STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari To The Court of Appeals

Appeal From The South Carolina Court of Appeals

Hon.

John D. Alexander, Petitioner,

V.

The State, Respondent.

Opinion No. 2012-211390

APPENDIX

John D. Alexander
Department of Corrections

Ms. Susanne H. White,
Ass. Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Respondent.

INDEX

Johnson Petition and grant counsel's request to withdraw

12. Pro se Petition For Rehearing

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14. Letter of Petitioner requesting a disposition on the timely Petition For Rehearing

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16. Order denying any actions on the Petition For Rehearing

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

John Douglas Alexander, Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-265
Submitted March 1, 2010 – Filed April 29, 2010

AFFIRMED

Appellate Defender M. Celia Robinson, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: John Douglas Alexander appeals his convictions for assault and battery with intent to kill and possession of a firearm during the commission of a violent crime. He argues the trial court erred by failing to charge self-defense and by allowing implied malice to be charged. We affirm[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities.

1. As to whether the trial court erred in failing to instruct the jury on self-defense: State v. Brannon, 347 S.C. 85, 89, 552 S.E.2d 773, 774-75 (Ct. App. 2001) (holding an issue is not preserved for review on appeal if it was not raised to and ruled upon by the trial court); Id. at 89, 552 S.E.2d at 775 (finding an issue conceded at trial cannot be argued on appeal).

2. As to whether the trial court erred in charging the implied malice jury instruction: State v. Carlson, 363 S.C. 586, 595-96, 611 S.E.2d 283, 288 (Ct. App. 2005) (affirming that constitutional arguments are not an exception to the error preservation rule and "if not raised to the trial court are deemed waived on appeal"); Brannon, 347 S.C. at 89, 552 S.E.2d at 774-75 (holding an issue is not preserved for review on appeal if it was not raised to and ruled upon by the trial court).[2]

AFFIRMED.

SHORT, WILLIAMS, and LOCKEMY, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

[2] Because the issue is unpreserved, we decline to analyze this case in light of State v. Belcher, 385 S.C. 597, 612-13, 685 S.E.2d 802, 810 (2009) (stating its holding that "where evidence is presented that would reduce, mitigate, excuse, or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon" applies to "all cases which are pending on direct review or not yet final where the issue is preserved".

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 17, 2010

REMITTITUR

The Honorable Ponda A. Caldwell
180 Magnolia Street
Spartanburg, SC 29304

Re: The State v. Alexander, John Douglas
2006-GS-42-04462

Dear Ms. Caldwell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Appellate Defender M. Celia Robinson
John Douglas Alexander # 194748
Senior Assistant Attorney General Norman Mark Rapoport
Harold W. Gowdy, III, Esquire

PD

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF SPARTANBURG	**SEVENTH JUDICIAL CIRCUIT**
John Douglas Alexander, # 194748 Petitioner, vs. State of South Carolina Respondent.	**ORDER FOR PRODUCTION OF GRAND JURY IMPANELMENT DOCUMENTS** **2010-CP-42-2428**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 NOV 21 AM 11:12
M. HOPE BLACKLEY

The Petitioner, John D. Alexander, moved this Court on May 26, 2011, to Order that copies of the grand jury impanelment documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006, be produced to him. This matter was heard on June 15, 2011. At that time, this Court requested a Brief from Petitioner on the issue of production of grand jury impanelment documents, particularly with regard to whether our Supreme Court's decision in State v. Gentry, 363 S.C.93, 610 S.E.2d 494 (2005), acts as a prohibition against the production of such documents.

After hearing the arguments of the Petitioner and Respondent, along with reviewing the Plaintiff's Brief, I make the following finding of fact:

The Supreme Court addressed this very issue in Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005), which was filed almost one month after its decision in Gentry. In Evans, the Supreme Court held:

> [W]e conclude impanelment documents, including the State's petition, supporting materials, and the impanelment judge's Order, may be released to a defendant prior to trial upon a timely request **or to an applicant in a PCR hearing** ... Release of the documents may be appropriate because (A) Section 14-7-1770 is not a complete prohibition on the release of the information; (B) release of the documents usually

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is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment; and (C) a defendant has the right to review the documents to determine whether to timely challenge the legality of the state grand jury which indicted him.

Evans, 610 S.E.2d at 504 (emphasis added).

IT IS THEREFORE ORDERED that the grand jury impanelment documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006, shall be produced to petitioner.

IT IS SO ORDERED.

Roger L. Couch, Presiding Judge
Seventh Judicial Circuit

November 21, 2011

Spartanburg, South Carolina

S

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
John Douglas Alexander, #~~197748~~ 194748)	2010-CP-42-2428
)	
Applicant,)	
)	
v.)	**ORDER OF DISMISSAL**
)	
State of South Carolina,)	
)	
Respondent.)	
)	

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 26 PM 12:03
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 6, 2010. The Respondent made its Return on or about October 19, 2010. An evidentiary hearing into the matter was convened on December 8, 2011, Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by John R. Holland, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Thomas A. M. Boggs, Esquire. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2006 term of the Spartanburg County Grand Jury for assault and battery with intent to kill and possession of a firearm during the commission of a violent crime

COMPUTER

(06-GS-42-4462, counts 1 and 2). Thomas A. M. Boggs, Esquire, represented the Applicant. On June 13-14, 2007, after proceeding to trial, a jury convicted the Applicant of these charges. The Honorable J. Derham Cole sentenced the Applicant to confinement for life for assault and battery with intent to kill and a concurrent sentence of five years for possession of a firearm during the commission of a violent crime.[1]

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Alexander, Op. No. 2010-UP-265 (S.C. Ct. App. filed April 29, 2010). The Remittitur was sent on May 17, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
   a. Applicant was denied his nonwaivable Constitutional right to be present at a "critical state" of his criminal trial,
   b. Counsel conceded at trial that the evidence didn't support a charge on self-defense,
   c. Counsel failed to present a meaningful or effective defense at trial,
   d. Counsel failed to adequately investigate, prepare for and advise Applicant of a possible defense based on insanity,
   e. Applicant was denied right to peremptory challenge and strike a juror who after being selected, sworn in and the trial started, was discovered to have been associated with the judge,
   f. Counsel failed to object to or request a mistrial when the phrase "malice and malice aforethought" was used forty-two times during closing arguments and the jury charge,
   g. Counsel failed to object to the jury instructions;
2. Trial judge's abuse of discretion, in that;
   a. Trial judge conspired along with the Solicitor to commit prosecutorial abuse by allowing the term "malice and malice aforethought" forty-two times during the closing argument and jury charge,
   b. Jury instruction constituted prejudicial error;

[1] Applicant received a life sentence pursuant to §17-25-45(A) & (H), S.C. Code Ann. (1976).

