

THE STATE OF SOUTH CAROLINA
[In The Supreme Court]

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JUL 27 2015
S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen T. Mullen, Chief Administrative Judge

Case No. 2013-CP-07-1650

State of South Carolina, Respondent,
v.
Nathaniel Johnson, Jr. #211574, Appellant,

BRIEF OF APPELLANT

Nathaniel Johnson, Jr. #211574
LCI. Stono-B#50
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Appellant

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- °[Boyd v. U.S.], 116, U.S. 616, 6 S.Ct. 524, 29, L.E.d. 746(1966)
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- °[Davis v. Alaska], 415, U.S. 308, (1974).
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- °[Evitts v. Lucey], 469, U.S. 387, 105, S.Ct. 830, 83, L.Ed.2d.
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- °[Goodwine v. Balcom], 684, F.2d. 794, (11th.Cir.1982).
- °[Gouled v. U.S], 255 U.S. 298, 41, S.Ct. 261, 65, L.Ed. 647,
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- °[Gray v. Greer], 778, F.2d. 350, (CA7 1985).
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- °[Mapp v. Ohio], 367, U.S. 643, (1961).
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- ° [Murray v. Carrier], 477, U.S. 496, 91, L.Ed.2d. 397, 106, S.Ct. 2639 (1986).
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- ° [Schmerber v. California], 384, U.S. 757, 86, S.Ct. 1862, 16, L.Ed.2d. 908 (1966).
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- ° SC. Code Ann. § 17-27-45 Prohibitions against successive applications
- ° SC. Code Ann. § 17-27-80 Exceptions to statutes of limitations
- ° SC. Code Ann. § 17-19-90 sufficiency of indictment (2003)
- ° SC. Code Ann. § 17-28-110 Chapter #27 Title #17 DNA Testing

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- ° SC. Rule Ev. #608(a),(b),(c).

ISSUES PRESENTED:

- 1) ° Whether the police were justified in requiring the Appellant to submit to the blood test against his will respected relevant Fourth and Fourteenth Amendment rights for standards of reasonableness?
- 2) ° Whether any intrusions made which are ^{Not} justified in the circumstances made in an proper manner?
- 3) ° Compelling submission to physical examination, to compel a person to submit to testing by reasonable force in which an effort will be made to determine his guilt or innocence on the basis of physiological response , whether willed or not, does this violates a person's Fifth Amendment rights to the privileges against self-incrimination?
- 4) ° Did the trial court abuse its discretion while denying the Appellant's motion for an mistrial twice?
- 5) ° Was the trial court in err by ordering that the Appellant's blood be taken by reasonable force if necessary?
- 6) ° Was the Appellant's Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights to the U.S. Constitution and State Constitution violated?
- 7) ° Did the trial court err denying the Appellant an mistrial twice when the evidence of prior bad acts are inadmissible?
- 8) ° Was the evidence legally obtained by investigator Brian Chapman from the Beaufort County Sheriff Department?
- 9) ° Did the PCR court err when Appellant was denied the rights to his Sixth Amendment right to effective assistant of counsel from all court appointed counsels to include trial, Appellate, and PCR Attorney?

ISSUES PRESENTED CONTINUED:

- 10) ° Did the PCR court err by failing to find the trial counsel to be ineffective?
- 11) ° Did the PCR court make an improper determination of judgment?
- 12) ° Whether or not trial counsel was ineffective in failing to properly object or raise the issue during direct appeal of trial court's curative instruction after the Appellant's character was put into issues twice because the instruction was not sufficient to cure the error?
- 13) ° Was the trial counsel ineffective for failing to challenge the DNA testing, or failing to properly raise the issue or a defense after retaining an DNA expert witness?
- 14) ° Did the PCR court abuse its discretion in refusing to hear the claims of prosecutorial misconduct, and the violations of due process?
- 15) ° Was the Appellant's due process rights violated by not having an preliminary hearing that the Appellant requested?
- 16) ° Did the lower court err in ruling, and refusing to quash the warrants, after Appellant filed an motion to dismiss by denying the motion holding that the Appellant was indicted before an preliminary hearing was held?
- 17) ° Did an preliminary hearing take place in Appellant's case?
- 18) ° Was trial counsel ineffective for failing to object to the prosecutorial misconduct, failed to raise issue during trial, or properly raise issues on direct appeal to properly preserve for appellate review?

