROLINA BILL OF RIGHTS STATES, IN PART: "... ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT... TO BE FULLY HEARD IN HIS DEFENSE BY HIMSELF OR BY HIS COUNSEL OR BY BOTH". (EMPHASIS ADDED).

ON APRIL 9, 2012, AFTER BEING DELIBERATELY FED 'MISINFORMATION' BY HIS PLEA COUNSEL, CHRISTOPHER S. POSEY (APP. 1), THE PETITIONER, CHRISTOPHER S. JOHNSON, ENTERED AN 'ALFORD' PLEA IN THE GREENVILLE COUNTY COURT OF GENERAL SESSIONS. AT THAT TIME, PETITIONER WAS FACING CHARGES OF TRAFFICKING HEROIN, AND POSSESSING METHAMPHETAMINE WITH THE INTENT TO DISTRIBUTE. THE STATUTORY MAXIMUM FOR THE HEROIN CHARGE WAS TWENTY-FIVE YEARS, WITH A MINIMUM

OF SEVEN YEARS; THE METHAMPHETAMINE CHARGE CARRIED A SENTENCING RANGE OF ZERO TO FIFTEEN YEARS.

ON THE DAY THE PETITIONER ENTERED HIS 'ALFORD' PLEA, HE WAS IN NO WAY INTENDING TO ENTER A PLEA. BY THAT POINT, THE PETITIONER HAD BEEN IN JAIL EIGHTEEN MONTHS AND CONSTANTLY AND CONSISTENTLY INSISTED UPON A TRIAL, BECAUSE HE ADAMANTLY BELIEVED HIS ARREST WAS FOURTH-AMENDMENT-VIOLATIVE. A PLEA OFFER OF FIFTEEN YEARS, ON BOTH CHARGES (TO BE SERVED CONCURRENTLY) HAD BEEN 'UNENTERTAINED' BY THE PETITIONER FOR THE ENTIRE EVEVEN MONTHS SINCE ITS PROPOSAL BY SOLICITOR JOYCE K. MONTS. BY THE TIME THE PETITIONER ENTERED HIS PLEA, HE HAD KNOWN HIS PLEA COUNSEL EXACTLY ONE WEEK, AND HAD ONLY SPOKEN TO HIM ON ONE PRIOR OCCASION, APRIL 2, 2012, THE DAY HE MET PLEA COUNSEL AT THE GREENVILLE COUNTY DETENTION CENTER (APP. 107, LL. 9-13).

DURING THE FIRST MEETING WITH PLEA COUNSEL, PETITIONER EXPLAINED, IN DETAIL, THE FACTS AND CIRCUMSTANCES OF HIS CASE, AND OUTLINED THE FACT HE WANTED A PRE-TRIAL 'FRANKS' HEARING (FRANKS V. DELAWARE, 438 U.S. 154, 98 S.CT. 2674 (1978)), THE FACT THAT HE HAD BEEN DENIED A 'RIVERSIDE' HEARING (COUNTY OF RIVERSIDE V. MCLAUGHLIN, 111 S.CT. 1661 (1991), ON REMAND 943 F.2D. 36), THE FACT THAT HIS FORMER COUNSEL HAD "WAIVED" HIS RIGHT TO A PRELIMINARY HEARING WITHOUT HIS KNOWLEDGE OR CONSENT, AND HIS DESIRE

FOR PLEA COUNSEL TO EXPLORE THE LIKELIHOOD THAT THE PETITIONER WAS BEING 'MALICIOUSLY' AND 'SELECTIVELY' PROSECUTED; DURING THIS SAME MEETING, PLEA COUNSEL ADDRESSED PLEAS, WHICH PETITIONER WAS NOT INTERESTED IN AT ALL.

DURING THE SECOND MEETING, HELD AT THE COUNTY COURTHOUSE, PLEA COUNSEL INFORMED PETITIONER THAT HE WAS NOT WILLING TO REPRESENT THE PETITIONER ON HIS MERITORIOUS FOURTH AMENDMENT CLAIMS, AND THAT ATTEMPTING TO CONFUSE THE JURY, IN EVENT OF A TRIAL, AND IN THE HOPE FOR A MISTRIAL, WOULD BE HIS 'STRATEGY' (APP. 115, LL 24-25 - APP. 116, LL. 1-6). AT THIS SAME MEETING, PLEA COUNSEL INFORMED PETITIONER THAT HIS CO-ARRESTEE, JOYCE EVELYN EDWARDS, WAS COOPERATING AGAINST HIM, IN EXCHANGE FOR "A SWEET DEAL" (APP. 122, LL. 2-13) AND "LENIENCY" (APP. 127, LL. 12-14), AND AGAIN BROUGHT UP THE SUBJECT OF PLEAS, "GUILTY" AND 'ALFORD'.