3. Violation of due process, in that;
   a. Applicant's Fourth, Fifth, Sixth, and Fourteenth Amendment rights were violated; and
4. Prosecutorial misconduct, in that;
   a. Prosecutor gave false impression to Court and jury which involved a corruption of the truth seeking function of the trial process
   b. Brady violation

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive

relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Object

The Applicant alleged that Counsel was ineffective for failing to object to several prejudicial statements made by the Solicitor and the trial court, including the use of the phrase "malice and malice aforethought." The Applicant testified that the State, during closing arguments, mentioned "malice," "inferences," and "opinions," fourteen times and Counsel should have objected. The Applicant also testified that the trial judge mentioned "malice" twenty-eight times during the jury charges and Counsel should have objected to that as well.

The Applicant also testified that Counsel was ineffective for failing to object to various improper comments and arguments made by the Solicitor during the trial. Although PCR Counsel pointed to arguments and comments which might be somewhat confusing and improper (violence v. violent and bank robber), the Applicant failed to meet his burden of proof in showing that Counsel was deficient in failing to object to those comments. This Court also finds that even if Counsel was deficient for failing to object to these comments, the Applicant failed to demonstrate that he was prejudiced by these statements made by the Solicitor and that the

objections would have been sustained or the outcome of the trial would have been any different.

This Court finds that the Applicant's argument that Counsel should have objected to the court's use of the word "malice" during the charge lacked merit. After reviewing the record, this Court finds that the jury charge given by the trial judge was proper and well-within the law at the time of Applicant's trial, so there is no deficient performance for Counsel's failure to object. Additionally, the number of times Applicant indicates the word "malice" was used includes both the jury charge and supplemental charge. Therefore, this claim is denied and dismissed.

Failure to Prepare and Investigate Sufficiently to Present Defense at Trial

The Applicant alleged that Counsel failed to prepare and investigate properly in order to present a meaningful and effective defense at trial. Applicant testified that Counsel did not review the elements of the charges he faced or possible defenses with Applicant, so that Applicant was not aware of what the State would have to prove to prove him guilty.

Counsel testified that he always interviews witnesses, retrieves discovery materials and then tries to explain the charges and potential sentences and defense to his clients in laymans' terms. Counsel was very credible at the hearing and presented information to the Court that showed he was fully prepared for trial. A review of the transcript also supports the conclusion that Counsel was fully prepared and represented the Applicant properly at trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 240, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

In particular, the Applicant alleged in his application that Counsel should have investigated and advised the Applicant on pursuing an insanity defense at trial. However, the Applicant failed to meet his burden of proof as to this claim. The Applicant only provided testimony that he had struggled with depression, anxiety and destructive behaviors, which included attending anger management. An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." The only evidence produced reflect that the Applicant had attended anger management classes.

As to Applicant's claims that Counsel failed to fully investigate and prepare to present a defense at trial, this Court finds that the Applicant has failed to meet his burden of proof. The Applicant failed to establish what, if anything, Counsel would have discovered if additional investigation had occurred. The Applicant also presented no evidence that there was ever a claim that he lacked the capacity to understand the difference between right and wrong and in fact, presented testimony to support that he knew what he was doing and felt justified in shooting the victim because he felt he was doing it in self-defense. Therefore, this Court finds that this claim is denied and dismissed.

Failure to Object to Jury Charge and Conceded to Lack of Evidence for Self-Defense

The Applicant also alleged that Counsel was ineffective for failing to object to the implied malice jury charge in light of the South Carolina Court of Appeals opinion in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). This Court finds that this allegation is without

merit. The jury charge that was given was a correct statement of the law as it existed at the time of trial and was supported by the facts presented at trial.

Applicant also alleged that Counsel was ineffective when he conceded that a self-defense jury charge was not proper. Applicant testified that this was the only defense that was ever discussed between himself and Counsel, never the lesser-included charge. Applicant testified that he did not know what the State would have to prove to establish the charges or what he would have to establish for self-defense. Applicant alleged that Counsel failed to define his right to testify as to the facts to help establish the self-defense claim.

This Court finds that the Applicant has failed to meet his burden of proof. Counsel testified that although that was discussed as a potential defense, when the Applicant's sister testified, as the only eyewitness to the events, he did not feel that the testimony presented supported a self-defense charge. A defendant is entitled to a self-defense charge where the evidence shows that (1) he was without fault in bringing on the difficulty, (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief, and (4) he had no other probable means of avoiding the danger other than to act as he did. State v. Sullivan, 345 S.C. 169, 547 S.E.2d 183 (2001); State v. Anderson, 338 S.C. 277, 525 S.E.2d 901 (2000).

Counsel testified that the sister's testimony did not support the fact that the victim was armed or that it was necessary for the Applicant to shoot the victim to stop the victim from hurting him or his sister. Counsel testified that he discussed the pros and cons of the Applicant testifying at trial with Applicant, but recommended that Applicant not testify because of the fact that his previous conviction for voluntary manslaughter would be able to be used against him.

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Although Counsel testified that he advised Applicant that it was his decision. Additionally, Counsel testified that he thought that the sister would be a strong witness for the defense who could help them reach the threshold of the requirement of evidence of imminent danger for bodily injury to the Applicant or sister. However, Counsel testified that the sister did not testify as she had indicated during previous conversations and he had to shift strategy for closing and focus on the lack of intent. Applicant also alleged that he believed his sister presented perjured testimony on the stand and gave inconsistent statements because of illegal tactics by the police and prosecutors.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The facts must support a jury instruction for it to be proper. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). In this case, the jury instructions regarding assault and battery with intent to kill were proper at the time of trial. Furthermore, the facts presented at trial through testimony did not support a charge of self-defense. Counsel is an experienced trial attorney who has prepared and presented many criminal cases which focused on self-defense and he is well-aware of the elements that must be met for a jury charge of self-defense to be considered. Even if this Court were to find that Counsel was deficient for conceding to no self-defense charge, prejudice cannot be established. It is clear that the trial judge did not feel that the Applicant had met the threshold for the charge and would not have allowed the charge even if Counsel had not conceded the issue. Therefore, this claim is denied and dismissed.