ISSUES PRESENTED CONTINUED:

- 19) ° Whether the Appellant knowingly, intelligently, willingly, or voluntarily waived and abandoned his direct appeal issues?
- 20) ° Was the trial court in error for failing to instruct the jury on the charges of lesser-included offenses?
- 21) ° Was the trial court in error for failing to meet each element of the crimes charged beyond reasonable doubt?
- 22) ° Was the Appellant prejudiced because of the improper jury instructions that may have confused the jurors and failed to instruct on charges of lesser-included offenses?
- 23) ° Was the trial counsel's failure to object to the improper jury instructions based on a tactical decision or an inadvertent ignorance of law?
- 24) ° Did Appellant receive adequate legal assistance from trial counsel Stephanie Smart-Gittings, Esquire?
- 25) ° Did Appellant receive adequate legal assistance from both Appellate counsels, LaNelle C. Durant, direct appeal counsel for the Court of Appeals, and Robert M. Pachak, Appellate defender for the Petition for Writ of Certiorari to the S.C. Supreme Court?
- 26) ° Did Appellate counsel Robert M. Pachak, offer erroneous advice that his client has exhausted his state remedies and is allowed to file federal habeas review?

ISSUED PRESENTED CONTINUED:

- 27).° Was all court appointed counsel for Appellant in violation of the SCACR, Rule #407 Rules of Professional Conduct and Responsibilities?
- 28).° Did Appellant receive adequate legal assistance from PCR counsel Timothy M. Wogan, Esquire?
- 29).° Was PCR counsel Timothy M. Wogan, ineffective for failing to seek DNA testing when Appellant requested pursuant to Chapter #27 Title #17 Consent to testing S.C. Code Ann§17-28-110?
- 30).° Does the statute of limitations for PCR applications, S.C. Code Ann § 17-27-45(A), applies to Appellants who alleges that he did not knowingly, intelligently, voluntarily, or willingly waived his Constitutional rights to a direct appeal from his conviction?
- 31).° Did the PCR court erred by summarily dismissing Appellant's based on his failure to file within the applicable statute of limitations as set forth in S.C. Code Ann § 17-27-45(A), when it was beyond the Appellant's control being represented by court appointed counsels?
- 32).° Did the PCR court err by denying the Appellant the right to self-representation?
- 33).° Did the PCR court abuse its discretion when it denied the Appellant's testimony during the evidentiary hearing and found that trial counsel's testimony was credible and Appellant's testimony was not credible?

"Statement of the Case"

On September 21st, 2006, it was said that the Beaufort County Grand Jury indicted the Appellant, Nathaniel Johnson, Jr. on the charges of criminal sexual conduct first degree (CSC), kidnapping, burglary first degree, and possession of a firearm during the commission of a violent crime.

On March 12th-14th, 2007, Appellant, Johnson, proceeded to trial before the Honorable Howard P. King and jury. He was represented by Stephanie Smart-Gittings, Esquire. The jury returned a verdict of guilty on the CSC first degree and the kidnapping charge and a verdict of not guilty on the burglary first degree and possession of a firearm during the commission of a violent crime. Judge King sentenced Appellant, Johnson, to thirty years (30) on the CSC conviction and to thirty (30) years on the kidnapping to run concurrently. Appellant, Johnson's trial attorney Stephanie Smart-Gittings, filed a notice of appeal that was perfected on March 22nd, 2007.

After appealing his convictions and they were affirmed by the Court of Appeals on December 11th, 2008. [State v. Johnson] Op.No.2008-UP-690.

Appellant, Johnson, filed an application for post-conviction relief on March 9th, 2009. An evidentiary hearing was held on August 30th, 2011, before the Honorable D. Craig Brown. Appellant was present and represented by appointed PCR counsel Timothy M. Wogan, Esquire. Respondent was represented by Matthew J. Friedman, Assistant Attorney General. Judge Brown decided to deny and dismiss the issues of "Prosecutory Misconduct", and "Violations of Due Process" at the beginning of the hearing and however, there was no opportunity to address those issues of the application. Appellant requested that PCR Timothy Wogan, file a motion to alter or amend Rule #59(e). Attorney failed to do so.

"Statement of Case Continued":

Appellant, Johnson, and trial counsel testified at the hearing, knows that he did not receive the fair one bite of the apple, by being instructed by PCR counsel Timothy M. Wogan, to only answer the questions that are being asked.

