

State of South Carolina
in the Supreme Court

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S.C. Supreme Court

Certiorari to Lexington County
Edgar W. Dickson, Circuit Court Judge

Alfonso Simmons,

Petitioner,

V.

State of South Carolina,

Respondent

Appellate Case NO. 2014-0001002

Alfonso Simmons #279349

Kirkland C.I. F2-226

4344 Broad River Rd.

Columbia, S.C. 29210

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Issues Presented

- 1) Was it error by the lower court to not grant petitioner P.C.R. relief when trial counsel failed to follow up on employee who left fingerprint?
- 2) Was it error by the lower court not to grant the Petitioner P.C.R. relief when trial counsel failed to object to demonstrative evidence?
- 3) Did the lower court error by not granting P.C.R. relief to the Petitioner when trial counsel was ineffective for failing to subject Petitioner to A mental evaluation?
- 4) Was P.C.R. counsel ineffective in failing to question other witnesses about the sign that was put up during trial?
- 5) Did the lower court error by not granting P.C.R. relief to the petitioner when trial counsel failed to properly argue miranda issue?
- 6) Did trial counsel error by failing to hire a hand-writing expert to examine petitioner's handwriting and compare it to the handwritten letter sent to Detective Russel that stated Petitioner wanted to Confess, because Petitioner denied writing the letter?
- 7) Did the lower court error in not granting the Petitioner P.C.R. relief when the circuit court unlawfully sentenced him in violation of his right to be protected from cruel and unusual punishment, and in violation of State v. Gordon?
- 8) Did the lower court error in not granting the Petitioner P.C.R. relief when trial counsel admitted in P.C.R. hearing she didn't attempt to recover potentially exculpatory footprint evidence that was "lost" in a computer by the state?

- 9) Was it error of the lower court not to grant the Petitioner P.C.R. relief when trial counsel did not attack the identification of the Petitioner during trial?
- 10) Did the lower court error in not granting the Petitioner P.C.R. relief when he wanted a preliminary hearing and was not granted one?
- 11) Was the lower court in error not granting the Petitioner P.C.R. relief when the indictments of 2008 were beyond the 90 day limit, and were done by a grand jury different from the original grand jury four years earlier that did the first indictments?
- 12) Was it prosecutorial misconduct to allow perjurious testimony by Detective Eric Russel to go uncorrected?

Statement of the Case

Petitioner Alphonso Simmons was convicted of Armed robbery and burglary, 2nd degree during the April 2008 term of the Lexington County General Sessions Court before judge Thomas A. Russo and a jury. App. 1-289. Judge Russo sentenced Petitioner to forty-five years imprisonment. App. 289. Petitioner was represented by Elizabeth Fullwood and Casey Coramell. Richard Hubbard and Angela Garrick represented the state. App. 1.

Petitioner appealed, but his conviction and sentence were affirmed. See State v. Simmons, op. no. 2011-UP-212 (S.C. Ct. App. filed May 11th, 2011). He was represented by Kathrine H. Hudgins on appeal.

On March 8, 2012, Petitioner filed a P.C.R. application with the Lexington County Clerk of Court. App. 292-298. Respondent filed a return, dated August 3, 2012, requesting that an evidentiary hearing be held. App. 299-303. A P.C.R. was held on August 13, 2013 in Lexington County before the Honorable Edgar W. Dickson, App. 304-366. Benjamin A. Stitely represented Petitioner at the hearing. Daniel Gourley represented the State. App. 304.

Judge Dickson issued an order of dismissal on April 9, 2014. App. 367-377. Petitioner appealed Judge Dickson's order of dismissal. This Petitioner follows.

Argument

- 1) It was error by the lower court to not grant petitioner PCR relief when trial counsel failed to follow up on employee who left fingerprints.