Failure to Ensure Applicant was Properly Served with LWOP Notice

The Applicant alleged during the hearing that Counsel was ineffective for failing to ensure that he had been properly given notice that the State intended to seek a sentence of life without parole. Applicant alleged that the State served him at his house, but gave the notice to

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his younger sister, who was not eighteen at the time and should not have been given the notice. However, Counsel testified that he received a letter regarding the notice several months well in advance of trial and then he and the Applicant were personally served at the courthouse approximately two weeks before trial. This Court finds that this allegation lacks merit. The record reflects a served Notice to seek life without parole, which was served within the statutorily required time. Therefore, this claim is denied and dismissed.

Failure to Ensure Applicant was Present at all Critical Stages of his Trial

The Applicant also alleged that Counsel was ineffective for failing to ensure that the Applicant was present at all critical stages of his trial. During testimony, the Applicant referenced an in chambers meeting that Counsel had with the Assistant Solicitor and the judge regarding the jury charges in his case. Based on the testimony presented, this Court interprets Applicant's claim as a claim that Counsel should have ensured that the Applicant was present for all conversations regarding his case, in particular the conversations regarding the possible jury charge for self-defense. Counsel acknowledged that he went into chambers with the trial judge and opposing counsel to discuss the requested jury charges, but testified that is standard procedure since it involves a discussion of the law and is not done in the presence of the jury. This Court finds that this allegation lacks merit. A review of the record indicates that the Applicant was present at all times during his trial before the jury. However, no Constitutional right was violated when Counsel met with opposing counsel and the judge to discuss the legal charges of the case. This Court finds no violation of the Applicant's rights and no deficient performance on Counsel's behalf. Therefore, this claim is denied and dismissed.

Failure to Challenge and Strike Juror Found to be Associated with the Judge

The Applicant failed to present any testimony or evidence at the hearing in support of this

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allegation. Therefore, this Court finds that the Applicant failed to meet his burden of proof and the claim should be denied and dismissed.

Trial Court's Abuse of Discretion

In regards to the Applicant's claim that the trial court abused its discretion, this Court finds that this claim should be dismissed. In so far as the Applicant is alleging that the trial court abused its discretion as to comments made during the jury charge as discussed above, this Court has ruled that those claims should be dismissed. Additionally, claims that the trial court abused its discretion are direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. This Court finds that his failure to do so has waived this allegation as a ground for relief. Therefore, this claim is denied and dismissed.

Due Process Violations

Although the Applicant raised this allegation in his application, he failed to produce any testimony or evidence in support of the allegation at his hearing, other than stating that he was denied due process and equal protection under the law regarding the elements of the charges. Therefore, this Court finds that he has failed to meet his burden of proof and it is denied and dismissed.

Prosecutorial Misconduct

In so much as the Applicant is attacking the comments made by the State during his trial, this Court has ruled that those allegations are without merit and did not prejudice the Applicant.

Therefore, they are dismissed. As to any other allegations of prosecutorial misconduct, the Applicant failed to produce any testimony or evidence in support of the allegation at his hearing. Therefore, this Court finds that he has failed to meet his burden of proof and it is denied and dismissed.

Grand Jury – Indictment Process

It was also noted at the beginning of the hearing that the Applicant had previously been granted limited discovery as to documents relating to the grand jury that indicted him on these charges. The Applicant received two documents related to that process. The Applicant testified that he wants the documents to determine why he was court that day because he believes that he was never legally indicted by the State. Counsel testified that the Applicant was indicted by the grand jury in November 2006 as a result of the arrest for the assault and battery with intent to kill charge, but directly indictment for the possession of a weapon during the commission of a violent crime charge. However, Counsel testified that he tried to explain the direct indictment process to the Applicant in layman's terms.

A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Absent evidence to the contrary, the courts will presume that a properly returned indictment is valid. "Thus, if the record does not reveal any irregularity in the proceedings affecting the indictment, this court must presume the trial court had subject matter jurisdiction." State v. James, 321 S.C. 75, 79, 472 S.E.2d 48, 49 (Ct. App. 1996). In this case, the Applicant has nothing other than speculation lacking in foundation to support his allegation. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the

Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier *supra*. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your

attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th **day of** March **, 2012.**

J. Mark Hayes II
Presiding Judge

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 26 PM 12:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG John Douglas Alexander, #~~197748~~, 194748 Applicant, vs. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT 2010-CP-42-2428 **ORDER**

This matter comes before the Court by way of Applicant's *pro se* Motion to Alter or Amend Judgment. The Respondent made its Return to this response on April 26, 2012.

This Court finds that Applicant is represented in these proceedings by John R. Holland, Esquire. Pursuant to Rule 11, SCRCP, and authority of the South Carolina Supreme Court, every motion of a party represented by an attorney shall be signed and submitted by counsel. See Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002)(stating there is no hybrid representation at trial or on appeal in South Carolina); Koon v. Clare, 338 S.C. 423, 527 S.E.2d 357 (2000)(Same); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998)(Same); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(Same); State v. Sanders, 269S.C. 215, 237 S.E.2d 53 (1977).

This Court cannot consider the *pro se* Motion to Alter or Amend submitted by the Applicant because he is represented by counsel. Therefore, this Motion is dismissed.

AND IT IS SO ORDERED this 3rd day of May, 2012.

J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spartanburg South Carolina

M. HOPE BLACKLEY
2012 MAY -8 AM 10:28

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 18, 2012

John Douglas Alexander, 00194748
386 Redemption Way
McCormick SC 29899

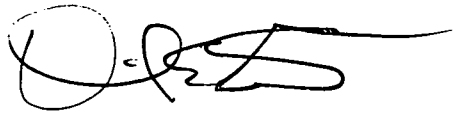
Re: John Douglas Alexander v. The State
Appellate Case No. 2012-211390

Dear Mr. Alexander:

This responds to your recent correspondence addressed to Tanya Gee, former Clerk of the SC Court of Appeals dated May 21, 2012. Since you are represented by counsel in this matter, no action will be taken on this *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

The Division of Appellate Defense is currently representing you and that office is awaiting delivery of the transcript. It is our understanding that an attorney will be appointed to you once the transcript is received. Should you have questions in the meantime, you may contact that office at Post Office Box 11589, Columbia, SC 29211. Their phone number is 803-734-1343.