ALTHOUGH PETITIONER WAS NOT INTERESTED IN TAKING A PLEA, HIS PLEA COUNSEL NONETHELESS "STEERED" THE CONVERSATION TOWARDS ENTERING A PLEA THAT DAY. IN FACT, THE PETITIONER'S AVERSION, TO ANY SORT OF PLEA, WAS SO WELL KNOWN TO THE PRINCIPALS IN HIS CASE, THAT EVEN THE SOLICITOR MADE MENTION OF HIS RELUCTANCE TO PLEA AT THE SENTENCING, WHEN SHE PROPOSED THE COURT SENTENCE THE PETITIONER TO MORE THAN SHE HAD OFFERED IN HER PLEA PROPOSAL (APP. 10, LL. 12-17). IN THE END, HOWEVER, PETITIONER ENDED UP ENTERING AN 'ALFORD' PLEA, BUT EVEN THEN ONLY AFTER BEING TOLD BY PLEA COUNSEL THAT ENT-

ERING EITHER THE 'ALFORD' PLEA OR A "GUILTY" PLEA WOULD ALLOW HIM TO SEEK PAROLE ON HIS "TRAFFICKING" CHARGE, WHEREAS A DETERMINATION OF GUILT, MADE BY A JURY, WOULD NOT.

IN ANTICIPATION OF HIS UPCOMING TRIAL, SCHEDULED TO BEGIN ON OR ABOUT APRIL 16, 2012, THE PETITIONER HAD BEGUN WORK ON AN ALLOCUTION STATEMENT, KNOWING FULL WELL THAT A TRIAL BY JURY WAS A 'SHAKY' PROPOSITION, EVEN UNDER THE BEST OF CIRCUMSTANCES. WHEN THE PETITIONER WAS TAKEN TO COURT THAT DAY, HE HAD THE "ROUGH DRAFT" OF HIS ALLOCUTION STATEMENT WITH HIM, BECAUSE HE CONSIDERED IT "LEGAL MATERIAL" AND HAD IT IN A FOLDER (ALONGSIDE THE REST OF HIS "LEGAL MATERIALS") HE CARRIED TO THE MEETING WITH PLEA COUNSEL. IT WAS FROM THIS "ROUGH DRAFT" THAT THE PETITIONER ATTEMPTED TO READ AT HIS SENTENCING (APP. 12, LL. 19-23). BY PETITIONER'S OWN ADMISSION, IT WAS LENGTHY, BUT IT WAS ALSO ELOQUENT, GRAPHIC, VIVID, AND MOST IMPORTANTLY, A CONSTITUTIONALLY-PROTECTED OPPORTUNITY FOR THE PETITIONER TO ATTEMPT TO MITIGATE HIS CIRCUMSTANCES. THIS WAS DOUBLY SO IN THE CASE OF THE PETITIONER, BECAUSE HIS PLEA COUNSEL, HAVING ONLY MET HIM A WEEK PRIOR (APP. 6, LL. 17-18), COULD ONLY OFFER BLAND AND GENERIC GENERALIZATIONS ABOUT THE PETITIONER (E.G. "HE IS VERY INTELLIGENT", APP. 12, LL. 2), AND HIS SITUATION (E.G. "HE'S FULLY UNDERSTOOD THE SITUATION HE'S IN", APP. 12, LL. 3), BUT THESE SAME BLAND GENERALIZATIONS WERE THE FUNCTIONAL AND LEGAL EQUIVALENT OF A PSYCHIC READER'S 'INSIGHT' WITH NONE OF THE SIXTH AMENDMENT OR IMPLIED POWERS OF PERSUASION.

"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. UNITED STATES, 365 U.S. 301, 304 (1961).