There was a fingerprint lifted off of a McDonald's drive-thru window. The same window that the petitioner was accused of using to enter the building. PCR p. 13 lines 2-21. The fingerprint was of an employee that worked there, and trial counsel admitted that she did not employ any resources to follow up on the fingerprint. Follow up on the fingerprint could have allowed the jury to have doubt regarding the allegations against the petitioner. A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution. When a defendant challenges a conviction on the ground that counsel was ineffective, the question becomes, "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result," Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686. Pursuant to Strickland v. Washington, a court will conduct a two-prong test when determining whether trial counsel's assistance was ineffective. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). First, an applicant must show that counsel's performance was deficient. Strickland, 466 U.S. at 687. In

analyzing this prong, A court will use an objective standard of reasonableness. *Id.* Under this prong, "the proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

(quoting Strickland, 466 U.S. at 688). Second, the applicant must show that counsel's "deficient performance prejudiced the defendant to the extent that there is a reasonable probability, that, but for counsel's unprofessional errors, the result of the proceeding would have been different."¹¹

2) It was error by the lower court not to grant the Petitioner PCR relief when trial counsel failed to object to demonstrative evidence.

The Petitioner stated in P.C.R. court that the jury was exposed to a sign, put up by the prosecutor, for the whole trial. P.C.R. P. 51 line 23 - P. 52 lines 1-14. The sign said "It was fun while it lasted" in reference to a statement that was made by the Petitioner to an investigator that was taken out of context. The continued exposure of this sign to the jury throughout the trial was intended to negatively portray the

Petitioner to the jury. The prosecutor relied heavily on the statement on the sign to influence the jury. The prosecutor made two different references to it in the closing argument. tr.p. 240 lines 24-25 and p. 243 line 25 - p. 244 lines 1-2. The sign was prejudicial to the Petitioner, and trial counsel should have objected to it under Rule 403.

3) The lower court erred by not granting P.C.R. relief to the Petitioner when trial counsel was ineffective for failing to subject petitioner to a mental evaluation.

The Petitioner stated he could only remember meeting trial counsel once before trial. p.c.r. p. 53 lines 6-11. With this limited exposure to the Petitioner the trial counsel would have had a poor assessment of his overall personality and behavior. Still, from the petitioner's county and S.C.D.C. record it was obvious that something was going on with him. p.c.r. p. 56 lines 7-25 - p. 57 lines 1-9. The petitioner stated he was first hospitalized when he was twelve years old. p.c.r. p. 50 lines 4-13. Trial counsel stated she did not talk to his family about his mental health. p.c.r. p. 30 lines 9-11. Trial counsel stated during p.c.r. that petitioner's mental health records covered 2012 and 2013, and he developed mental health issues long after she represented him. p.c.r. p. 29 lines 24-25 - p. 30 lines 1-5. Actually, the

Petitioner's mental health records go as far back as January 22 of 2007 only after ten days of being in S.C.D.C., and long before Petitioner meet his trial counsel. The Petitioner expressed that there was a lack of comprehension in talking with his trial counsel before the trial. P.C.R. p. 53 lines 14-25 - p. 54 lines 1-3. The Petitioner's S.C.D.C. psychiatrist was subpoenaed to appear at the p.c.r. She was not able to appear, so instead she sent a letter describing the Petitioner's mental health. p.c.r. p. 22 lines 18-25 - p. 23 lines 1-5. The psychiatrist's letter stated, "I am the treating psychiatrist for Alphonso L. Simmons at South Carolina Department of Corrections. He suffers from a serious mental illness and is diagnosed with major depression with psychotic ~~with~~ features and Obsessive Compulsive Disorder. He is prescribed medication and is housed in our second highest level of care, for mentally ill inmates, The Intermediate Care Services. This housing unit is for the mentally ill who require intensive supervision due to their level of mental illness." If the Petitioner's psychiatrist had been able to testify in p.c.r., she would have been able to verify she was treating the petitioner before, and during, his trial. The Petitioner's medical records were "exhibit one" in his p.c.r. p. 24 lines 13-15. The Petitioner's psychiatrist can testify that

the petitioner hears "voices", and has episodes of delusion, and definitely should have been subjected to A mental evaluation by his trial counsel to see if he was competent at the time of his trial. In the P.C.R. judge's "Order of dismissal" he quoted, "In determining if counsel is ineffective for failing to request A competency hearing, an applicant must show that A reasonable probability exists that he would be found incompetent at the time of this trial or plea. Peter V. State, 308 S.C. 230, 417 S.E.2d 594 (1992)"

4) P.C.R. counsel was ineffective in failing to question other witnesses about the sign that was put up during trial.