On October 6th, 2011, Judge Brown issued an order denying and dismissing the application for post-conviction relief.

Appellant proceeded in the S.C. Supreme Court, petitioning for "WRIT OF CERTIORARI", on May 4th, 2012. Appellant was denied certiorari on June 5th, 2013.

On June 21st, 2013, Appellant, Johnson, filed an federal habeas petition that was considered procedurally barred from review because it was stated that Appellant, Johnson, did not properly exhaust his state remedies. Three (3) weeks expired before the Appellant filed this federal habeas petition on June 21st, 2013, after the denial of his PCR action on June 5th, 2013. As a result, Appellant was not in violation of the AEDPA one (1) year statute of limitations.

On May 12th, 2014, the Honorable District Court Judge, Richard M. Gergel, ordered that Respondent's motions for summary judgment be granted, and denies the Appellant's motion for an evidentiary hearing. Appellant was also denied a certificate of appealability. This case is dismissed with prejudice. Federal Habeas Review was denied and dismissed with pursuant to the defenses of issues being waiver and abandoned.

On June 25th, 2013, along with the Federal Habeas petition filed June 21st, 2013, Appellant, Johnson, filed an 2nd PCR amended application in the Court of Common Pleas for Beaufort County.

On December 30th, 2014, the Appellant received from the Respondent's a Return and Motion to Dismiss because this application is stated to be untimely and successive to Appellant's prior application. Also received on January 5th, 2015, an proposed "Conditional Order of Dismissal in this matter 2013-CP-07-1650. Final Order of Dismissal received signed by Chief Administrative Judge, Carmen T. Mullen on June 17th, 2015.

ARGUMENTS

1). The police were not justified in requiring the blood of the Appellant, with respect to the S.C. State's Constitution, or the U.S. Constitution relevant Fourth and Fourteenth Amendment rights under the standards of reasonableness. See Exhibit-P-1 The Supplemental incident report of Officer LCPL Brian Chapman, the investigator dated 04-21-06. According to the officer's report, he met with the 14th. Judicial Circuit Solicitor's office to discuss the facts of this case. Officer Brian Chapman, was advised that at this point, there was not enough probable cause for a Schmerber hearing to collect DNA blood from the defendant. The issue of whether probable cause to search exists must be determined on the basis of an independent judgment and not on facts of an unreasonable search and seizure. See-[Mapp v. Ohio], 367, U.S. 643, (1961). Fourth Amendment violation and S.C. State Constitutional violation of Article #1 §10. Police conduct was the product of the fruit of the poisonous tree doctrine and relevant Rules of Evidence #608(a), &(b), may apply to the (re) credibility of Officers testimony or used to impeach. Tr.p 170-177 line 17-23, Tr.p 180 line 1-11, also See-Exhibits-5&6 comments.

ARGUMENTS

2). The intrusions were not justified based on the clear and convincing evidence stated by the Solicitor's office on 04-21-06. See-Exhibit-P-1 Supplemental incident report any unwarranted intrusions by the State is to be protected against, any arbitrary intrusions, the rights to personal privacy. Fourth Amendment violation.

ARGUMENTS

3). To compel a person to submit to testing by reasonable force violates the privilege of the Fifth Amendment rights, that no person may be required to testify against him/herself. Neither life, liberty nor property may be taken without due process of law. See-[Counselman v. Hitchcock], 142, U.S. 546, 562, 12, S.Ct. 195, 198. Appellant would also like to apply a denial of effective assistance of counsel. Sixth Amendment violation where trial counsel erroneously advised her client to submit to the testing. See-[Griswold v. State of Connecticut], 381 U.S. 479, 85, S.Ct. 1678 14, L.Ed.2d. 510. Thus the Fifth Amendment marks a zone of privacy which the Government may not force a person to surrender. Therefore, this Court should find that this case must be reversed or vacated. The privilege against self-incrimination. There is no clearer invasion of ~~this~~ right to privacy that can be imagined than a forcible bloodletting. See-Exhibits-T, U, & V. T- On Jan. 10th,2007, Circuit Court Judge Curtis L. Coltrane, ordered an blood sample for defendant. U-Amended Motion made by Assistant Solicitor Melissa M. Millican, and former trial counsel Stephanie Smart-Gittings, Esquire, dated Jan. 16th.2007. V-Circuit Court Judge Howard P. King, ordered on Jan. 18th,2007, an Amended Order for Blood Sample by reasonable force if necessary. Exhibit-Z PCR Tr.pages 426 line-12, Direct exam by PCR counsel Timothy M. Wogan and testimony of trial counsel Stephanie Smart-Gittings, her statement is to be examined by rules of evidence #608(a),and(b) truthfulness or untruthfulness and may be used to impeach. Refusal to consider this case would constitute an gross miscarriage of justice.

