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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Certiorari to Horry County

Benjamin H. Culbertson, Circuit Court Judge

ARNOLD L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-001807

PETITION FOR WRIT OF CERTIORARI
ADDENDUM TO WRIT OF CERTIORARI

ARNOLD L. WARD
Pro-se PETITIONER,

ARNOLD L. WARD #109169
Allendale Correction Institution
PO Box 1151, Hwy 47, F-4-A-2
Fairfax, South Carolina, 29827

I N D E X

INDEX..... (1)

ISSUES PRESENTED..... (2)

STATEMENT..... (3)

ARGUMENT..... (10)

CONCLUSION..... (18)

SECTION TO BE AFFIDAVIT

ISSUES PRESENTED

III.

Whether petitioner's sixth Amendment rights were violated due to the trial counsel's failure to adequately prepare defendant for court proceedings by not informing and/or requesting a jury instruction in defendant's defense, where he had the right and was entitled to a instruction of a lesser offense and/or a lesser included offense of the charged offense...

IV.

Whether petitioner's sixth Amendment rights were violated due to trial counsel's ineffective assistance in failing to adequately investigate, develop and present a sufficient argument to support defense's motion in-limine to alter and/ or amend the deficiency of the indictment...

ARGUMENT

III

Petitioner sixth Amendment rights were violated due to the trial counsel's failure to adequately prepare defendant for court proceedings by not informing and/or requesting a jury instruction in defendant's defense, where he had a right and was entitled to an instruction of a lesser offense and/or a lesser included offense of the charged offense...

Deficient Performance

Trial counsel performance in failing to request for a jury instruction and/or advise defendant, he had a right to request a jury charge on a lesser offense of the charged offense was deficient, as it fell below an objective standard of reasonableness and a prevailing professional norms... (see:) *Strickland v. Washington* 466 us 668, 104 S.ct. 2052, 80 LE2d 674 (1984)...

The law charge to the jury is determined from the evidence presented at the trial...(see:) *State v. Knoten* 347 SC 296, 555 SE2d 391 (2001)... Trial counsel has the authority to make certain tactical decisions involving a trial strategy and must articulate a reason for certain strategies to avoid a finding of ineffectiveness...(see) *Roseboro v. state* 317 SC 292, 454 SE2d 312 (1995)... *Thomas v. state* 308 SC 123, 417 SE2d 531 (1992)...

Trial counsel strategy basis, was built on the foundation around the petitioner's credibility, good character, professional reputation and financial success to rebut the state's allegations of the intent to commit Attempt burglary...(App. 123, II. 3-12) (App. 202, II. 2-16)... Petitioner testified at trial a valid and logical purpose for his presence at the home-owners home...(App. 205, II. 9-13)... The credibility of this testimony is supported through Kenneth Coleman and other witness verifying of the petitioner's reputation of honesty... (App.202, II. 3-6) (App. 206, II. 1-11)... Rule 404 (a) (1) SCRE allows evidence of a relevant character trait to be offered by the defendant or by the state to rebut the defendant's character trait evidence... (see) *state v. Braxton* 343 SC 629, 541 SE2d 833 (2001)...

"Attempt Burglary" requires the state to prove that petitioner went to home-owner's house with the intent to commit a burglary... (see) *state v. Reid* 393 SC 325, 713 SE 2d 274 (2001)... *state v. Nesbitt* 346 SC 226, 550 SE2d 864 (ct. App. 2001)...(to prove attempt, the state must prove that the defendant committed an overt act, beyond the mere preparation, in furtherance of the intent to commit the crime)... "Here" The state relied on (*state v Haney* 257 SC 89) and testimony of the home-owner to try an support their theory of intent to commit attempt burglary...

The home-owner (Shane Holly) testified there where two separate set of door's with-in a few feet of each other on the front of his beach home... A solid set of double doors and a set of double glass french doors...(App. 104, II. 10)...Holly also admitted that his french door locks had broken a few weeks prior to the incident... (App. 110, II. 22-25)... Not only would the doors not lock, but they would not stay closed and where only secured shut by a belt.Id... Holly further conceded the belt only loosely held the doors and would move up to an inch or so, despite his effort to punch new hole's in the belt...(App. 111, II. 6-10)...When petitioner knock on the doors they swayed back and forth (App. 184, II. 17-18) Holly claim to hear pressure on the doors and observed petitioner step back from the doors and exit from the the front porch...(App. 104, II. 1-6)... Once petitioner had reach the front drive of the home, Holly turn on his extior lighting...(App. 106, II. 11-21)... Where petitioner turn back toward the house and waited on some-type response...After a period of time, thinking lights to be on a "motion sensor" petitioner proceded on his way... (App. 185, II. 2-6)...