Very truly yours,



CLERK

cc: Suzanne Hollifield White
John R. Holland
Robert Michael Dudek

The Supreme Court of South Carolina

John Douglas Alexander, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-211390

ORDER

Petitioner has filed a *pro se* Motion for Remand to Reconstruct the PCR Transcript of Record and a Motion to Hold Petitioner's Writ of Certiorari in Abeyance. The motions are denied.

C.J.

FOR THE COURT

Columbia, South Carolina

February 13, 2013

cc:
Suzanne Hollifield White
Robert M. Pachak
John Douglas Alexander, 194748

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

March 04, 2013

Mr. John Douglas Alexander, 194748
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: John Douglas Alexander v. The State
Appellate Case No. 2012-211390

Dear Alexander:

This responds to your *pro se* petition for rehearing regarding this Court's order of February 13, 2013. Since this order did not have the effect of dismissing or finally determining this matter, no action will be taken on this petition for rehearing. Rule 240(i), SCACR ("The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.").

Very truly yours,

CLERK

cc: Suzanne Hollifield White, Esquire
Robert M. Pachak, Esquire

The Supreme Court of South Carolina

John Douglas Alexander, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-211390

ORDER

Petitioner has filed a motion to relieve counsel and have new counsel appointed. The State has filed a return in opposition to the motion. Petitioner's counsel has submitted a response in which he essentially submits his removal is not merited, but states that if this Court wishes to grant petitioner's motion, he does not oppose new counsel being appointed. The motion is denied. *Richardson v. State*, 377 S.C. 103, 659 S.E.2d 493 (2008).

C.J.

FOR THE COURT

Columbia, South Carolina

April 3, 2013

cc:
Suzanne Hollifield White, Esquire
Robert M. Pachak, Esquire
John Douglas Alexander, 194748

The Supreme Court of South Carolina

RE: TRANSFER OF CASES FROM SOUTH CAROLINA SUPREME COURT TO THE COURT OF APPEALS

ORDER

Pursuant to Rule 243(l), SCACR, the following post-conviction relief cases are hereby transferred to the South Carolina Court of Appeals:

	Appellate Case Number	Case Name
1.	2012-212734	Ricky Lee Hatcher v. State
2.	2012-209540	Jerome Curtis Buckson v. State
3.	2012-207809	Nathaniel Suber v. State
4.	2012-207247	Charles McCormick v. State
5.	2012-206670	Luther Brian Marcus v. State
6.	2011-204374	Herman Belton v. State
7.	2011-202768	LaVelle Weaver v. State
8.	2011-195210	Tonnie Baldwin v. State
9.	2012-213472	Ricky Dean Duncan v. State
10.	2012-213423	Jose Antonio Anzaldo v. State
11.	2012-213326	Jeremy T. Durant v. State
12.	2012-213323	Adrian Franklin v. State
13.	2012-213322	Carlos Gonzales v. State
14.	2012-213312	Eric LaGeorge Mouzon v. State
15.	2012-213235	Robert Edgar Upchurch v. State
16.	2012-213200	William Outlaw v. State
17.	2012-213167	Jeremy J. Jeter v. State
18.	2012-213133	Sherman Boyd v. State
19.	2012-213131	Waddell McGhee v. State
20.	2012-213130	Ken Lucero v. State
21.	2012-213072	Giles Belcher v. State
22.	2012-212964	Marques A. Durant v. State
23.	2012-212912	Robert L. Foster v. State

24.	2012-212911	Jimmy Belton v. State
25.	2012-212909	James E. Kennedy v. State
26.	2012-212880	Marvin Mims v. State
27.	2012-212848	Roddregus Wells v. State
28.	2012-212793	Jeffery Augustine v. State
29.	2012-212751	Robert Bostic v. State
30.	2012-212702	Samuel Emanuel Stokes v. State
31.	2012-212701	Farid A. Mangal v. State
32.	2012-212698	Marquita Smith v. State
33.	2012-212676	Whelthy McKune v. State
34.	2012-212671	John W. Floyd v. State
35.	2012-212608	Adrian Allen v. State
36.	2012-212602	Oscar Fortune v. State
37.	2012-212589	Clarence Collins v. State
38.	2012-212576	Edward Whitner v. State
39.	2012-212557	Luis Ozorio v. State
40.	2012-212553	Stephens Smalls v. State
41.	2012-212552	Lawerence K.Smith, Jr. v. State
42.	2012-212550	Marcus J. Parker v. State
43.	2012-212521	Eugene Santiago v. State
44.	2012-212506	Lakendrick K. Leverette v. State
45.	2012-212504	Nicolas Brown v. State
46.	2012-212418	James Edward Roseboro v. State
47.	2012-212417	Alex Brice Graham v. State
48.	2012-212416	Jovon Brown v. State
49.	2012-212414	Islam Dunn v. State
50.	2012-212412	Donna Marie Redding v. State
51.	2012-212410	Gary Michael Piper v. State
52.	2012-212409	Raymond Kelley v. State
53.	2012-212402	Octavious C. Neeley v. State
54.	2012-212399	Walter Durham v. State
55.	2012-212398	Jomer Hill v. State
56.	2012-212397	Steven D. Denton v. State
57.	2012-212396	Martina R. Putnam v. State
58.	2012-212316	Theodore Kyinoo v. State
59.	2012-212314	Antwon Garrett v. State
60.	2012-212310	Charles Gory v. State
61.	2012-212308	George N. Moses v. State
62.	2012-212306	Michael Shane Johnson v. State
63.	2012-212305	Herman D. McKnight v. State
64.	2012-212301	Elkin Perez v. State
65.	2012-212179	Alton Docherty v. State
66.	2012-212177	Craig M. Brannon v. State
67.	2012-212175	Favian Alfonzo Hayes v. State

