

Harold Watts,  
Petitioner,

) THE STATE OF SOUTH CAROLINA  
) IN THE SUPREME COURT

) Appellate Case No. 2015-000812

RECEIVED

v.

NOV 23 2015

State of South Carolina,  
Respondent

) PRO SE RESPONSE TO PETITION FILED  
) BY COUNSEL JOHNSON PETITION  
) SUPREME COURT

STANDARD OF REVIEW

Petitioner's claim that counsel's assistance was so defective as to require reversal of a conviction has two components: First Petitioner must show that counsel performance was deficient, requiring showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed Petitioner by the Sixth Amendment to the United States Constitution, Second: Petitioner must show that the deficient performance prejudiced the Petitioner by showing that counsel's errors were so serious as to deprive Petitioner of a fair trial.

STATEMENT OF THE CASE

Petitioner was indicted at the September 2012 Term of the Greenville County Grand Jury for Attempted Murder (2012-GS-23-5528) and First Degree Burglary (2012-GS-23-5528). Petitioner was represented by James W. Bannister, Esq. On April 8, 2013, Petitioner pled guilty. The Honorable Letitia H. Verdin sentenced

STATEMENT OF THE CASE (Con't)

Petitioner to concurrent term of thirty years for Attempted Murder and thirty-five years for First Degree Burglary.

TABLE OF CONTENTS

Table of Contents .....	1
Issues Presented .....	2
Argument .....	3-8
Conclusion .....	9

## ISSUES PRESENTED

### INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

1. Counsel failed to advise Petitioner of his right to a direct appeal, or to file a direct appeal. Petitioner never waived his right to direct appeal.
2. Counsel failed to object to the Court accepting a conditional plea to the Burglary charge and to the Attempted Murder charge.
3. Counsel failed to make a reasonable investigation.
4. Counsel failed to request a Competency Evaluation.
5. Counsel failed to seek a Charge of a Lesser Offense than Burglary.
6. Counsel failed to request a Change of Venue.
7. Counsel failed to inform the Court of improper conduct by the Solicitor's Office.

### INEFFECTIVE ASSISTANCE OF PCR COUNSEL

1. Counsel failed to inform the Petitioner in a timely matter after the Court had made a decision on Petitioner's PCR Application.
2. Counsel failed to file a Motion (59(e)); motion as request by Petitioner to preserve all the issues for appellate review.

## ARGUMENT

### INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Counsel was ineffective when he failed to file a Notice of Appeal as I requested. Had counsel file the notice of appeal as requested I would have been able to raise the trial court's error in accepting a conditional plea to the charges of first degree burglary and attempted murder.

Facts in Support: Counsel was ineffective when he failed to file notice of appeal as I requested. See, White-v.-State, 208 SE2d 35. Even though there is a reasonable basis for trial counsel's conclusion or assumption that the Petitioner is fully aware of his appeal rights. Counsel should not rest upon that assumption but should make certain that Petitioner is fully aware of his appeal rights Robinson-v.-State, 754 SE2d 862.

On Page 11, Line 11-12 of the Plea Tr., Petitioner's counsel stated on record that "He will dispute that he went through the house" thereby denying that he entered the dwelling an element of the offense of first degree burglary.

On Page 11, Lines 14-19, trial counsel stated "He would dispute that he poured gasoline on her" thereby denying the element of intent.

The PCR Court admits in his Order "that the defendant denies entering the residence" Page 2 of the PCR Court's Order, once the defendant made this denial, it created a conditional plea. The

Court can not accept a conditional plea. See, State-v.-Truedale, 296 SE2d 528, State-v.-Oleary, 393 SE2d 186. Plea that are conditional are not recognized in South Carolina.

The PCR Court admits that Plea Counsel told the Court that defendant denied any intent in the attempted murder. See, Page 3 of PCR Court's Order. To be convicted of attempted murder, the accused must intend to cause a specific harm, namely to kill the targeted victim. You cannot for example commit attempted murder if you intended to only maim, frighten, or disfigure someone. The State must prove as an element of attempted murder specific intent. See, State-v.-King, Appellate Case No. 2012-213405.

#### COUNSEL FAILED TO MAKE A REASONABLE INVESTIGATION

Trial Counsel has a duty to conduct reasonable investigation to discover mitigating evidence. See, Taylor-v.-State, 745 SE2d 97.

A.) Counsel failed to investigate the burglary charge. Counsel was informed through documents provided by law enforcement that the victim stated to law enforcement that the defendant was her common law husband, and further investigation would have proved that the defendant was paying rent and had not been evicted nor was there any order of protection against him. Had counsel done any investigation into the facts surrounding this burglary charge, he would have discovered the above mentioned facts. And acting on this knowledge the out-come of this charge would have been different. See, Abney-v.-State, 2014 WL 1047103, State-v.-Blakely, 742 SE2d 29.

B.) Counsel failed to investigate the indictment, had he done any investigation he would have found the indictment was defective.

C.) Counsel failed to do any investigation into the crime scene. Had he had an investigation done he would have found that the facts as presented by the State did not line up with the crime area.

Counsel was ineffective when he failed to object to the defective indictment. The indictment for the charge of attempted murder does not allege the elements that constitutes the offense of attempted murder. And does not put the defendant on notice as to what he has to defend against. See, State v. King, Appellate Case No. 2012-213405.

