

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to York County  
Alison Renee Lee, Circuit Court Judge

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S.C. Supreme Court

DAVID BEATSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001266

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PETITION FOR WRIT OF CERTIORARI

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JOHN H. STROM  
Appellate Defender

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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether the PCR court committed reversible error by ruling on the merits of Petitioner's post-conviction relief application without requiring the State to produce the record of Petitioner's magistrate court trial, mandated under S.C. Code Ann. § 17-27-70(a), as the absence of a trial record rendered Petitioner's post-conviction relief application, alleging the ineffective assistance of trial counsel, a nullity?

## STATEMENT

On the morning of March 8, 2013, Petitioner was leaving his house outside of Rock Hill for his security guard job, when he saw a group of minors smearing feces on his neighbor's mailbox. App. 39, ll. 5 - 41, ll. 5. Petitioner followed the group to a nearby house and called the sheriff's department. *Id.*

When Petitioner reached the house, the minors' father, "Homoer" Plummer came out. App.82. Petitioner attempted to explain what the man's children had done, but Plummer became angry and threatened Petitioner. App. 39, ll. 5 - 41, ll. 5. Petitioner retreated back to his house. However, Plummer followed Petitioner, continuing to insult and threaten him. *Id.*

As Plummer inspected the vandalized mailbox, Petitioner began filming him with his cell phone. *Id.* Plummer told Petitioner not to record him and began walking towards Petitioner. *Id.* In response Petitioner ran to his car and retrieved a baton. *Id.* Police arrived shortly thereafter. *Id.* At law enforcement's instigation, Plummer agreed to file a police report and make a statement. *Id.*

In an unfortunate coincidence, the arresting officer had also recently arrested Petitioner's mentally handicapped son while responding to a 911 call by Petitioner requesting assistance when the child threatened self-harm. *Id.* Petitioner had vociferously objected to the officer's handling of his earlier call for assistance.

Petitioner would recall at the PCR hearing that when the arresting officer arrived on the scene, he was "pressuring [Plummer] to make a statement and I think on the video it shows . . . the deputy made six different attempts of approaching him in trying to get him to make a report stating that he knew who I was and that I was a troublemaker based on that previous incident." App. 40, ll. 18 - 41, ll. 5.

## **Magistrate Court Trial and Appeal**

Petitioner was charged with Assault and Battery, 3<sup>rd</sup> degree, on or around March 8, 2013. On August 6, 2013, Petitioner proceeded to a jury trial in magistrate's court before the Honorable Johnny Grason. Toni Johnson represented Petitioner. There is no transcript or recording of Petitioner's trial. App. 55, ll. 6-9.

A jury found Petitioner guilty and Judge Grason sentenced Petitioner to a fine of four hundred dollars. App. 80. On August 13, 2013, Petitioner appealed his conviction to the Sixteenth Judicial Circuit. App. 8 - 11. The Honorable John C. Hayes III denied Petitioner's appeal on January 13, 2014. App. 22 - 23.

## **Post-Conviction Relief Action**

On May 9, 2014, Petitioner filed an application for post-conviction relief (PCR). On August 13, 2014, the State filed a return. On November 19, 2014, an evidentiary hearing was held before the Honorable Allison R. Lee. Leah B. Moody represented Petitioner and Assistant Attorney General J. Rutledge Johnson represented the State. Johnson ("trial counsel") and Petitioner testified at the hearing.

## Petitioner's Testimony

Petitioner testified that trial counsel, a public defender, was frequently too busy to discuss his case. App. 52, ll. 7 - 53, ll. 24. Petitioner recalled that counsel was not present at court when his case was called for trial and that a different public defender moved for a continuance on counsel's behalf. App. 41, ll. 8-24.

Judge Grason denied the continuance and, despite that attorney having no knowledge of Petitioner's case, insisted on selecting a jury. App. 38, ll. 4 - 43, ll. 21. The trial began the next day. Petitioner stated that counsel forgot to bring a copy of his cell phone video to court, but that

fortunately, Petitioner was able to access the video through an online account. App. 44, ll. 2-22. Ultimately, while the video was played at trial, the jury was never given a copy of it during deliberations. App. 55, ll. 5-22.

Petitioner further testified that counsel had incorrectly stated the basis for the defense's motion to recuse Judge Grason. App. 44, ll. 20 - 48, ll. 22. Counsel motioned that Judge Grason should recuse himself because he refused to grant Petitioner a restraining order against Plummer. *Id.* In actuality, Petitioner testified that the basis for the recusal motion was that Petitioner had filed a grievance against Judge Grason for refusing to accept a lawsuit he filed against his neighborhood homeowners association. *Id.* Petitioner never filed for a restraining order against Plummer.