AFTER THE PETITIONER TOOK THE 'ALFORD' PLEA, HE ATTEMPTED TO READ HIS ALLOCUTION STATEMENT TO THE COURT. SEVERAL POTENTIALLY MITIGATING FACTORS WERE INCLUDED IN THIS STATEMENT, INCLUDING (BUT NOT LIMITED TO): PETITIONER'S UPBRINGING (AND HISTORY OF CHILDHOOD ABUSE OF MULTIPLE VARIETIES), EARLY CHILDHOOD DRUG DEPENDENCE, TRAUMATIC FAMILY HISTORY, SOCIAL HISTORY, EDUCATION, ETC. NONE OF THESE FACTORS WERE KNOWN TO HIS PLEA COUNSEL, AND, IN THE SHORT "MITIGATION" SPEECH OFFERED BY PLEA COUNSEL, NONE OF THESE MITIGATING FACTORS WAS EVEN MENTIONED BECAUSE OF PLEA COUNSEL'S IGNORANCE OF HIS CLIENT'S HISTORY. THEREFORE, IN ORDER FOR THE COURT TO FAMILIARIZE ITSELF WITH THE PETITIONER, THE PETITIONER HAD TO SPEAK FOR HIMSELF, LEST THE ONLY IMPRESSION IS BE LEFT WITH BE THAT PAINTED BY THE PROSECUTION.

WHEN THE PETITIONER BEGAN HIS ALLOCUTION STATEMENT, HE WAS READING FROM THE SOLE COPY OF IS IN EXISTENCE, HIS SO-CALLED "ROUGH DRAFT." THE PCR COURT ERRED IN ITS DETERMINATION THAT THE TRIAL COURT WAS IN POSSESSION OF A COPY OF THE STATEMENT PRIOR TO, OR DURING, THE SENTENCING (APP. 139). THE TESTIMONY OF CHRISTOPHER POSEY (PLEA COUNSEL) AT THE PCR HEARING SUBSTANTIATES THE FACT THAT HE HAD NEVER EVEN SEEN THE ALLOCUTION STATEMENT

(APP. 125, LL. 2-3). HAD THE PETITIONER, REPRESENTED BY COUNSEL, ATTEMPTED TO SUBMIT A DOCUMENT OF ANY SORT FOR THE COURT'S PERUSAL AND/OR ENTERTAINMENT, PLEA COUNSEL WOULD HAVE HAD TO SUBMIT IT FOR HIM, AND NECESSARILY WOULD HAVE KNOWN ITS LENGTH, AND LIKELY ITS DETAILS AND PARTICULARS, IF HE CHOSE TO READ IT.

SHORTLY AFTER PETITIONER BEGAN HIS ALLOCUTION STATEMENT, IT WAS APPARENT THAT IT WAS 'UNNERVING' SOME OF THE COURT STAFF, AS WELL AS SOME OF THE SPECTATORS IN THE SEATS BEHIND, AND TO THE SIDE OF, THE PETITIONER. THIS WAS THE UNINTENDED CONSEQUENCE OF HAVING A NEARLY FULL COURTROOM. IT WAS ABOUT THIS TIME THAT THE COURT "INTERRUPTED" THE ALLOCUTION AND TOLD THE PETITIONER TO "PARE DOWN" HIS STATEMENT (APP. 21, LL. 4-5). INSTEAD OF LODGING A PROTEST OR OBJECTING TO THE CONSTITUTIONAL VIOLATION, PLEA COUNSEL HIMSELF CHIMED IN, "YOU CAN PASS IT UP AND SHE'LL PUT IT IN THE RECORD, IF YOU WANT TO DO THAT" AND "I WOULD DO ABOUT A MINUTE MORE" (APP. 21, LL. 7-8; APP. 21, LL. 11). ALTHOUGH PETITIONER ACQUIESCED, HE DID NOT SIMPLY WANT TO PASS UP HIS OPPORTUNITY TO SPEAK, IN EXCHANGE FOR HIS STATEMENT BEING ENTERED INTO THE RECORD POST-SENTENCING. UNFORTUNATELY, THE PETITIONER WAS NOT IN A POSITION TO ANTAGONIZE A JUDGE MINUTES BEFORE BEING SENTENCED. "AFTER BEING CONVICTED, THE DEFENDANT IS USUALLY SO CRUSHED AS TO HESITATE TO MAKE DEMANDS LEST THEY BRING INCREASED PUNISHMENT." MIXON V. U.S., 214 F.2D. 364, 366 (1954).