SEE[Gant v. State], 354, SC. 183, 580, SE.2d. 133 (2003).

ARGUMENTS

4). Trial court abused its discretion and erred in its ruling by denying the Appellant equal protection of the law under the 14th. Amendment guarantee due process. Circuit Court Judge Howard P. King, warned the State to be mindful of Rule #608(b),(c). See-Tr.p 178 lines 4-18, Tr.p 188 lines 4-14, Tr.p 170 lines 18, Tr.p 191, line 5. Sound discretion of the trial judge will not be overturned on appeal absent an abuse of discretion amounting to an of the law, which was extremely prejudice in Appellant's case by improperly applying law. The Appellant's right to an impartial jury included the rights to adequate legal assistance of counsel. Appellant's due process rights were violated from pre-trial detention when the jurors were exposed to potential prejudicial pre-trial publicity of an high profile case. Trial also abused its discretion by allowing extensive questioning of witnesses which tainted the process of the trial information the jurors may have heard and its possible effects. Due process allows the rights procedurally to 1).adequate notice, 2).adequate opportunity for a hearing, 3).the right to introduce evidence, and 4).the right to confront and cross examined witness against the accused. Fifth Amendment violation of the Due Process Clause.

ARGUMENTS

(5). Trial Court erred by ordering the Appellant to be compelled into submitting to blood test by reasonable force violated Appellant's Fifth Amendment. See- Exhibits- V and Exhibit-6 Circuit Court Judge Howard P. King ordering this case be tried within 120 days or defendant will be released. Exhibit-V , ordere the blood sample dated Jan.18th.2015. Also See- [Boyd v. U.S.] 116, U.S. 616, 6, S.Ct. 524, 29, L.Ed. 746 (1966).[Counselman v. Hitchcock], 142, U.S. 547 584-585, 12, S.Ct. 195, 206, 35, L.Ed. 1110 8 Wigmore, Evidence 2252 (McNaughton rev. 1961). [Schmerber v. California], 384, U.S. 757, 86, S.Ct. 1862 16, L.Ed.2d. 908 (1966).

ARGUMENTS

6). Appellant's State Constitution Article #1 section § 10 and the U.S. Constitutional Amendment rights were violated which consisted of : Fourth- the right to be protected from any unreasonable search and seizures. See-[Mapp v. Ohio], 367, U.S. 643, (1961).[Kimmelman v. Morrison], 477, U.S. 365 (1986).

[Sikes v. State] 323, S.C. 28, 448, S.E.2d. 560, (1994).

Fifth- the right to be protected against self-incrimination.

See-[State v. Reese], 359, S.C. 260, 271, 597, S.E.2d. 169, 175, (Ct. App. 2004),[Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682, (2000).[State v. McDaniel], 462, S.E.2d. 882, 884, (Ct. App. 1995).

Sixth- the rights^{to}adequate legal assistance of counsel.

See-[Goodwine v. Balcom], 684, F.2d. 794, (11th. Cir. 1982).

[U.S. v. Cronin], 466, 648, 104 S.Ct. 2039 (1984).[Gray v. Greer] 778, F.2d. 350 (CA7 1985).[Evitt v. Lucey], 469, U.S. 392, 105, S.Ct. 830, 83, L.Ed.2d. 821 (1985).[Lambert v. Blackwell], 387 F.3d. 210, 247, (3rd.Cir. 2004).[Matrيره v. Wainwright], 811 F.2d. 1430 (CA11 1987).

Fourteenth- No State shall deprive a person of life, liberty, or property without proper due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

ARGUMENTS

7). Trial court erred for failing to grant mistrial twice because mentioning prior bad acts are inadmissible unless the defendant were to take the stand. See- Tr.p 183 lines 18-22. Trial counsel argued that her client Johnson, had not testified and that the jury had heard twice that the defendant Johnson, has prior criminal history for unrelated charges which shows prejudice and bias. See- Tr. p. 184 lines 1-25, also see Tr. p. 187 lines 18-19.