Trial counsel (Fullmond) could not remember the sign during trial. p.c.r. p. 39 lines 23-25 - p. 40 lines 1-4. P.C.R. Counsel should have questioned assistant trial counsel (Casey Cornwell) or any other witness to get verification of the sign. P.C.R. counsel's ineffectiveness weakened Petitioner's Issue 1

5) The lower court erred by not granting p.c.R. relief to the Petitioner when trial counsel failed to properly argue miranda issue.

A Jackson v. Denna hearing was held pretrial p. 63-127. The Petitioner stated in the hearing that he was not read his miranda rights, and that he did not want to talk to the investigator without counsel. Pretrial p. 80 lines 22-25 - p. 81 lines 1-25 - p. 82 lines 1-3 p. 85 lines 3-25 - p. 86 lines 1-8. The statement, "It was fun while it lasted" the Petitioner admitted to making in reference to the trip when the Investigator picked him up. Pretrial p. 82 lines 5-25 - p. 83 lines 1-10. The investigator stated that the statement was made not from Lexington to Richland as the Petitioner said, but from Richland driving to Lexington county. The investigator stated that the statement "It was fun while it lasted" was in response to him saying "you gave us a good run for our money". Pretrial p. 76 lines 19-25 - p. 77 lines 1-3. The judge ruled that he would allow that statement in because he believed it was not in response to interrogation. Pretrial p. 124 lines 20-25 - p. 125 lines 1-5. If the investigator's version is to be believed, then the statement would be in response to interrogation according to the investigator's own words "you gave us a good run for our money" which is obviously a reference to the crime he believed the Petitioner committed. Trial counsel was grossly negligent in missing this when the investigator's remark was in response to trial counsel's question to him about context of the Petitioner's statement. Pretrial p. 76 lines 14-25. "Coercion can be mental as

well as physical, and that the blood of the accused is not the only hallmark of an un-constitutional inquisition." Blackburn V. Alabama 361 U.S. 199, 206 n17. Trial Counsel's Failure to Argue this point was below "reasonableness under prevailing professional norms" Cherry V. State, 300 S.C. 115, 117, 386 S.E. 2d 624 625 (quoting Strickland, 466 U.S. at 688). The alleged statements "I'll tell you everything you want to know, but I want to speak to my family first," and "I want to confess, and give up my accomplice so I can get the best deal possible," trial counsel failed to argue in the Denno hearing that these alleged statements should be excluded under the Hearsay rule. SCRE 801(c) Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute. SCRE 802. The statements do not meet the statement against interest exception to the hearsay rule provided in Rule 804(b)(3). The admission of these statements in trial were not harmless, in fact were greatly prejudicial since they were used by state to convince the jury that were "confessions" when Petitioner actually exercised his fifth amendment right, and did not talk to the investigator. This issue was brought up in P.C.R. P. 38 lines 3-10, but it was not addressed by the P.C.R. judge. In Pruitt V. State 423 S.E.2d 127-128 (1992) It required that a new hearing be conducted. 11

6) Trial counsel erred by failing to hire A handwriting expert to examine Petitioner's handwriting and compare it to the handwritten letter sent to Detective Russel that stated Petitioner wanted to confess, because Petitioner denied writing the letter.

At the P.C.R. hearing, Petitioner stated that he told his defense attorney that he did not write the letter, and that the letter was not in his handwriting. P.C.R. p. 49 lines 18-25. Trial counsel admitted to not seeking A handwriting expert to examine the letter and compare it to the Petitioner's handwriting. P.C.R. p. 11 lines 4-8. She conceded that the State relied on the letter as part of their case. p.c.r. p. 10 lines 8-21. She acknowledged that an expert would have helped the Petitioner at trial P.C.R. p. 11 lines 4-16. However, she did not hire an expert because "there was nothing that would show [her] that they were going to be able to show it was his handwriting." P.C.R. p. 33 lines 14-17. There is no "reasonableness" in that logic. Because of trial counsel's negligence the prosecutor argued the contents of the letter in her opening statement and closing argument, which prejudiced Petitioner. A criminal defense attorney has A duty to conduct A reasonable investigation to discover all reasonably available mitigation evidence and evidence that can refute any aggravating evidence presented by the state. McKnight V. State, 378 S.C. 33, 46, 661 S.E.2d 354, 359 (2008) citing Wiggins V. Smith, 539 U.S. 510, 524, 123 S.Ct. 2527, 2537 (2003); Bagwell V. State, 410 S.C. 259, 265, 763 S.E.