PLEA COUNSEL'S FAILURE TO OBJECT TO THE SIXTH AMENDMENT (AND POSSIBLE FOURTEENTH AMENDMENT) VIOLATION, TAKING PLACE IN FRONT OF HIS EYES, IN REAL TIME, AS WELL AS HIS COMPLICITY IN PROMOTING IT, WAS NOT "HARMLESS ERROR"; AND THE PCR COURT ERRED, NOT ONLY WHEN IT FOUND THAT IT WAS, BUT WHEN IT FOUND THAT PLEA COUNSEL'S 'PERMISSIVE' ATTITUDE AND UNSATISFACTORY PERFORMANCE DID NOT SATISFY BOTH PRONGS OF THE 'STRICKLAND' TEST.

FOR AN APPLICANT TO BE GRANTED PCR, AS A RESULT OF "INEFFECTIVE ASSISTANCE OF COUNSEL", HE MUST SHOW BOTH: A) THAT HIS COUNSEL FAILED TO RENDER REASONABLY EFFECTIVE ASSISTANCE UNDER PREVAILING PROFESSIONAL NORMS, AND B) THAT HE WAS PREJUDICED BY HIS COUNSEL'S INEFFECTIVE PERFORMANCE. STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052, (1984).

WHEN THE PLEA COURT ENCROACHED UPON THE PETITIONER'S RIGHT TO ALLOCUTION, PLEA COUNSEL NOT ONLY FAILED TO RECOGNIZE THE VIOLATION, HE EXACERBATED IT, EFFECTIVELY SWITCHING ROLES FROM THAT OF ADVOCATE TO ADVERSARY. BY FAILING TO INVESTIGATE PETITIONER'S BACKGROUND HIMSELF, HE, IN EFFECT, LEFT THE PETITIONER TO FEND FOR HIMSELF. THIS IS CORROBORATED BY PLEA COUNSEL'S OWN WORDS AT THE PLEA HEARING, "... I'M GOING TO BE KIND OF BRIEF CAUSE I THINK HE'S GOING TO COVER MOST EVERYTHING I WOULD SAY TO YOU..." (APP. 11, LL. 13-14). IN OTHER WORDS, PLEA COUNSEL WAS DEFERRING

TO THE PETITIONER HIS OWN MOUTH: THAT OF PETITIONER'S ADVOCATE. BY INTERFERING WITH THE ALLOCUTION HIMSELF, THE PLEA COUNSEL HELPED TO RENDER THE PETITIONER'S WORDS AND ACTIONS WITHOUT EFFECT, AND PLEA COUNSEL'S FAILURE TO PROTECT HIS CLIENT'S INTERESTS, INTERESTS HE HIMSELF COULD NOT, OR WOULD NOT, PROTECT, BECAUSE OF HIS FAILURE TO INVESTIGATE SAID CLIENT'S HISTORY, SATISFIES THE FIRST PRONG OF THE 'STRICKLAND' TEST.

THE SECOND PRONG OF THAT TEST IS MET IN THE PREJUDICE TO THE PETITIONER IN RELATION TO HIS SENTENCING. AFTER THE PETITIONER WAS GIVEN THE INSTRUCTION TO "PARE DOWN" HIS STATEMENT, HE DID AS INSTRUCTED, BUT WAS FORCED TO SELECT A FEW SHORT EXCERPTS FROM HIS PREPARED STATEMENT, AND AFTERWARDS IMPROVISE AND AD-LIB THE REST. THE STATE WAS THEN GIVEN A CHANCE TO SAY ITS LAST PIECE BEFORE SENTENCING. AGAIN, PLEA COUNSEL DID NOT OBJECT OR PROTEST, ALTHOUGH WHAT HAD JUST TRANSPIRED, ACKNOWLEDGED OR RECOGNIZED OR NOT, WAS THE COURT HAD JUST GIVEN EVERY PRINCIPAL IN THE PETITIONER'S CASE A CHANCE TO SAY EXACTLY WHAT THEY WANTED TO, SAVE FOR THE PETITIONER HIMSELF. "TO ACHIEVE FUNCTIONAL EQUIVALENCY, IT IS NOT ENOUGH THAT THE SENTENCING COURT ADDRESSES A DEFENDANT ON A PARTICULAR ISSUE (U.S. V. WALKER, 896 F.2D. 295, 300-301 (1990)), AFFORDS COUNSEL THE OPPORTUNITY TO SPEAK (U.S. V. POSNER, 868 F.2D. 720, 724 (1989)), OR HEARS THE DEFENDANT'S SPECIFIC OBJECTIONS TO THE PRESENTENCE REP-

ORD (U.S. V. PHILLIPS, 936 F. 2D. 1252, 1255-1256 (1991)). BOTH ER, 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.