68.	2012-212173	Dwayne Housey v. State
69.	2012-212164	William D. Hoyles v. State
70.	2012-212163	Sherman Graham v. State
71.	2012-212161	Roger Nickeya Johnson v. State
72.	2012-212153	Sintari A. Summers v. State
73.	2012-212149	James J. Abercrombie v. State
74.	2012-212147	Lawrence Reyes Waller v. State
75.	2012-212117	Vincent A. Pitts v. State
76.	2012-212097	Damion Curry v. State
77.	2012-212094	Desmond Briggs v. State
78.	2012-212093	Jose Eloy Tello v. State
79.	2012-212092	Charles Ray Dean v. State
80.	2012-212091	David L. Bacchus v. State
81.	2012-212086	Chas Lamous Smith v. State
82.	2012-212084	Kevin King v. State
83.	2012-212083	Heyward Robinson v. State
84.	2012-212080	Antonio M. Williams v. State
85.	2012-212075	Donques Hood v. State
86.	2012-212074	Donald Wetherall v. State
87.	2012-212073	Antonio Barton v. State
88.	2012-212072	Wayne Morris Hibbert v. State
89.	2012-211647	Sherman Dewalt v. State
90.	2012-211629	Myra Christenbury v. State
91.	2012-211390	John Douglas Alexander v. State
92.	2012-211388	Benjamin Garrick v. State
93.	2012-211386	Jason Moulton v. State
94.	2012-211291	James A. McClellan v. State
95.	2012-211288	James Marion Branham v. State
96.	2012-211093	Sterling Green v. State
97.	2012-211091	Darryl Frierson v. State
98.	2012-211087	Christopher Ray Nolan v. State
99.	2012-210227	James Clayton Helms v. State
100.	2012-210226	Timothy T. Kinard v. State
101.	2012-210213	Walter C. Kelly v. State
102.	2012-210209	Vincent L. Neumon v. State
103.	2012-210168	Lisa Ann Blakeney v. State
104.	2012-209535	Trico D. Thompson v. State
105.	2012-209533	George R. Lindsey, Jr. v. State
106.	2012-209530	John Lewis Mills v. State
107.	2012-209507	David Bryant Richards v. State
108.	2012-209506	Norman J. Hayes v. State
109.	2012-208888	Cedric T. Smith v. State
110.	2012-208639	Darian G. Reddish v. State
111.	2012-208631	Thomas Osborne v. State
112.	2012-208630	Timothy Earl Green v. State

113.	2012-208629	Dorothy Harden v. State
114.	2012-208626	Ruben Ramirez v. State
115.	2012-208013	Virgil Lee Culbreath v. State
116.	2012-208009	Jose N. Alvarenga v. State
117.	2012-207807	Harold Lee Greer Jr. v. State
118.	2012-207561	Dwayne R. Clark v. State
119.	2012-207560	Nathan Luckett v. State
120.	2012-207554	James C. Cobbert, III v. State
121.	2012-206673	Angela M. Vaughn v. State
122.	2012-206649	James L. Farrow v. State
123.	2012-206047	Fernando F. Young v. State
124.	2012-205987	Lazarus M. Brannon v. State
125.	2011-203247	Michael Lathan v. State
126.	2011-203229	Tobias Chano Lee v. State
127.	2011-202771	Harrison Sanders v. State
128.	2011-202766	Helen Marie Douglas v. State
129.	2011-201592	Joseph Morrison, III v. State
130.	2012-213492	Kenneth Epps v. State
131.	2011-199421	Dominique D. Moore v. State
132.	2011-199420	Donald Carter v. State
133.	2011-199419	Quandelle J. Wilson v. State
134.	2011-199412	Carmen Latrice Rice v. State
135.	2011-196598	Dayvonn A. Valentine v. State
136.	2011-190110	Luzenski Allen Cottrell v. State
137.	2013-000410	Lindy L. Jones v. State
138.	2013-000365	Samuel Abiodun v. State
139.	2012-213324	Terrance A. Baker v. State
140.	2012-213158	James Corbett v. State
141.	2012-213515	Odis D. State
142.	2012-212825	Johnny L. Friazer v. State
143.	2012-212750	Jeremy McPhail v. State
144.	2012-212699	Jovian McRant v. State
145.	2012-212503	John Barbare v. State
146.	2012-212170	Mark Lowery v. State
147.	2012-212088	Andre Martin v. State
148.	2012-211088	Kevin L. Grant v. State
149.	2011-202772	Antonio Glover v. State
150.	2011-203631	Michael Bohannan v. State

IT IS SO ORDERED.

C.J.

FOR THE COURT

Columbia, South Carolina

July 29, 2013

cc: Chief Appellate Defender Robert M. Dudek
Deputy Chief Appellate Defender Wanda H. Carter
Appellate Defender Robert M. Pachak
Appellate Defender Kathrine H. Hudgins
Appellate Defender LaNelle C. DuRant
Appellate Defender Susan B. Hackett
Appellate Defender Benjamin J. Tripp
Appellate Defender Carmen V. Ganjehsani
Appellate Defender David Alexander
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General John W. Whitmire
Assistant Attorney General Tyson A. Johnson
Assistant Attorney General Suzanne H. White
Assistant Attorney General Ashleigh R. Wilson
Assistant Attorney General Megan E. Harrigan
Assistant Attorney General Karen C. Ratigan
Assistant Attorney General Daniel F. Gourley
Assistant Attorney General David A. Spencer
Assistant Attorney General J. Rutledge Johnson
John Benjamin Aplin, Esquire
Tricia Blanchette, Esquire
J. Falkner Wilkes, Esquire
John R. Ferguson, Esquire
Tara D. Shurling, Esquire
Joel F. Stroud, Esquire
Thomas W. Dunaway, III, Esquire
Beattie B. Ashmore, Esquire
John D. Dalgado, Esquire
Franklin G. Shuler, Esuire
Paul Archer, Esquire
Dwight C. Moore, Esquire
Tommy Thomas, Esquire
James R. Snell, Esquire
Ricky Dean Duncan
Jose Antonio Anzaldo
Jeremy T. Durant
Adrian Franklin
Robert E. Upchurch
Jeremy J. Jeter
Sherman Boyd

Waddell McGhee
Giles Belcher
Marques A. Durant
Robert L. Foster
James E. Kennedy
John W. Floyd
Adrian A. Allen
Lakendrick K. Leverette
Nicolas Brown
Alex B. Graham
Islam Dunn
Raymond Kelley
Walter Durham
Charles Gory
Herman D. McKnight
Alton Docherty
William D. Hoyles
Sherman Graham
Sintati A. Summers
James J. Abercrombie
Desmond Briggs
Heyward Robinson
Donques Hood
Sherman Dewalt
John D. Alexander
Benjamin Garrick
Timothy E. Green
Jose N. Alvarenga
Michael Lathan
Dayvonn A. Valentine
Lindy L. Jones
Terrance A. Baker
James Corbett
Brain Less
Johnny L. Frazier
Jeremy McPhail
Mark Lowery
Michael Bohannan
Jeffery Augustine
Kenneth Epps
The Honorable Jenny Kitchings

The South Carolina Court of Appeals

John Douglas Alexander, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-211390

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

Paul E. Short, Jr. J.