2d 630, 634 (Ct. App. 2014). This duty requires, at a minimum, interviewing potential witnesses and making an independent investigation of the facts and circumstances of the defendant's case. Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). This issue was not addressed by the judge in P.C.R. In. Pruitt v. State, 423 S.E.2d 127-128 (1992). It required that a new P.C.R. hearing be conducted.

7) The lower court erred in not granting the Petitioner P.C.R. relief when the circuit court unlawfully sentenced him in violation of his right to be protected from cruel and unusual punishment, and in violation of State v. Gordon.

In a motion before sentencing, trial counsel argued that the Supreme Court in State v. Woody (2004) and in State v. Gordon, 588 S.E.2d 105 (2003) held that Section 17-25-45 had to be construed in conjunction with Section 17-25-50. Tr. p. 274 lines 20 - p. 290 lines 1-16. Section 17-25-50 deals with crimes that are so closely connected in point of time that they could be considered as one offense for sentencing purposes. Trial counsel placed in the record discovery material prepared by investigator Russell that chronologically outlined a number of armed robberies that occurred in the ~~the~~ Midlands area between March 5th, 2004 and April 19th, 2004, all of which were attributed to the Petitioner. She stated that

the April 14th robbery was the Predicate Conviction that Lexington County was using to have the Petitioner sentenced to life under 17-25-45. She stated that the April 14th Richland County robbery was just three days after the offenses he was convicted of that day. She stated that not only in the trials, but also in outstanding warrants and indictments, the state claimed that the Petitioner engaged in A month or more long crime spree. Given that the State's allegations were that it was A crime spree, she asked the court to consider all of them, including the one he was convicted of that day, in connection with the one petitioner was convicted of April 14th in Richland County as A continuous course of criminal activity, therefore falling within section 17-25-50 as crimes that are so closely connected that they must be considered as one offense. trip. 276 lines 7-25-p. 277 lines 1-25. Trial counsel argued that the crime the Petitioner was convicted of that day happened on April 16th 2004, and the Richland County robbery he was convicted of happened on April 14th of 2004. She Argued that the legislature's intent in enacting Section 17-25-45 was to Punish recidivist. To subject people to enhanced punishment who have been convicted of crimes and sentenced and punished for crimes and thereafter when

they were released from their punishment ignored all efforts to correct their behavior and offended again. she argued that to sentence her client under the statute 17-25-45 would be cruel and unusual punishment. Since the predicate conviction in that case, the actual offense occurred after the crime her client was convicted of that day. tr. p. 278 lines 5-25 - p. 279 lines 1-19. Trial counsel also made reference to State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1991) which states that courts are constrained to strictly construe penal statutes in the defendant's favor. The trial judge granted counsel's motion not to sentence defendant to life without Parole, tr. p. 290 lines 14-16, but decided that petitioner's case did not fall within Gordon, because the crimes were in different jurisdictions, though, he did admit he agreed the crimes were close in time. tr. p. 287 lines 8-25 - p. 288 lines 1-4. The judge sentenced the petitioner to 45 years consecutive to the 30 years he was sentenced to by Richland County. The judge erred, 75 years to a 27 year old (in 2008) is synonymous to a life sentence, and the trial judge's decision does not fulfill State v. Wood, (2007) or Gordon, and it constitutes cruel and unusual punishment violating the eighth amendment. The P.C.R. judge did not rule on this issue. In Pruitt v. State, 423 S.E.2d

127-128 (1992), It required that A new P.C.R. hearing be conducted.

- 8) The lower court erred in not granting the Petitioner P.C.R. relief when trial counsel admitted in P.C.R. hearing she did not attempt to recover potentially exculpatory foot print evidence that was "lost" in A computer by the state.