AFTER THE PROSECUTION HAD BEEN GIVEN HIS OPPORTUNITY TO SAY HIS LAST WORDS, THE PETITIONER WAS SENTENCED TO FIFTEEN YEARS APIECE ON BOTH CHARGES. THIS REPRESENTED THE STATUTORY MAXIMUM FOR THE "PWID" AND WAS EIGHT YEARS ABOVE THE MINIMUM FOR THE 'TRAFFICKING' CHARGE. TAKEN IN CONJUNCTION WITH THE FACTS THAT: 1) THE COURT DID NOT HAVE A COPY OF THE STATEMENT BEFOREHAND, OR DURING THE ALLOCUTION, AND THEREFORE COULD NOT HAVE KNOWN WHAT ELSE THE PETITIONER HAD TO SAY, 2) THE COURT DID NOT RECEIVE PETITIONER'S "ROUGH DRAFT" UNDER FILE UNTIL AFTER THE SENTENCING (APP. 21, LL. 9-10), AND 3) PLEA COUNSEL HAD DONE NOTHING IN THE WAY OF INVESTIGATING THE PETITIONER'S BACKGROUND, IN ORDER TO OFFER SUBSTANTIVE MITIGATION HIMSELF; THE PETITIONER WAS CLEARLY 'HARMED' AND PREJUDICED BY PLEA COUNSEL'S DEFICIENT PERFORMANCE. THE FACT HE ASSISTED IN THE DEPRIVATION OF HIS CLIENT'S RIGHTS, AND THE CLIENT WAS SUBSEQUENTLY SENTENCED TO ANYTHING MORE THAN THE ABSOLUTE MINIMUM SENTENCE (S) POSSIBLE, ALONE IS SUFFICIENT TO "INEFFECTIVE ASSISTANCE OF COUNSEL". AS A FOOTNOTE, PLEA COUNSEL'S FAILURE

TO INVESTIGATE THE PARTICULARS OF THE PETITIONER'S CASE LEFT HIM UNABLE TO RECOGNIZE AND CORRECT SOLICITOR MONKS' MISSTATEMENT WHEN SHE CLAIMED THE PETITIONER HAD BEEN ARRESTED FOR "ALMOST FOUR TIMES THE FOUR GRAM INFERENCE OF HEROIN" (APP. 31, LL. 17-18), WHEN, IN REALITY, PETITIONER WAS ACTUALLY CHARGED WITH 11.71 GRAMS OF HEROIN, APPROXIMATELY TWO-AND-A-HALF TIMES THE "FOUR GRAM INFERENCE." THIS STATEMENT BY SOLICITOR MONKS, WAS THE ABSOLUTE LAST THING THE COURT HEARD BEFORE IMPOSED SENTENCE ON THE PETITIONER (APP. 31, LL. 16-25, APP. 32 LL. 1-2), AND PLEA COUNSEL LET IT GO UNCONTESTED.

PLEA COUNSEL'S INTERFERENCE WITH THE ALLOCUTION AND HIS FAILURE TO INVESTIGATE NOT ONLY THE FACTS OF THE CASE (THE CLAIMS OF THE PETITIONER INCLUDED), BUT THE BACKGROUND OF THE PETITIONER FOR MITIGATION PURPOSES, CONSTITUTED "A CLASSIC EXAMPLE OF A COMPLETE BREAKDOWN IN THE ADVERSARIAL PROCESS." NANCE V. OZMINT, 626 S.E. 2D. 878 (2006). HIS FAILURE RECOGNIZE THE SIXTH AMENDMENT VIOLATION BY THE COURT REPRESENTED DEFICIENT PERFORMANCE, AS ANY CRIMINAL DEFENSE ATTORNEY SHOULD HAVE AT LEAST FUNDAMENTAL AND RUDIMENTARY KNOWLEDGE OF THE CONSTITUTION AND ITS AMENDMENTS. HIS PARTICIPATION IN THE VIOLATION FURTHER ILLUSTRATED HIS "INEFFECTIVE ASSISTANCE". HIS FAILURE TO RECOGNIZE AND CORRECT THE SOLICITOR'S MISSTATEMENT, JUST SECONDS BEFORE SENTENCE WAS PASSED, WAS "INEFFECTIVE ASSISTANCE", BECAUSE PETITIONER WAS SENTENCED, IN PART,

ON THIS FAULTY ASSERTION, TO MORE THAN THE MINIMUM SENTENCES FOR EITHER CHARGE! SEE VAUGHN V. STATE, 607 S.E.2D. 72 (S.C. 2004)).