Counsel was ineffective when he failed to provide Petitioner with all discovery material. Counsel withheld some of my Rule 5 material. Keeping from me several parts that were very important to my decision to plead guilty. Had counsel provided me all of my discovery material, I would have gone to trial and the outcome would have been different.

Counsel was ineffective when he failed to inform the Court of my mental health history. Trial counsel was informed by Petitioner of Petitioner's Mental Health history. Given the seriousness of the charged offenses, counsel should have informed the Court of petitioner's mental health history. According to S.C. Code Ann. §44-23-410, the Court has the duty in making the determination of the capacity of person to stand trial. Had counsel informed the Court of Petitioner history the outcome of the case would have

been different because the Court would have ordered petitioner an examination which would prove to be helpful in Petitioner's defense.

Trial counsel failed to protect my constitutional right to have a bond hearing.

Trial counsel was ineffective when he failed to request a change of venue as requested by the petitioner. For months in Greenville and the surrounding counties there was constant media coverage of the incident between the Petitioner and his common-law wife. The local stores and shops had jars on the counter to collect donations for the victim. This case was always in the public focus, everyone knew about this case, and it would have been impossible to get a fair trial in Greenville County or the surrounding counties. Trial counsel was influenced by the media, counsel did not ask the Court for a change of venue. Counsel told Petitioner "that if he was in the Petitioner's position he would commit suicide" that left Petitioner with no help. The right of a person to a change of venue depends upon the condition at the time of trial. See, State-v.-Stanko, 741 SE2d 708. A defendant who seeks a change of venue based on pretrial publicity, has the burden to demonstrate actual prejudice as a result of pretrial publicity. See, State-v.-Parker, 671 SE2d 619, State-v.-Avery, 649 SE2d 102.

Trial counsel was ineffective when he failed to inform the Court of the improper conduct of the Greenville County Solicitor's Office. Defendant informed the counsel that his witness had

received a letter from the Solicitor's Office requesting that they attend a meeting at the Solicitor's Office. Solicitor's Office did not provide defendant or counsel with the exact nature of this meeting (these witness were on defendants witness list). After this meeting defendants witness informed him that he should plead guilty. After this meeting my witness were unwilling to testify on the defendants behalf. The testimony would unquestionably have aided in my trial strategy and other important issues. See, State v. Teague, 737 F.2d 378. This cannot be deem blameless.

The Solicitor's Office used these witness to influence defendant, this amounted to substantial interference, where after meeting with Solicitor's Office the witness support was changed. See, Gibson-v.-State, 514 SE2d 320. The Solicitor's Office withheld the information of this meeting from defendant and his counsel. Witness were intimidated and my counsel failed to inform the Court, after I had told him about the meeting. It is improper for the Solicitor's Office to intimidate the witness or to have a meeting with them without me or my attorney present or to inform me of the exact nature of the meeting or what was said. See, U.S. v. Sanders,

#### INEFFECTIVE ASSISTANCE OF P.C.R. COUNSEL

PCR counsel was ineffective when she prevented Petitioner from seeking appellate review of denial of his PCR Application when she failed to file a Motion 59(e) or to timely inform Petitioner of the denial of his PCR Application.

On December 16, 2014, Petitioner had his Evidentiary Hearing for his PCR Application. The PCR Court denied the PCR Application on February 10, 2015, the Order was filed with the Greenville County Clerk of Court on March 16, 2015. Counsel did not inform Petitioner until June 17, 2015. Prior to the Court's Order Petitioner requested that his counsel file a 59(e) when the Court made its decision to ensure that all issues are preserved for appellate review. See, attached Exhibit "A". Under the Post Conviction Relief Rules, an Applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple" this bite includes an Applicant right to appeal the denial of a Post Conviction Relief Application, see Exhibit "B". Petitioner made it clear to PCR counsel that he wanted a Motion 59(e) to preserve his issues for review. Given the issues raised concerned error of law by the trial Court that should have been raised on direct appeal, and counsel's failure to file a direct appeal was an issue that should have been raised in a 59(e) motion. The right to seek appellate review of the denial of PCR is expressly authorized by state law, S.C. Code Ann. §17-27-100, Supreme Court Rule 50(9) Petitioner was denied this right by PCR Counsel's failure to file 59(e) motion. This fact is further evident by the fact that Appellate Defender has file a Johnson Petition stating that there are no meritorious issues.

CONCLUSION

This Court must exercise its power here, clearly the Petitioner's rights to a direct appeal has been denied, and the record reflects that there are errors for the Court of Appeals.

Petitioner's right to review is being denied by the errors of his PCR counsel, by not informing the Petitioner of the Court Order and not filing a Motion 59(e) to preserve all the issues.

Petitioner prays that this Court will order a belated direct appeal, and find the trial counsel was ineffective and that his errors prejudiced Petitioner.

November 18, 2015

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Harold Watts  
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4460 Broad River Road  
Columbia, SC 29210

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Petitioner,

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) CERTIFICATE OF SERVICE

State of South Carolina,  
Respondents.

Petitioner declares under the penalty of perjury that he mailed a copy of his Pro se Response to the parties listed below by placing in the U.S. Mail.

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk  
Post Office Box 11330  
Columbia, SC 29211

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NOV 23 2015

The Office of the Attorney General  
Alan Wilson, Attorney General  
Post Office Box 11549  
Columbia, SC 29211

S.C. SUPREME COURT

Respectfully,

November 18, 2015  
COLUMBIA, SOUTH CAROLINA

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