Ann Walker, who said it was the petitioner who robbed her, testified in pretrial p. 41 lines 9-23, and in trial p. 167 lines 13-25 that the person who robbed her was standing on, and jumped across some freezer and counter. trial counsel in pretrial stated that A shoe impression was taken off one of the counters, and two officers exchanged information about what type of shoe it was. pretrial p. 127 lines 11-25 - p. 128 lines 1-2. The state did have the Petitioner's shoes to do A match pretrial p. 131 lines 4-9. The prosecutor stated that the information on the shoe impression was lost in cyberspace. pretrial p. 129 lines 25 - p. 130 lines 1-5. trial counsel admitted in P.C.R. hearing that she did not ask for A continuance, or hire an expert in digital forensics to try to recover the possible exculpatory shoe impression evidence. A criminal defense attorney has A duty to conduct A reasonable investigation to discover all reasonably

available mitigation evidence and evidence that can refute any aggravating evidence presented by the state. McKnight v. State 378 S.C. 33, 46, 661 S.E.2d 354, 359 (2008) citing Miggins v. Smith 539 U.S. 510, 524, 123 S.Ct. 2527, 2537 (2003); Bygum v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 634 (Ct. App. 2014).

This duty requires, at a minimum, interviewing potential witnesses and making an independent investigation of the facts and circumstances of the defendant's case.

Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). This issue was also not addressed by the P.C.R. judge.

- 9) It was error of the lower court not to grant the Petitioner P.C.R. relief when trial counsel did not attack the identification of the Petitioner during trial.

In P.C.R., Trial counsel stated she attacked the identification during pretrial, but did not do it during the trial because it was a strategic move. p.c.r. p. 14 lines 17-p. 15 lines 1-14. That was a bad decision. There was important information about the identification process that the jury needed to hear. During pretrial the Petitioner's counsel stated that the victim Ann Walker gave a very generic description of the robber. There was no detail in her description to allow more refinement to be put into selecting photos for photo lines. pretrial p. 101 lines 8-13. trial counsel described how very different the

Petitioner's photo looked from the others ptr. p. 101 lines 14- p. 102 lines 1-19. She stated the line-up was in black and white with very poor quality, and randomly selected African-American men that didn't in these least resemble her client. ptr. p. 100 lines 23- p. 101 lines 1-19. The investigator admitted that he could have made better-quality photos for the line-up. ptr. p. 75 lines 9-12. She stated that the line-up was inherently suggestive, and it was clear that the identification was not reliable. ptr. p. 102 lines 16-19. She stated that if her client was the man in the video that robbed the Decker Blvd. McDonald's, and Ann Walker saw that video and if the same man robbed her, then she didn't recognize it as the same man. ptr. p. 104 lines 10-18. During trial the detective stated that when he showed Ann Walker the second line-up he was with another detective tr. p. 211 lines 23-25. But Ann Walker stated during trial it was only one detective. tr. p. 178 lines 2-8. All of this information would have been very important for the jury to know. The jury saw during trial that Ann Walker's credibility in seeing the person who robbed her was shaky when she told the court contradictory information than what she told Detectives the day of the robbery. tr. p. 186 lines 3-19. tr. p. 187 lines 10- p. 188 lines 1-9. In pretrial Ann Walker stated that the man who robbed her didn't have distinctive ears, when the petitioner has very distinctive ears that stick out side ways. pretrial p. 60 lines 13-14. trial counsel greatly erred in not attacking the identification during trial, because all

of the aforementioned information brought together and presented to the jury, would have shown the weakness in the reliability of Ann Walker's ability to identify the person who robbed her. This issue was not addressed by the P.C.R. judge.

- 10) The lower court erred in not granting the Petitioner P.C.R. relief when he wanted a preliminary hearing and was not granted one.

The Petitioner did not receive proper true billed indictments until 2008, and therefore was able to have an preliminary hearing. The Petitioner stated in P.C.R. that he did not have counsel from Lexington County p. 47 lines 10-13, when he was first charged, but he did have counsel before march of 2008 when he was true billed.

- 11) The lower court was in error not granting the Petitioner P.C.R. relief when the indictments of 2008 were beyond the 90 day limit, and were done by a grand jury different from the original grand jury four years earlier that did the first indictments.