IMMEDIATELY PRIOR TO HIS CHANGE OF PLEA AND SUBSEQUENT SENTENCING, PETITIONER HAD A SOMEWHAT LENGTHY MEETING WITH PLEA COUNSEL CONCERNING HIS POTENTIAL SENTENCING PENALTIES WERE HE TO GO TO TRIAL AND LOSE, VERSUS ENTER A PLEA OF EITHER "GUILTY" OR ONE UNDER 'ALFORD'. AT ALL TIMES PRIOR TO THIS MEETING, AND EVEN AT ITS BEGINNING, THE PETITIONER HAD REJECTED ALL NOTIONS OF TAKING A PLEA IN LIEU OF EXERCISING HIS RIGHT TO TRIAL. IT WAS ONLY AFTER HEARING (FALSELY) THAT A PLEA UNDER 'ALFORD', OR OF "GUILTY", WOULD ALLOW HIM TO SEEK PAROLE, DURING WHAT WOULD THEN BE AN IMPENDING INCARCERATION, THAT THE PETITIONER FINALLY AGREED TO ENTER HIS 'ALFORD' PLEA. WHILE OTHER FACTORS, SUCH AS HIS COUNSEL'S 'LACKLUSTER' SELF-EVALUATION OF HIS TRIAL PROWESS (APP. 116, LL. 4-6), CERTAINLY CARRIED SOME WEIGHT IN HIS DECISION, NO FACTOR WAS MORE DECISION-MAKING THAN THE IDEA OF PAROLE ELIGIBILITY. FEELING THAT HIS PLEA COUNSEL HAD BEEN UPFRONT WITH HIM ABOUT HIS STRENGTHS/WEAKNESSES, ANSWERED HIS QUESTIONS TRUTHFULLY AND COMPLETELY, ETC., PETITIONER ENTERED AN 'ALFORD' PLEA. IT WAS ABOUT A FULL YEAR BEFORE PETITIONER CAME TO REALIZE THERE WAS NO PAROLE FOR "TRAFFICKERS"; EVEN IF THEY HAD TAKEN

PLEAS, OR SIMPLY LOST AT TRIAL (APP. 113, LL. 18-25, APP. 114, 1-25, APP. 115, 1-15).

THE PLEA COUNSEL'S 'MISINFORMATION' WAS DIRECTLY INVOLVED IN PETITIONER'S DECISION TO PLEA, AND WAS ITS LARGEST FACTOR. THE PCR COURT ERRED IN ITS CHARACTERIZATION OF THE 'MISINFORMATION' AS A "PROMISE" (APP. 138). EVEN THOUGH IT WAS FAULTY IN ITS ASSERTION, REGARDING PAROLE ELIGIBILITY, THE 'MISINFORMATION' REPRESENTED A FACT OF LAW. IF IT HAD BEEN ACCURATE, IT WOULD HAVE EQUATED WITH BEING INFORMED "FOUR GRAMS" WAS THE "INFERENCE" AMOUNT FOR A HEROIN TRAFFICKING CHARGE, OR THAT SAID AMOUNT REPRESENTED A SENTENCING RANGE OF SEVEN TO TWENTY-FIVE YEARS. THERE WAS NO PROMISE EVEN IMPLIED. THE PCR COURT, FOR WHATEVER REASON(S), REDUCED ITSELF TO PLAYING A POINTLESS GAME OF SEMANTICS IN ITS DENIAL OF THE PETITIONER'S PCR. WHAT IS MORE IS THE FACT THAT THE RECORD DOES NOT SUPPORT ITS FINDINGS.

PETITIONER HAS NEVER ALLEGED THAT HE WOULD BE GRANTED PAROLE, IF HE PLED GUILTY OR UNDER 'ALFORD', OR WAS TOLD THAT; ONLY THAT HE WAS TOLD HE WOULD BE ELIGIBLE FOR IT. AND ALTHOUGH PLEA COUNSEL TESTIFIED HE CLEARLY INFORMED THE PETITIONER "TRAFFICKING" WAS A NON-PAROLE OFFENSE AND THAT THE RECORD REFLECTED THIS, IT ACTUALLY DOES NOT. AT THE PCR HEARING, PLEA COUNSEL TESTIFIED, "... I BELIEVE WE DISCUSSED THE GENERAL TERMS OF THOSE THINGS