#### Trial Counsel's Testimony

Counsel recollected that she and Petitioner reviewed the video footage from the incident, both from his cell phone footage and from the arresting officer's police car dashboard camera. App. 57, ll. 4 - 58, ll. 15. Counsel alleged that she introduced the cell phone video at trial, but conceded that the jury would not have had a copy of the video with them during deliberations. Rather counsel assumed that if they had wanted to see the video again, they could have asked the court. App. 60, ll. 5-12.

Counsel averred that Petitioner had sought a restraining order because he and Plummer lived in the same neighborhood and Plummer had been harassing Petitioner since the incident. App. 66, ll. 2-21. Counsel claimed that she filed the recusal motion based on information that Petitioner provided to her and that the court ruled against the motion because Judge Grason did not recall the complaint and did not believe it would impact his handling of the case. App. 61, ll. 8 - 63, ll. 22.

### **Order of Dismissal**

On May 8, 2015, the PCR court denied Petitioner's application in a written order of dismissal. App. 76 - 81. The court ruled that Petitioner failed to prove that defense counsel "did not conduct an adequate pre-trial investigation." App. 79. Oddly, given that there was no trial transcript, the court also concluded that counsel adequately utilized Petitioner's cell phone video during trial. App. 80.

## ARGUMENT

**The PCR court committed reversible error by ruling on the merits of Petitioner's post-conviction relief application without requiring the State to produce the record of Petitioner's magistrate court trial, mandated under S.C. Code Ann. § 17-27-70(a), as the absence of a trial record rendered Petitioner's post-conviction relief application, alleging the ineffective assistance of trial counsel, a nullity.**

The State, as the respondent in Petitioner's PCR action, had a duty to obtain the trial transcript for Petitioner because his PCR application raised allegations that trial counsel provided ineffective assistance of counsel. App. 1 - 25. Under the Uniform Post-Conviction Relief Act, the State must, "[i]f the application is not accompanied by the record of the proceedings challenged therein, ***the respondent shall file with its answer the record*** or portions thereof that are material to the questions raised in the application. S.C. Code Ann. § 17-27-70(a) (*emphasis added*).

This mandate is particularly important with respect to indigent applicants. S.C. Code Ann. § 17-27-60; *Draper v. Washington*, 372 U.S. 487, 497-500 (1963) (invalidating a state rule that an indigent criminal defendant could only obtain a free trial transcript if he demonstrated to the trial court that his contentions on appeal would not be frivolous); *Griffin v. Illinois*, 351 U.S. 12 (1956) (finding a state statute unconstitutional because it denied due process and equal protection of the law by allowing non-indigent persons to procure a copy of the trial transcript to file an appeal, but denied the same privilege to poor persons unable to bear the expense).

The State filed its Return in Petitioner's case on August 13, 2014. App. 26 - 29. At that time, the State was obligated to also file a record of the challenged proceedings. § 17-27-70(a). Petitioner was prejudiced by the trial court's failure to require the State submit a record of his magistrate court trial as it prevented review of the transcript for issues relating to Petitioner's PCR claim or additional issues that would only be contained in the transcript itself.

In PCR proceedings, the burden of proof is on the applicant to prove the allegations in his

application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) To establish ineffective assistance of counsel, the Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). “First, a defendant must show that counsel's performance was deficient.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

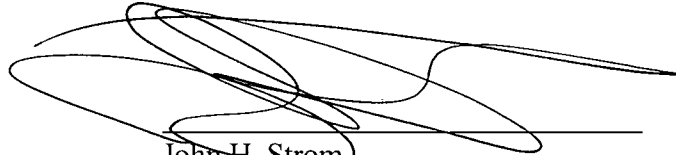
A PCR applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692). Obviously, Petitioner could not effectively argue that trial counsel was unconstitutionally ineffective without having access to a record of his trial.

Accordingly, the PCR court committed reversible error by ruling on the merits of Petitioner’s PCR application without requiring the State to produce the record of Petitioner’s magistrate court trial as mandated under § 17-27-70(a) where the absence of a trial record rendered Petitioner’s PCR application a nullity. *Cf. Griffin*, 351 U.S. at 19; *Cf. Draper*, 372 U.S. at 497-500.

**CONCLUSION**

Petitioner respectfully requests this Court grant the writ of certiorari and order full briefing on the issue presented.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line. The signature is stylized with several loops and a long tail.

John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County  
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DAVID BEATSON,

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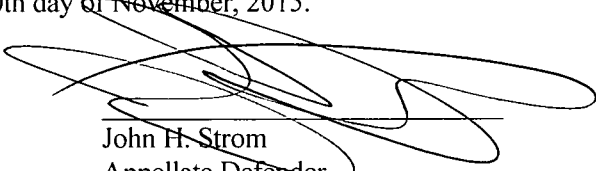
APPELLATE CASE NO. 2015-001266

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CERTIFICATE OF SERVICE

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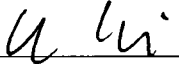
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Justin Hunter, Esquire this 30th day of November, 2015.



John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of November, 2015.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025.