Allowing indictments to be true billed four years after the crime was erroneous because no one would have remembered the proper facts of the case.

12) It was prosecutorial misconduct to allow perjurious testimony by Detective Eric Russel to go uncorrected.

Detective Eric Russel committed perjury when he stated that when he and the Petitioner was in his car, the Petitioner's statement "It was fun while it lasted" was a product of general conversation. When, in actuality, according to Detective Russel's version of events, the statement was in response to Detective Russel saying "you gave us a good run for our money" A psychologically play to elicit information from the Petitioner before he was mirandized. pretrial p. 76 lines 5-25. This perjury happened during A Jackson V. Denno hearing, and the detective knew if he deliberately admitted he was interrogating the Petitioner, then the judge may rule not to allow the statement in.

Although the Detective perjured, the prosecutor supported the "it was just chitchat" idea pretrial. p. 108 lines 1-6. The detective repeated this perjury during the actual trial. trial p. 215 lines 17-20. It was repeated during questioning from the prosecution. The prosecution cannot allow perjured testimony to go uncorrected. Giglio V. United States, 405 U.S. 150 (1972). It is also an infringement upon my 14th amendment right. This was not harmless because that statement was used in the state's opening

statement and closing argument.

Conclusion

For the reasons argued The Petitioner respectfully request that his convictions of Armed Robbery and second degree burglary be vacated.

2-22-15

Respectfully Submitted

Alphonse Simmons

The Supreme Court of South Carolina
Daniel E. Shearouse, clerk of court
P.O. Box 11330
Columbia, S.C. 29211

2-22-15

MR. Shearouse,

The following papers are letters of correspondence listed in chronological order showing my intent to have my unanswered issues ruled on in P.C.R. 1) A letter to my P.C.R. the day I got the order of dismissal. 2) I did not get a response to the first letter so I wrote again 3) His response to my second letter 4) A letter to Indigent Defense. 5) A response from Indigent Defense 6) Another attempt to get my P.C.R. Counsel to file an 59(e). 7) An attempt to get letters 6, 7, and 8 clocked and stamped 8) A proof of service, not sure if it was appropriate, but did it anyway. 9) A response to letter (6) 10) letters (6, 7, and 8) which were not clocked and returned so I tried again sending them Certified.

Alphonso Simmons #279349
Kirkland E.I. #2-226
4344 Broad River Rd.
Columbia, S.C. 29210

Dear MR. Stitely

4-29-17

on this date I have received the Order of Dismissal of the P.C.R. I would like to get your help in appealing this, because it's obvious that the judge did not take this case seriously. In the section "Findings of fact and conclusions of law" the judge only addressed three of the issues presented in Court. Everything else is just mentioned in the "Summary of testimony presented". There are important issues that the judge skipped on. On what he did rule on, the grounds used were flawed.

The section "All other Allegations" I do not understand what other allegations are they talking about?

I would like to get the transcript of that P.C.R. hearing, can you get one for me, please?

I should be getting shipped to a different yard soon. Maybe within the next few weeks. If possible I would like to see you, I have many questions. Thank you for your assistance thus far.

Thank you for your time.

Sincerely,
Alphonso Simmons JR.

Alphonso Simmons JR. #274349
Kirkland C.I. F2-110
4344 Broad River Rd.
Columbia, S.C. 29210

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7-7-14

Dear Mr. Stitely:

All of my issues were addressed in court, and therefore should have been addressed by the judge in my P.C.R. He only responded to three of the issues. Would you please file A 59E for the Judge to address those other issues?

Thank you for your time.

Alphonso Simmons Jr. 279349
Lee Co. Ker-5-2751
990 Misacky Hwy.
Bishopville, SC 29010

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

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July 10, 2014

Alphonso Leonard Simmons, Jr., SCDC # 00279349
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

Re: Alphonso L. Simmons, Jr. v. State of South Carolina
Civil Action No.: 2012-CP-32-01074

Dear Alphonso:

I am in receipt of your letter dated July 7, 2014. Since filing your appeal in the S.C. Court of Appeals the lower court no longer has jurisdiction over this matter. Please direct any further communication/questions to the S.C. Office of Indigent Defense.