J.

J.

FILED

May 21, 2015

Columbia, South Carolina

cc: Suzanne Hollifield White, Esquire
Robert M. Pachak, Esquire
John Douglas Alexander, 194748

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2012-211390

John D. Alexander, Appellant,

v.

The State, Respondent.

PETITION FOR REHEARING

On, May 21, 2015, this Court affirmed the PCR Court's decision to Dismiss Appellants claims of Denial and deprivation of Due Process and Equal Protection of Law, Ineffective Assistance of Counsel, and Prosecutorial Abuse and/or Malicious Prosecution. This Court misJugded or disregarded the facts of circumstances, evidence, and proof of the case which rendered the trial counsel's performance and prosecutors' Federal and State violations and errors merely unimportant or harmless. Consequently, pursuant to Rule 221 (a), SCACR, the Court should grant the Petition For Rehearing, Find all the cumulative violations and errors made by trial counsel, as well as, the trial prosecutors denied and

deprived the Petitioner of a fair and impartial Jury trial, and reverse the Appellant's conviction and sentence.

The Appellant contends that the cumulation of errors and violations warranted reversal. But more importantly, each indivíual error and violation mention cause preJudice against the Appellant effecting a denial and deprivation of a fair and impartial Jury trial. See State v. Peterson, 287 S.C. 244, 335 S.E. 2d 800 (1985). Unequivocally this Appellate Court overlooked or misJudged the below points:

(1) Trial counsel was ineffective for failing to object to the Trial Court's Malice May Be Inferred From The Use OF A Deadly Weapon Jury Charge. During Petitioner's PCR hearing trial counsel conceded along with the Petitioner that that inference was highly preJudicial to Petitioner's self-defense case. And that he should have objected and preserve the issue for appellate review. Additionally, Ms. Susanne White, Assistant Attorney General agreed that the South Caralina Supreme Court's ruling in State v. Belcher, 685 S.E. 2d 802 (2009) was applicable to the instant case for two reasons. I

First, the Petitioner's case was "pending on direct review" at the time Belcher was decided. Second, evidence was presented during trial that reduced,

mitigated, excused or justified the assault and battery with intent to kill offense.

(2) That trial counsel was ineffective for failing to object to the trial Court giving the Jurors a Supplemental Malice Charge through the bailiff, without publishing in open court the Jury's inquiry, outside the presence of the Petitioner or trial counsel answering the Jurors question, and denying and depriving the Petitioner the right to object to the Supplemental Malice Charge. Or providing the Petitioner the opportunity to make suggestions to include current and correcti laws to assist the Jury in their fact-finding process in connection with the element and nature of malice.

Immediately following the trial Court giving the Supplemental Malice Charge the Jury convicted the Petitioner. The Federal and State Constitution guarantee the Petitioner the right to hear the Jury's question on malice posed to the Court. The right to be present when the Court answer the Jury's question. The right to object to the Supplement Malice Charge. And the right to preserve any objections to the Supplemental Malice Charge for appellate review. Fifth, Sixth, Fourteenth Amendment; Article 1 Section 3 S.C. Const.; 18 U.S.C.A Rule 43; State v. Rounder, 639 F.2d 931 (1981); S.C. Digest Key (7); U.S. v. Glick, 463 F.2d 491 (1972); U.S. v. Bascaro, 742 F.2d 1335 (1984); also see U.S. v. Duffie, 542 F.2d 236-41

(1976).

(3) That trial counsel was ineffective for failing to object to the trial Court's General Intent Instruction. The Petitioner presented evidence of self-defense as well as other evidence sufficient to mitigate and/or reduce a general intent to kill. Second, the trial court's general intent instruction forced the Jurors to decide upon the law the act or acts constituting a general intent to kill where no elements were explained nor defined. Third, the trial court's general intent to kill charge shifted the burden of proof on intent from the State upon Petitioner to prove that he had a general intent to shoot in self-defense, absent any intent to kill or, with legal Justification. U.S. v. Span, 75 F.3d 1383 (1996); State v. Coleman, 536 S.E.2d 387 (S.C. App. 2000); State v. Foust, 479 S.E.2d 50 (1996); also State v. Hilton, 284 S.C. 245, 325 S.E.2d 575 (Ct. App. 1985)

(4) That trial counsel was ineffective for failing to object to and preserve for appellate review the trial court denying and depriving the Petitioner's Four requests for a charge on the law of self-defense where such a charge was supported by evidence and Facts, and were material to a fair presentation of the case. During the Petitioner's Jury trial the prosecution never challenged or objected to none of Petitioner's requests for a self-defense charge. After careful consideration of the evidence and

facts of self-defense presented during trial, trial counsel conceded at the PCR hearing that he should have objected and preserved for appellate review the trial court's reasoning there was not sufficient evidence from which the Jurors could consider self-defense. Burkhart v. State, 350 S.E.2d 252, 565 S.E.2d 298 (S.C. 2000); Wiles v. Roof, 854 F.2d 671 (4th Cir. 1988); Thomas v. Leeke, 725 F.2d 246 (4th Cir.), cert denied, 469 U.S. 870, 105 S.Ct. 218, 83 L.Ed.2d 184 (1984); State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987); State v. Glover, 284 S.C. 152, 326 S.E. 2d 150 (1985); State v. Davis, 282 S.C. 45, 317 S.E. 2d 452 (1984); and State v. Slator, 644 S.E. 2d 50, 373 S.C. 66 (2007)

(5) That trial counsel was ineffective for failing to object where the Petitioner was involuntarily excluded from a secret inchambers meeting held at the start of the Petitioner's Jury trial. At the close of the State's case and trial counsel's defense; the trial court stated that it, the prosecution and trial counsel universally understood at the conclusion of the secret meeting that no (meaningful) defense of self-defense would be presented or "this would not be a self-defense case." On the contrary, trial counsel mislead and deceive the Petitioner into believing that self-defense was applicable and adaquate to the evidence and facts of the case. The secret inchambers meeting thus was a critical stage during the Jury trial which had Petitioner been present to hear sustenance of trial counsel's intent to misrepresent the Petitioner, the Petitioner would have sought

permission from the Court to relieve counsel of any further duties and seek new counsel. See Rule 407 Professional Conduct, Rule 8.4 Misconduct SCACR; Sixth Amendment.