ARGUMENTS:

8). The evidence collected by investigator Brian Chapman, was illegally obtained in bad faith with no regards to the respect of the Appellant's Fourth Amendment rights to be protected against any unreasonable search and seizures. See-[Kimmelman v. Morrison], 477, U.S. 365, (1986). [Sikes v. State], 323, S.C. 28, 448, S.E.2d. 560 (1994).

9). The PCR court erred for failing to find the trial counsel's performance bellow the standards of adequate legal assistance. This claim of ineffective assistance of trial counsel also applies to Appellate counsel for failure to raise ineffective assistance of trial counsel. The courts judgment was based on an unreasonable determination of the facts in light of the evidence that were never raised or presented. The Appellant was denied the right to be heard. During the PCR hearing the Appellant did take the stand, but, was instructed by the PCR counsel to only answer the questions that are being asked. SEE [Ezell v State], 345, S.C 312, 548, SEad. 852, (2001).

10). The PCR court made an unreasonable determination of judgment when the court found that trial counsel's testimony was credible and that counsel's performance was effective and did not fall below the professional standards of norm in criminal cases. SEE [Jackson v State], 355, S.C, 568, 570, 586, SE.2d 562, 563 (2003).

ARGUMENTS:

11). The PCR court did make an improper determination by abusing its discretion, and prejudging the PCR application. Before the hearing ever got started the issues of prosecutorial misconduct, and the claim of due process violations were denied and dismissed with prejudice. There is clear and convincing evidence by the PCR counsel's failure to file a Rule #59(e), motion to make sure that all issues on the application be addressed and properly preserved for Appellate review. [Austin v. State], 305, S.C. 453, 409, S.E.2d. 395, (1991). [Leamon v. State], 363, S.C. 432, 434, 611, S.E.2d. 494, (2005). citing S.C. Code Ann. § 17-27-80. [Lambert v. Blackwell], 387, F.3d. 210, 247 (3rd. Cir. 2004). [Aice v. State], 305, S.C. 409, S.E.2d. 392, (1991). The Supreme Court Rules #50(5), and 71.1(d), ~~MAKES~~ it mandatory that PCR counsels must make sure that all grounds or issues on the PCR application be raised during that proceeding. *SEE [Case v State], 277, S.C. 474, 287, S.E.2d. 413 (1982).*

12). Trial counsel was inadequate for failing to present an defense. Inadequate for not producing any exculpatory scientific evidence on the behalf of her client. See-[Florida v. Nixon], 543, U.S. 175, 125, S.Ct. 551, 160, L.Ed.2d. 565 (2004). [Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682 (2000). [Sikes v. State], 323, S.C. 28, 448, S.E.2d. 560, (1994). Counsel never sought DNA testing to challenge the State's evidence. Instead of challenging the State's evidence, the counsel helped bolster the case against her client. See-[U.S. v. Trang Trong Cuong], 18 F.3d. 1132, (4th. Cir. 1994). [Pauling v. State], 503, S.C. 468, 331, S.E.2d. 606, (1998). [Davis v. Alaska], 415, U.S. 308, (1974). [Dorsey v. Kelly], 112, F.2d. 50 (2nd. Cir. 1997).

ARGUMENTS

13). Trial counsel's failure to challenge the DNA evidence, failure to challenge the improper chain of custody, failure to properly raise or properly preserve issues for Appellate review. Failure to retain an DNA expert for a witness to testify on the behalf of the Appellant. See-[U.S. v. Van Dyke], 14 F.3d. 415, (8th. Cir. 1994). [Goodwine v. Balcom], 684, F.2d. 794 (11th.Cir. 1982).[State v. Reese], 359, S.C. 260, 271, 597, S.E.2d. 169, 175, (Ct.App. 2004).[Edmond v. State], 341, S.C. 340, 534, S.E.2d. 682, (2000).[Wilson v. State], 348, S.C. 215, 559, S.E.2d. 581, (2002).

A failure to file a motion to suppress that is based on counsel's lack of knowledge of the [state's rules] of evidence, due to counsel's misunderstanding ignorance of the law or failure to conduct adequate investigations, can satisfy Strickland's deficiency prong. Appellan's prejudice is that he was convicted and sentenced on two time-barred counts that would have been dismissed. The to suppress physical evidence stated that evidence was improperly seized at the time of his arrest and therefore, was not admissible at trial. Trial counsel was incompetent and inadequate.