AND PAROLE ELIGIBILITY. AND I CLEARLY STATED IT ON THE RECORD AGAIN THAT IT WAS NOT PAROLE ELIGIBLE." (APP. 128, LL. 2-4). HOWEVER, AT THE SENTENCING, PLEA COUNSEL MERELY STATED, "... HE UNDERSTANDS THE CONSEQUENCES OF IT BEING VIOLENT AND THE NON-PAROLE." (APP. 12, LL. 6-8). ALTHOUGH PLEA COUNSEL ATTEMPTS TO CONVEY THIS IS HIS 'CLEAR' PROOF THAT THE PETITIONER WAS NOT MISINFORMED, IT IS THIS EXACT SAME STATEMENT THAT KEPT THE PETITIONER FROM QUESTIONING WHAT HE HAD BEEN TOLD ABOUT PAROLE ELIGIBILITY: A "TRAFFICKING" CHARGE WAS VIOLENT, AND NO PAROLE WAS AVAILABLE IF HE DID NOT TAKE A PLEA. THE PLEA COURT MADE NO FURTHER INQUIRY AS TO PETITIONER'S UNDERSTANDING ABOUT PAROLE ELIGIBILITY, AND PLEA COUNSEL LIKEWISE NEVER CLARIFIED THIS 'AMBIGUOUS' STATEMENT. PLEA COUNSEL WAS DEFICIENT IN NOT ONLY MISINFORMING THE PETITIONER ABOUT PAROLE ELIGIBILITY (SEE ALEXANDER V. STATE, 402 S.E.2D. 484 (S.C. 1991) - TRIAL COUNSEL INEFFECTIVE FOR ERRONEOUS ADVICE; WINSON V. STATE, 377 S.E.2D. 338 (S.C. 1989) - TRIAL COUNSEL INEFFECTIVE FOR ERRONEOUS ADVICE; ROY V. STATE, 401 S.E.2D. 151 (S.C. 1991) - TRIAL COUNSEL INEFFECTIVE FOR ERRONEOUS ADVICE), BUT IN ALLOWING PETITIONER TO PLEAD UNDER THAT ERRONEOUS ADVICE AND FAILING TO FULLY ADVISE THE PETITIONER OF HIS LEGAL SITUATION.

AT HIS FIRST MEETING WITH PLEA COUNSEL, THE PETITIONER RAISED THE 'SPECTRE' OF RACIAL BIAS IN REGARD TO HIS CASE IN THE

FORM OF 'SELECTIVE' PROSECUTION. AT THE TIME, PETITIONER MISTAKENLY BELIEVED THAT A WHITE, FEMALE CO-ARRESTEE, JOYCE EVELYN EDWARDS, HAD BEEN CHARGED WITH THE EXACT SAME "TRAFFICKING" AND "PWID" VIOLATIONS AS THE PETITIONER AND ASSIGNED THE SAME BAIL ($80,000), BUT LATER, AND INEXPLICABLY, SAW HER CHARGES "EVAPORATE" (APP. 109, LL. 12-25, APP. 110, 1-3), ALTHOUGH SHE HAD NEVER ENTERED INTO ANY TYPE OF AGREEMENT WITH THE SOLICITOR'S OFFICE. PETITIONER'S ASSUMPTION ABOUT EDWARDS' BEING CHARGED WAS BASED, IN PART, ON HIS SIMULTANEOUS ARREST WITH EDWARDS, AS WELL AS THE FACT THAT SOME OF THE POLICE REPORTS, FILED LATER, APPEARED (TO PETITIONER'S UNTRAINED EYE) TO REFLECT THAT EDWARDS HAD BEEN CHARGED EXACTLY AS HE HAD (APP. 81; APP. 84; APP. 88-89; APP. 91). PLEA COUNSEL AT THE FIRST MEETING SEEMED COMPLETELY UNINTERESTED IN INVESTIGATING THE PETITIONER'S CLAIM, AND, AT THE SECOND MEETING, ON THE DAY OF HIS PLEA, NOTHING ABOUT THAT HAD CHANGED.