(6) That trial counsel was ineffect for failing to explain the elements and true nature of assault and battery with intent to kill or possession of a weapon during the commission of a violent crime. Or the four elements of self-defense or defense of another. Consequently, the Petitioner was denied and deprived of the most universal of Due Process recognized to be placed and advised "real Notice of the true nature and elements of the offense charge." As well as the requisite elements of his defense of self-defense. See Henderson v. Morgan, 96 S.Ct. 2253 (1976); Majko v. United States, 457 F.2d 790 (1972); U.S. v. Cody, 438 F.2d -- (1971); and Sixth Amend. Consequently, trial counsel did not provide the Petitioner with adaquate or sufficient knowledge and information of the offense charge or defense of self-defense to understand the offense charged. Or to comprehend and participate effective in Petitioner's defense.

(7) That trial counsel was ineffective by failing to explain to the Petitioner that his testimony was required to produce the evidence by a preponderance of evidence the trial court was demanding before any self-defense instruction would be given to the Jury. Essentially, the

the trial court advised trial counsel [at the close of the State's case and after the defense rested] that it would not be instructing the Jury on self-defense. But if that would change defense counsel's trial strategy about putting the Petitioner on the stand, he would give trial counsel the opportunity to explain to Petitioner the disadvantage of not doing so. However, rather than explain to the Petitioner that he had everything to gain and nothing to lose; trial counsel declined to explain to Petitioner the benefits of testifying and simply surrenderred the self-defense claim. Trial counsel's conduct was contrary to Rule 407 A Lawyer's Responsibility SCACR as well as the Sixth Amendment.

(8) That trial counsel was ineffect for failing to request a charge on the law that "Malice do not preclude a find on assault and battery of a high and aggravated nature." See State v. Fennell, 531 S.E. 2d 512 (S.C. 2000); State v. Pilgram, 326 S.C. 24, 482 S.E. 2d 562 (1997). The trial court's malice charge gave the Jury the presumption that the absence of malice was required before a finding of assault and battery of a high and aggravated nature could be made.

(9) That trial counsel was ineffective for failing to object where Solicitor Jordan during Closing Arguments told the Jury; "in our state, assault and battery of a high and aggravated nature is not considerred

(1) "If I were the prosecutor I'd argue that this is not a self-defense case. And I won't be instructing them on the law of self-defense. I'm talking about thats argument."

(2) "I can only assume that you intend to address that in your Closing Arguments, that I will not be instructing them on self-defense. They cannot consider that or legal justification. And so I assume you'll be able to handle that through some pursuasive Closing Arguments."

The prosecutor adhered to the trial court and in their Closing Arguments quoted the trial Judge's words verbatim. As a result, the Petitioner was convicted. The trial court did not refrain from making comments solely bent on directing a verdict in favor of the prosecutors. Artical 5 Section 17 S.C. Constitution; State v. Norris, 243 S.E. 2d 440 (1978); State v. Kennedy, 250 S.E. 2d 338 (1978); and State v. Cook, 368 S.E. 2d 907 (S.C. 1988).

(12) That trial counsel was ineffective for failing to present to the trial court and Jury a sworn Voluntary Statement of the Petitioner's defense witness swearing that, only after Mr. Freeman threaten to take the Petitioner's head off and charged at the Petitioner did the Petitioner shoot Mr. Freeman. See PCR Exhibits. Such material evidence not hear by the trial court and Jury was conducive supporting and establishing a self-defense

case and/or mitigating and reducing Petitioner's culpability.

(13) That trial counsel was ineffective for Failing to object to the prosecution using unconstitutionat trial methods calculated to produce a wrongful conviction. Specifically, Solicitor Jordan told the Jurors during her Closing Arguments:

> "It's kind of like if I were to go into a bank, rob the bank. My action afterward do not negate what I did when I walked into the bank and took the money, Just like in this case it doesn't negate that he shot Mr. Freeman Just because afterwards he decides to help."

On the contrary, malice and criminal intent may be mitigated or reduced base on the Petitioner's conduct surrounding the circumstances of the incident. Likewise, South Carolina Law entitles Petitioner's guilt or innocence to be determined soley on the basis of the evidence and Facts introduced at trial. But, prohibits the State to introduce unrelated or unconnected separate statutory criminal offenses into the Jury trial. See Patterson v. COM, 429 S.E. 2d 899 (1993); Winston v. Common Wealth, 404 S.E. 2d 414 (1991); 8th and 14th Amendments.

(14) That trial counsel was ineffective for Failing to

pursue through discovery or subpoena exculpatory or mitigating evidence contained on a 911 Emergency Taped Recording. During the Petitioner's Jury trial the prosecutor made not less than six references to alleged conversations between the Petitioner, Mr. Freeman, April (Petitioner's sister) and 911 Emergency Dispatch. Trial counsel was ill prepare to confront or refute any of the prosecution's misinterpretation or misconstrued theories as to the events recorded on the tape. They taped recording would have demonstrated the Petitioner good nature and well intent for the Jury had trial counsel obtained a copy and utilized the tape during trial.

(15) That trial counsel was ineffective for failing to pursue a Jackson v. Denno hearing seeking to suppress a statement obtained in violation of Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004). During the Petitioner's Jury trial the prosecutors conceded that the statement complained of was obtain after Petitioner asserted his 5th Amendment right. All evidence in the record substantiates that the investigators ignored and disregarded Petitioner's right to remain silent by continuing to question Petitioner about the incident absent Petitioner initiating any further conversation. And while restraining Petitioner from leaving the scene.