14).The PCR court failed to address the issue of prosecutorial misconduct and violations of due process denied the Appellant the right to an full and fair hearing. *Equitable* tolling due to egregious attorney's conduct. See-[Howell v. Crosby] 415 F.3d. 1250, 1252, (11th. Cir. 2005). We have reasoned that equitable tolling may be warranted when a government official has misled a Appellant. Appellant reasonably relied on his PCR attorney's misrepresentation and paid for the counsel to go the extra mile by filing and preparing the 59(e) motion and this rationale is that attorney's negligence is not an extraordinary circumstance and the Appellant must "vigilantly oversee", and ultimately bear responsiblity for, their attorney's actions or failures.

ARGUMENTS

15). The Appellant's due process rights were violated when the courts refused the Appellant the right to an preliminary hearing. "The Confrontational Clause"! Appellant filed an motion to quash warrants for insufficient evidence to convict on August 23rd, 2006. On Oct. 10th, 2006, the Honorable Roger M. Young, Sr., Circuit Court Judge, denied and dismissed the motion, holding that the Appellant is not entitled to an hearing if the Appellant is indicted before an hearing is held. Appellant's argument in this case is that it is stated that the Appellant was indicted on Sept. 21st, 2006. While it is stated on the preliminary calendar that an preliminary hearing was held on Sept. 15th, 2006. Someone from the public defender's office was there to represent you. See-Exhibits-1-A, 1, 2, & 3. Appellant believe that the dates for either the preliminary hearing or the Grand jury indictments are inconsistent. See-Exhibit-P-1, the Supplement report where the investigator Brian Chapman talks with the Solicitor's office and it was stated that at this point there was not enough probable cause to keep the Appellant detained or to collect an Schemerber testing for DNA. Appellant believes that his due process were violated. The rights to the S.C. State's Const. Article #1 section §10 and the U.S. Const. Fourth Amendment the right to protected against unreasonable search and seizures, Fifth Amend. No State shall compel a person to be a witness against himself or the right to remain silent. Sixth Amend, The Confrontational Clause, or the right to effective assistant of counsel. Fourteenth Amend., No State shall deprive a person of life, liberty, or property without due process of law.

16). The lower courts was in err when it denied the Appellant motion to quash the warrants holding that the Appellant was indicted before an hearing was held in err.

S.C. Code Ann. §17-19-90 (2003).

ARGUMENTS

17). An preliminary hearing did take place on Sept. 15th, 2006, in the absence of the Appellant according to the records of the preliminary hearing clerk Marta Cherena. See-Magistrates Exhibit-1 & 2.

18). Trial counsel was ineffective during trial for failing to properly raise the improper chain of custody and the handling of the DNA blood samples, failed to raise or object to the golden rule argument that was prejudicial. Counsel's failure to object to solicitor's inflammatory argument during closing. Counsel abandoned her client, therefore, Appellant was subjected to issues being abandoned and waived.
SEE [Bennett v State] 371 S.C. 198, 638, SE2d 673 (2006). Crim. Law 1178

19). The Appellant did not waive ~~nor~~ abandoned his rights to a direct appeal. Appellate counsel are telling their clients that it is their decision what issues to present to the courts. Appellant did waive his rights knowingly, intelligently, voluntarily, or willingly. Therefore, Appellant's issues that are considered waived and abandoned should be considered belated.
SEE [Bennett v State], 371, S.C. 198, 638, SE2d. 673 (2006) Crim Law 1178

20). Trial court erred when it failed to instructed the jury on the lesser-included offenses. *See [Kerrigan v State] 304, S.C. 561, 406, SE.2d. (1991). [State v Braun], 603, S.C. 392, 360, SE2d. 581 (2001).*

21). Trial court erred for failing to meet each element of the crimes charged. Please examined the trial transcript and the PCR transcript. See- trial transcript page 283 line 9 that of attorney arguing that the elements has not been met.
Tr. p. 306 lines 14-15

22). Trial counsel's decision not to object to the improper jury instruction was not an tactical decision that she can rely on, but indeed an decision made inadvertent to ignorance of law.