AT THE PCR HEARING HOWEVER, PLEA COUNSEL OFFERED A 'CONVOLUTED' TALE OF HOW HE HAD NOT ONLY ADDRESSED PETITIONER'S CONCERN, BUT CONTACTED THE SOLICITOR PROSECUTING THE PETITIONER AND CONFIRMED THAT JOYCE EDWARDS HAD NOT ONLY TURNED 'STATE'S EVIDENCE' AGAINST THE PETITIONER, BUT LIKELY GOING TO "GET A SWEET DEAL" (APP. 122, LL. 8) OR THE SOLICITOR WAS GOING TO "DISMISS HER CHARGES" (APP. 122, LL. 9). THE PETITIONER REFERS TO PLEA COUNSEL'S ASSERTION AS A "CONVOLUTED TALE" BECAUSE, AS A WHOLLY FABRICATED AND PA-

DENTLY FALSE CLAIM, THAT IS EXACTLY WHAT IT WAS. PLEA COUNSEL EVEN WENT SO FAR AS TO REITERATE THIS NONSENSE ON CROSS-EXAMINATION (APP. 126, LL. 18-25 - APP. 127, LL. 1-21).

AFTER THE PCR HEARING, AND PETITIONER'S RETURN TO PRISON, HE CONTACTED EDWARDS IMMEDIATELY AND CONFRONTED HER WITH PLEA COUNSEL'S CLAIMS AND TESTIMONY. SHE, IN TURN, REFUTED THE ALLEGATIONS, CALLING THEM "RIDICULOUS" AND "B.S.", THEN INFORMED PETITIONER THAT SHE HAD NOT BEEN INVOLVED IN ANY DEAL MAKING, BECAUSE, FROM 'DAY ONE', SHE HAD NOT BEEN CHARGED WITH ANY DRUG-RELATED CRIME, NOR SUBJECTED TO BAIL FOR SUCH A CRIME. THIS WAS A REVELATION TO THE PETITIONER, WHO WENT BACK AND SCOURED THE POLICE REPORTS, SEARCHING FOR, AND FINDING, CONFIRMATION THAT EDWARDS, AND NOT PLEA COUNSEL, HAD TOLD THE TRUTH.

IN ALL OF THE POLICE REPORTS, "SUBJ. #1" IS JOYCE EDWARDS AND "SUBJ. #2" IS THE PETITIONER. VIEWED FROM THIS CONTEXT, IT IS READILY APPARENT THAT EDWARDS ESCAPED CHARGES ALTOGETHER. HAD COUNSELOR POSEY TRULY INVESTIGATED THE PETITIONER'S CONCERNS, HE WOULD HAVE KNOWN THIS FACT. HAD PLEA COUNSEL SIMPLY PERUSED THE POLICE REPORTS (APP. 81-92) HIS 'TRAINED' EYE WOULD HAVE DISCERNED WHAT THE PETITIONER'S 'UNTRAINED' ONE COULD NOT, AND SAVING HIM THE NEED OF COMMITTING PERJURY, PLEA COUNSEL

PERHAPS COULD ACTUALLY HAVE CONDUCTED AN INTELLIGENT, THOROUGH, AND DILIGENT INVESTIGATION OF PETITIONER'S CLAIMS. HE FAILED TO DO THAT, LIED ABOUT IT (MUCH AS HE DID WHEN HE CLAIMED THE PETITIONER'S ALLOCUTION WAS NOT "INTERRUPTED" UNTIL IT WAS ABOUT "FIFTEEN TO TWENTY PAGES LONG ON THE TRANSCRIPT" — APP. 125, LL. 8-10 — WHEN, IN REALITY, IT WAS ONLY SEVEN — APP. 7 - APP. 21, LL. 4-5), AND, WAS CLEARLY DEFICIENT AND RENDERED "INEFFECTIVE ASSISTANCE" ACCORDING TO 'STRICKLAND'.

BASED ON THE CLAIMS CONTAINED HEREIN, THE COURT SHOULD REVERSE AND REMAND.

RESPECTFULLY SUBMITTED,

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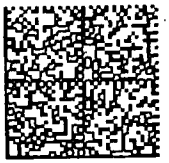

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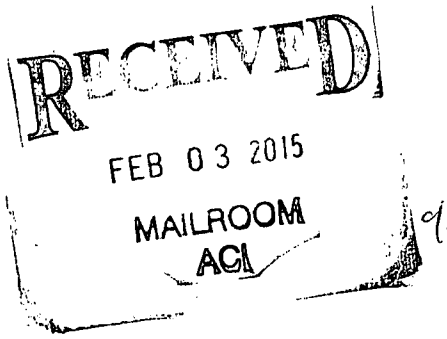

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