(16) That trial counsel was ineffective for failing to motion the Court of General Sessions to quash the indictment for assault and battery with intent to kill, Particularly

because the indictment is vague, ambiguous and uncertain concerning the act or acts of malice the State was accusing the Petitioner to be guilty of. As such, a burden was placed on Petitioner to defend against Twenty-Six (26) inferences of malice given in the trial court's Malice Charge. As well as Fourteen (14) inferences of malice discussed by the prosecutor during her Closing Arguments. Some of which are not valid South Carolina legal inferences. And some amounted to a constructive amendment of elements to the indictment. The uncertain indictment left the prosecutors free to roam at large to shift its theory of criminality in Fourty-Two (42) directions so as to take advantage of each passing vicissitude of the trial and appeal. The cryptic indictment required the Petitioner to go to trial with the chief issue, i.e. act or acts of malice alleged to have been committed undefined. Enabling the Petitioner's conviction to rest on one point and, the affirmance of the conviction to rest on another. See U.S. v. Cruikshank, 92 U.S. 542, 550, 23 L. Ed. 588; Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514; also 5th, 6th and 14th Amendments.

(17) That trial counsel was ineffective for failing to object where the State did not comply with the madatory requirements of Statute Section 17-25-45 (H) Timely Notice S.C. Code of Law (1976). The Petitioner sought from the Solicitor's Office as well as from trial counsel a copy of the Notice that Petitioner signed verifying the exact date it was signed. Neither party would

produce to Petitioner a copy of the contract. Trial counsel testified during the PCR hearing, "it would have been two week before the trial." Nonetheless, only two years after Petitioner's trial and conviction trial counsel stated; "I have tried to reconstruct the date in question but cannot remember the machanics." However, some five years after the trial and conviction trial counsel could remember perfectly that it was two weeks prior to trial that Petitioner was put on Notice.

(18) That trial counsel was ineffective for failing to object to the trial courts partial, bias and erroneous jury instruction that; "All twelve of you must be in agreement before any decision may be reached." The Jurors should have been properly instructed that the Petitioner could not be convicted except by the unanimus consent of all twelve Jurors. The trial court jury instruction directed the attention of the Jurors to agree without any mentioning of their duty to dissent if dissent is founded upon reasoned conclusions reasonably arrived at and reasonably held.

Without reference to both sides of the coin, a strong statement of the duty of agreement was readily construed by those Jurors in the minority as requiring a differential surrender to the views, however unreasonable they may be, of the majority. See State v. Parker,

224 S.E. 2d 280 (1976); Lowenfield v. Phelps, 484 U.S. 231 (1988); Hooks v. Workman, 10th Cir. No. 07-6152, 5/25/10); also Anderson v. Leeke, 248 S.E. 2d 120 (1978).

Wherefore, Petitioner respectfully requests that this Court Of Appeals Reverse its Decision and Grant the Petitioner a new trial.

Dated 6/4/15.

Respectfully Submitted,
John Alexander

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2012-211390

John D. Alexander, #194748, Appellant,

v.

The State Respondent.

AFFIDAVIT
PROOF OF SERVICE

I, John D. Alexander, #194748, certify that I have served an original Petition For Rehearing to the Court of Appeals. And complete copies of the same in the United States mail, postage prepaid, addressed to:

Ms. Suzanne H. White
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Mr. Robert M. Pachak
Appellate Defender
SCCID
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule

to be served have been served. This 4 day of June, 2015.

Respectfully Submitted
John Alexander

Sworn and Subscribed
this 04 day of June, 2015
J C Franklin
Notary Public For South Carolina
My Commission Expires 12-16-2019

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 08, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: John Douglas Alexander v. State
Lower Court Case No. 2010CP4202428
Appellate Case No. 2012-211390

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Suzanne Hollifield White, Esquire
Robert M. Pachak, Esquire
John Douglas Alexander, 194748

John Alexander, 194748
Department of Corrections
386 Redemption Way
McCormick, SC 29899

11 June 2015

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Re: Petitition For Rehearing

Dear Ms. Kitchings:

On the above date I received a Remittitur From this Court. Also, on June 4, 2015 I submitted a pro se time Petition For Rehearing of the May 21, 2015 Order.

Please send me the disposition of the Petitione For Rehearing. Or inform me if this Court will not be taking any actions on the Petition.

Dated 6/11/15.

Respectfully Submitted
John Alexander

Sworn and Subscribed
this 11th day of June, 2015
Jenny G. Morton
Notary Public For South Carolina
My Commission Expires Feb 28 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge

Appellate Case No. 2012-211390

John Alexander — Petitioner,

v.

The State — Respondent.

MOTION TO RESCIND

COMES the above Petitioner, John Alexander, before The Court of Appeals of South Carolina with a Motion To Rescind its Remittitur dated June 8, 2015. The Petitioner contends that the below genuine material evidence and Facts of the Record Justifies and warrants rescinding and annulling the Remittitur:

On May 22, 2015 the Petitioner received From The South Carolina Court of Appeals an Order dated "May 21, 2015" denying the Petition For Writ of Certiorari, Johnson Petition and Grant counsel's request to withdraw. Subsequently, on "June 4, 2015 the Petitioner placed in the United States mail, prepaid, dated and stampted by Ms. J. Franklin, Postal Director for the McCormick Correctional Institution a pro se Petition For Rehearing pursuant to the provisions of Rule 221 (a) SCACR Rehearing And

Remittitur Thirteen (13) days which are within the Fifteen (15) days after the Filing of the Order dated May 21, 2015.

As such, this Court of Appeal can and should rescind its Remittitur pending a disposition on the timely Petition For Rehearing. Or such time as the Petitioner be placed on Notice that there will be no actions taken on his pro se Petition.

Dated 6/12/15.

Respectfully Submitted,
John Alexander

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2012-211390

John Alexander, Petitioner,

v.

The State, Respondent.

AFFIDAVIT OF SERVICE

I, John Alexander, certify that I have served a Motion To Rescind to the Court of Appeals. And complete copies of the same upon Ms. Suzanne H. White, Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211. United States Postal Service prepaid.

Dated 6/12/15

Respectfully Submitted,
John Alexander

Sworn and Subscribed
this 12 day of June, 2015
JC Franklin
Notary Public For South Carolina
My Commission Expires 12-16-2019

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 12, 2015

John Douglas Alexander, 194748
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: John Douglas Alexander v. State
Appellate Case No. 2012-211390

Dear Mr. Alexander:

The Court received your petition for rehearing on June 10, 2015. On June 8, 2015, your case was remitted pursuant to Rule 221 (b) of the South Carolina Appellate Court Rules. Accordingly, no action will be taken on your petition.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Suzanne Hollifield White, Esquire
Robert M. Pachak, Esquire