In the context of an "Attemp Crime" the preparations for committing a crime consist in "devising or arranging" the means or mesures neccessary for the commission of the crime, The attempt or overt act is the direct movement towards the commission after the preparations are made... see: Model Penal Code: section 5.01 (1-4)-(proposed official draft 1985)... US v. Mcfadden 739 F2d 149 (4th cir. 1984)..

In reviewing of the testimoney given by the home-owner it fails to establish proof of any supporting facts for a conviction under the Model Penal Code text... state v. Dunbar 282 SC 169, 318 SE2d 16 (1984)... state v. Green 753 SE2d 259 (2014)... The record reflects that the testimoney and evidence produce during the trial proceeding's, Clearly, only present no more than an equal choice of probility's and would have entiled petitioner to a jury instuction on a "lesser offense and/or a lesser included offense" of the charged offense... State v. McLean 32 SE2d 227 (1944)... Pelzer V State 381 SC 217, 672 SE2d 190 (2009)...

PREJUDICE

Petitioner was prejudice by trial counsel's ineffectiveness for failing to request and/or inform petitioner, if he went to trial he had a right to have the court's request a jury charge on a lesser offense... US v. Whitaker 447 F2d 314 (1971)... State V McLean 32 SE2d 227 (1944)... "Aswell", Counsel should have advise defendant of any lesser offense and/or lesser included offense inwhich the courts could have given instructions on if he went to trial... State v. Kerrigen 406 SE2d 160 (1991)... Strickland V Washington 466 US 668, 104 S.ct. 2052, 80 LE2d 674 (1984)...

Holly testified that his door's had been broken weeks before the incident occurred, (App. 110, II. 22-25)... He also testified to the instability of the doors, despite his efforts to secure them with a belt... (App. 111, II. 6-10)... This testimony Questions any preparations being made and/or an overt act to support the intent to commit a attempt entry... Aswell, Holly's statement of facts within the incident would ~~guilty~~ Question petitioner guilt, where home-owners testimony supports a "truly extraordinary" probability of the petitioners actual innocence, due to the fact the incident could have and should have been viewed accidental and/or involuntary... see: Bousley V US 532 US 614, 118 S.ct. 1604, 140 LE2d 828 (1998)... Schlup V. Delo 513 US 298, 115 S.ct. 851 (1995)...

Petitioner's explanation for his presence at Holly's home and his conduct during the incident is supported through the credibility of his good character, professional reputation and financial success...(App. 192, II. 312)... Petitioner presented direct evidence of a stable income through tax returns over a period of years and called contractor's and witness to testify of his honesty and professional success... (App. 178, II. 11)...(App. 179, II. 9)... This testimony and evidence was to set up a trial strategy basis, to show that given petitioners success and good reputation, committing a burglary would have been in odds with his behavior for over the past twenty some years... (App. 192, II. 3-12)...(App. 202, II. 2-6)...

Petitioner claims where the state only produce circumstantial evidence to support thier theory of intent... The testimony and evidence fail to satisfy the context of attempted entry... Counsel's failure to request and/or inform petitioner of his right to request a jury instruction on a lesser charge deprive him the opportunity to present all of his options in his defense..."Aswell," this deprive the jury of a fair opportunity to compare various offense's to the charged offense... This had a great impact over juror's verdict and effected the out come of the trial... Tisdale v. State 662 SE2d 410 (SC2008)... Brightman V. State 520 SE2d 614 (SC.1999)...

Accordingly, Petitioner contends that counsel's performance during trial proceedings to complete defence trial strategy, by not requesting and/or informing the petitioner of his right to request a lesser offense and/or lesser included offense of the charge offense prejudice petitioner right to a fair trial...petitioner should have the opportunity to a new proceeding... Stokes v. State 308 SC. 546, 419 SE2d 778 (1992)...Strickland v. Washington 466 US 668, 104 S.ct. 2052, 80 LE2d 674 (1984)... Cherry v. State 300 SC 117, 386 SE2d 625 (1989)...