With kindest regards, I am

Very truly yours,



Benjamin A. Stitely

BAS/as



7-22-14

Dear Mr. Dudek:

Benjamin Stitely represented me for my P.C.R. I just wrote him telling him that the judge did not respond to all of my issues, and that I needed him to file A 59E for the judge to address those other issues. I recieved A letter from him today telling me I needed to address my concerns to Indigent Defense. Though I haven't been assigned counsel yet, I didn't want to waste time that I might not have. Can the judge still be made to address all of my issues?

Alphonso Simmons #279349

Lee C.I., ASU-5-137

990 Wilsack, Hwy

4 Bishopville, S.C. 29010



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 1, 2014

Mr. Alphonso Simmons, #279349
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Simmons:

I cannot file a Rule 59(e) motion for you. It was your PCR attorney's job to file a Rule 59(e) motion.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/smf

Enclosure

Benjamin Stitely
P.O. Box 849
Lexington, S.C. 29071-0849

1-26-15

Dear Mr. Stitely,

on 7-7-14 I wrote you asking if you would file A 59E for the Judge to address the issues that he ignored. I recieved A letter from you dated 7-10-14 saying that the lower court no longer had jurisdiction. on 7-22-14 I wrote the S.C. office of indigent Defense addressing my concerns to them. on 10-1-14 Wanda H. Carter from Indigent Defense responded telling me it was your job to file the motion. under martinez V. Ryan 566 U.S. march 20, 2012, I am entitled to have all of my issues addressed. Mr. Stitely I respectfully ask if you would file the 59(e) motion, please?

Thankyou for your time.

Alphonso Simmons #279349
Kirkland C.I. F2-226
4344 Broad River Rd.
Columbia, S.C. 29210

January 26th 2015

Daniel Sherouse, Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Dear MR. Sherouse,

Please find enclosed one copy of letter requesting MR. Stitely to file an 59(e), and one copy of Proof of Service. Would you please check one copy of both and return to me? I am enclosing a self-addressed, stamped envelope.

Thank you for your time.

Alphonso Simmons #279349
Kirkland C.I. F2-226
4344 Broad River Rd.
Columbia, S.C. 29210

State of South Carolina
County of Lexington

Alphonso Simmons #279349
Petitioner

V.

State of South Carolina
Respondent

The Supreme Court of
South Carolina of the fourth circuit

Case no. 2012-CP-32-01074

Proof of Service

I certify that on January 26th I have served the within letter requesting an 59(e) motion to be filed upon the individuals named below by placing a copy of the same in the United States mail postage prepaid and return address clearly indicated to the addresses listed below:

Benjamin Stately
P.O. Box 849
Lexington, S.C. 29271-0849

Daniel E. Sherouse, Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina
29211

1-26-15

s/ Alphonso Simmons
Alphonso Simmons #279349
Kirkland C.I. F2-226
4344 Broad River Rd.
Columbia, S.C. 29210

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Daun C. Steigner
Benjamin A. Stitely
Michelle L. Boykin

February 2, 2015

Alphonso Leonard Simmons, Jr., SCDC # 00279349
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

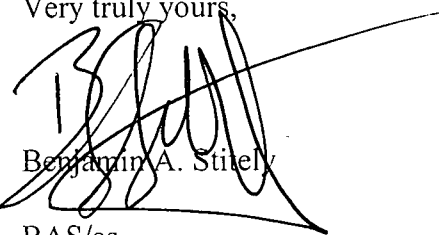
Re: Alphonso L. Simmons, Jr. v. State of South Carolina
Civil Action No.: 2012-CP-32-01074

Dear Alphonso:

My appointment is concluded now that your PCR has been decided upon. The Notice of Intent to Appeal was submitted to the S.C. Office of Indigent Defense on May 2, 2014. You will need to be advised by them from here on out since they represent you.

With kindest regards, I am

Very truly yours,


Benjamin A. Stitely

BAS/as



Alphonso Simmons - 2793019 - F2-226

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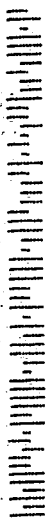
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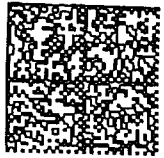
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David E. Shearouse, Clerk of Court
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