ARGUMENTS:

23).The services received from trial counsel was detrimental reliance at an very critical stage in the Appellant's appeal. Trial counsel Stephanie Smart-Gittings was inadequate and she also abandoned her client.

24).Both Appellate counsels LaNelle Durant for direct appeal, and Robert M. Pachak, for the petition in Writ of Certorari, were inadequate based upon the ineffective assistance received from his trial counsel which is considered the domino or ripple effect.

25).The Appellate defender Robert Pachak, did offer erroneous advice,direct his client to pursue federal habeas corpus alleging that the Appellant has exhausted his state remedies was in err.

26).All appointed counsels for the Appellant did violated the SCACR, Rule #407 Professional Conduct and Responsiblities. Counselors are responsible for reporting any misrepresentation or unethical conduct that falls below the standards of reasonableness.

27).PCR counsel Timothy M. Wogan, was inadequate for failing to seek DNA testing, failing to alter or amend the PCR application by failing to file an Rule #59(e) motion to make sure that all grounds or issues are addressed. Appellant did not receive adequate legal assistant from PCR counsel.

28).The ineffective assistance that the Appellant received from PCR counsel prejudiced his client, because the Appellant requested Consent to testing pursuant to S.C. Code Ann. §17-28-110. Also requested counsel to file the 59(e) motion. See-letter from Appellate defender Robert Pachak, in regards to him stating that he has never seen anyone win an PCR case by filing an Rule#59(e)..

ARGUMENTS:

29).The statute of limitation does not apply to an Austin PCR application under S.C. Code Ann. § 17-27-45(a) if the Appellant alleges that he did not knowingly, intelligently, voluntarily, or willingly waived his constitutional rights to a direct appeal. SEE [Lodum v State], 337, S.C. 256, 523, SE.2d. 753, (1999).

30).The PCR courts made an improper decision by summarily dismissing the Appellant's amended application to include all grounds that were considered waived and abandoned. The Respondent's alleges that the application is successive and untimely by the statute of limitations. Appellant objects to such allegation. It was an extraordinary circumstance beyond the Appellant's control, especially when the counsels say to their client's it is my decision what issues to present or what to raise. SEE [Deamon v State], 363, S.C. 432, 434, 611, SE.2d. 494, 495, (2005). Citing SC. Code Ann. § 17-27-80

31).On Aug.30th,2011, an PCR hearing was scheduled before the Honorable Perry M. Buckner, the hearing was set for an continuance, the Appellant was denied the right to self-representation and appointed Timothy Wogan as counsel. Based upon the case of Faretta v. California, the decision to deny the Appellant the right to represent himself was in err.

32).Trial counsel's testimony at the PCR hearing was not credible. See-Exhibit-Z PCR transcript pages 425-426, line 12, direct exam of PCR counsel Timothy Wogan and Trial counsel Stephanie Smart-Gittings, perjured her statement by saying that she had no involvement in the taking of Appellant's blood through an Schermerber motion. The judgment made by the PCR court was an abuse of discretion. Under rules of evidence #608(b),&(c), statements by counsel's truthfulness or untruthfulness may be used to impeach.

CONCLUSION

For the reasons stated, the Appellant's conviction and sentence should be vacated.

July 21st, 2015.

Respectfully submitted,
/s/ Nathaniel Johnson Jr. #211574
Nathaniel Johnson, Jr. #211574
L.C.I. Stono-B#50
P.O. Box 205
Ridgeville, S.C. 29472
Pro-Se Appellant

STATE OF SOUTH CAROLINA
[In The Supreme Court]

~~APPEAL FROM THE~~ BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Chief Administrative Judge

Case No. 2013-CP-07-1650

State of South Carolina, Respondent,

v.

Nathaniel Johnson, Jr. #211574, Appellant,

CERTIFICATE OF SERVICE

The Appellant, Nathaniel Johnson, Jr. #211574, hereby certifies that a true copy of the Initial Brief of Appellant and Designation of the Matter in the above referenced case has been served upon The Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, P.O. Drawer 1128, Beaufort, S.C. 29901, and J. Ruthledge Johnson, Assistant Deputy Attorney General, P.O. Box 11549, Columbia, S.C. 29211-1549, this 21st day of July, 2015.

1s/ Nathaniel Johnson, Jr. #211574
Nathaniel Johnson, Jr. #211574
Pro-Se Appellant

SUBSCRIBED AND SWORN TO before me
this ____ day of July, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: _____.