ARGUMENT

IV.

Petitioner sixth Amendment rights were violated due to trial counsel's ineffective assistance in failing to adequately investigate, develop and present a sufficient argument to support defense's pre-trial motion in-limine to alter and /or amend the deficiency of the indictment...

DEFICIENT PERFORMANCE

During pre-trial hearing, Trial counsel was ineffective in failing to adequately investigate, develop and present a sufficient argument to support defense's motion in-limine to alter and/or amend the deficiency of the indictment...(App.320,II.1-15) Counsel's performance during the hearing violated petitioner's right to a fair trial, due process and equal protection of law...(see) Strickland v Washington 446 SC 668 104 S.ct. 2052, 80 LE2d 674 (1984)...

Petitioner was indicted and proceeded to trial for (Attempted) Burglary first degree For the indictment to be sufficient, the state was required to alledge the elements of both (Attempt) SC code Ann; 16-1-80 and(Burglary) SC code Ann: 16-11-311 (1) - (2) - (3)...(see) State v. Gentry 363 SC 101, 610 SE2d 499 (2003)... State v. Wright 354 SC 48, 579 SE2d 538 (SC App. 2003)...

Trial counsel testified that he and petitioner spoke briefly prior to trial over the issue's of elements to support the charged offense of the indictment... (App.326, II 5-10)... Befor juror's were sworn, counsel for petitioner put-in a motion in-limine to alter and/or amend the deficient indictment for failing to state pacific facts of the charge and issue's pretaining to the use of petitioner's twenty year old prior conviction... (App. 6, I. 1-7)...

The state at the begining of pre-trial hearing indicated to the courts they intend to prove the elements of (Burglary first degree) by evidence that the crime was committed in the (Night time) and defendant had (Prior convictions) for two or more burglary's and/or housebreakings... (App. 6, I. 11-17)...

Trial counsel admitted during the pre-trial hearing he failed to acknowledge the missing "night time" language in the indictment and failed to present the issue during pre-trial dicussions over the use of the twenty year old prior convictions... (App. 325, II. 3-10)..."Aswell", Counsel recall all through the pre-trial motion the "Night time" language being stated, Although, he nor the state moved to have the language Amended to the indictment... (App. 322, II. 6-8)...

Counsel's performance during the pre-trial motion for failing to amend the language of the "night time" to the indictment violated petitioner's right to due process and equal protection of the law by allowing the trial judge to erroneously give a charge on the indictment to the juror's as follows: (App. 21, I. 15-23)...

The state, in the charge, in the indictment, says that Arnold Ward did in Horry county on/or about October 31, 2006... willfully and unlawfully attempt to enter the dwelling of Shane Holly, Located at 621 Longbay st. in Myrtle Beach section of Horry county, with out consent and with the intent to commit a crime there in, in violation of the laws of the state of South Carolina, 1976 as amended, that being the crime of Burglary first degree, (Attempted)

Trial counsel's ineffective action for not objecting to trial judge's erroneous decision over defense's motion and allowing the insufficient indictment to proceed before juror's to be heard, "Question's"; The fundamental fairness of petitioner's trial...(see) *Browning v state* 320 SC 366, 465 SE2d 358 (1995)... *state v Hornsby* 326 SC 121, 484 SE2d 869 (SC 1997)...

PREJUDICE

Petitioner was prejudiced by trial counsel's ineffectiveness in failing to adequately investigate, develop and present a sufficient argument to support defense's pre-trial motion in-limine to alter and/or amend the insufficiency of the indictment.. (see) *Strickland v Washington* 446 US 668, 104 S.ct. 2052, 80 Le2d 674 (1984)...

Petitioner contends he was prejudiced by trial counsel's failure to object to trial judge's ruling over pre-trial motion to allow the use of petitioner's twenty year old prior convictions with out other supportive elements to satisfy the charge of Burglary first degree (Attempted)...(App. 21, I. 15-23)...

Trial counsel admitted that during the pre-trial motion he failed to acknowledge the missing language of the "Night time" (App. 325, II. 3-10) "Aswell"; Counsel admitted he nor the state moved to have the language amended to the indictment during the pre-trial discussions...(App. 322, II. 6-8)...(see) *state v Lynch* 545 SE2d 511 (2001)... *State v Stagers* 525 SE2d 260 (2000)...

Petitioner Argue's, that trial courts abuse its discretion by admitting the twenty year old prior convictions with out conducting a balancing test and articulating for the record a specific fact and circumstance's to over rule 609(b) presumption against admissibility... (see) *state v Golf* 332 SC 313, 504 SE2d 360 (ct. App.1998) Rule 609 (b) SCRE...

The trial judge acknowledge Petitioner would be greatly prejudice by admitting the evidence of his twenty year old prior's,(App. 13, I. 16-24) "although," He Admitted the insufficient indictment to the juror's with out any other supportive elements of the charged offense... (App. 21, I. 15-23)... "Aswell," Trial judge gave a limited instruction to the juror's over the use of the twenty year old priors,(App. 13, I. 16-23) But the "Naive" presumption that the prejudicial effect can be over come by a instruction to the juror's, is known to be unmitigated fiction... (see) C. J. Warren's dissenting opinion in Spencer v. Texas 385 US 554, 87 S.ct. 648 (1967)...

Convictions are suppose to be based upon the evidence for which one is on trial "Not prior Criminal Acts," When the previous conviction is "Striking Similar" to the crime the petitioner is being tried, "the danger of prejudice is enhanced," "Here" The state only produce circumstantial evidence to support the alledged allegation of attempted entry and the use of the priors was bias as it allowed the state to dilute thier burden of proof... This had a highly prejudicial effect, confusing and misleading juror's consideration over testimoney and evidence produce during procedures of the trial... (see) state v. Gore 283 SC 118, 322 SE2d 12 (ct. App 1984)... state v. pipkin 359 SC 322, 597 SE2d 831 (ct. App. 2004)...

When evidence's prejudicial effect outweighs its probative value it should be excluded, even if other wise relevant... "Unfair prejudice means undue tendency to suggest a decision on an improper basis... (see) state v. Beckham 334 SC 302, 513 Se2d 606 (1999)... Evidence is incompetent if it could creat dangers such as prejudice , undue delay , confusion of the issue , tendency to mislead the jury , wast of time and / or cumulative presantation... (see) state v. Hamilton 344 SC 357, 543 SE2d 593 (1997)... Rule 403, SCRE...

Petitioner contends, Trial counsel's ineffective actions for failing to object over the admittance and/or use of his twenty year old prior conviction, where the indictment fail to state any other supportive elements to satisfy a conviction was highly prejudice and violated petitioner's right to a fair trial, due process and equal protection of law... (see) state v. Zulfer 345 SC 258, 547 SE2d 885 (SC App. 2001)... state V. Funderburk 367 SC 236, 625 SE2d 248 (ct. App. 2006)... state v. Bailey 276 SC 32, 274 SE2d 913 (1981)...

Counsel's unprofessional performance through out the pre-trial fell well below an objective standard of reasonableness and prevailing proffessional Norms... Petitioner should be granted the oppertunity to a new proceeding...(see) Cherry v. state 300 SC 115, 386 SE2d 624 (1989)... state v. Butler 286 SC 441, 334 SE2d 813 (1985)...

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May 5, 2015

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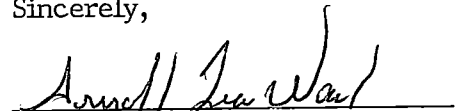
RE: Addendum to Writ of Certiorari
Arnold Lea Ward # 109169
Appellate case No: 2014-001807

Clerk of Court,

Enclosed please find a copy of Addendum to Writ of Certiorari in petitioner's Pro-se response of Jonson - prtion for Writ of Certiorari filed in his behalf by Mr. John H. Strom of the Division of appellant defense... Petitioner request of Clerk of Court to please send a clock stamped copy of the Addendum to Writ of Certiorari to the address listed above for personal files...

I would like to take the time to thank you and your office in advance for any and all assistance you may be able to provide with-in this matter...

Sincerely,


Arnold Lea Ward #109169

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