STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Florence County
Edgar W. Dickson, Circuit Court Judge

CARLYNIAS PETTIGREW,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001587

PRO SE JOHNSON BRIEF

Date: January 4, 2016

Carlynias Pettigrew

Carlynias Pettigrew
Pro Se Appellant

ISSUES PRESENTED

I. Is there any evidence of probative value ~~WHICH~~ support the PCR court's conclusion that counsel was not ineffective for failing to make himself knowledgable of the statutory provisions and caselaw of S.C. Code of Law §16-11-410, et.al. and then thereafter impart this knowledge to the defendant in advising him of the options available to him.

The Applicant-Appellant testified at the pcr evidentiary hearing that he fervently believed he has a right to defend himself on his property from any threat with force, including lethal force. (See Appx. pg. 73 line 21- line 23). Additionally, the Appellant testified that he only used the force, which ultimately killed the victim, because he had the right to defend himself against the decedent. (See Appx. pg. 90 line 11 - line 20).

The PCR counsel Vick Meetze testified at the pcr evidentiary recounting the facts of the case against the Appellant including the fact the Appellant was at his home when the decedent arrived and created

a verbal dispute with Appellant which escalated to an altercation. (See Appx. pg. 95 line 12 - pg. 96 line 7). The pcr counsel further testified and recounted evidence the decedent at one point reached like he had a gun and the decedent thrusted his car forward in a manner that caused the Appellant to fear he would be run over by the car. (See Appx. pg. 96 line 14 - pg. 98 line 8).

The trial counsel in this case candidly admitted at the pcr evidentiary hearing that he did not ever bring up the Protection of Person's and Property Act to the Appellant, neither did he go over the Protection of Person's and Property Act with the Appellant. The trial counsel also admitted he did not prepare for pre-trial, trial nor for the guilty plea by making himself aware of applicable laws available to construct a complete defense for his client against the indictment of murder, specifically the Protection of Person's and Property Act, known by layperson's as South Carolina's "stand your ground" law. (See Appx. pg. 100 line 2 - line 13).

The trial counsel is clearly deficient under the first prong of Strickland because Strickland requires trial counsel to perform under the professional norms of the standard legal profession and the norms of the standard legal profession dictates that trial counsel must be abreast of the current body of law which emcampasses the offenses the client is facing. Trial counsel failed in this regard, trial counsel Meetze did not research and prepare appropriately under Strickland's standard to go over the Protection of Person's and Property Act and to argue its protection of immunity on Appellant's behalf or at least advise the Appellant of the existence of Protection of Person's and Property Act as a legal option. Trial counsel Meetze testified repeatedly that the Appellant fervently believed the decedent posed a threat of serious bodily harm or death to him and the Appellant was adamant he has the right to defend himself and his home. Although trial counsel understood Appellant's recount of what occurred between him and the decedent, the trial counsel Meetze failed to inform Appellant of the full spectrum of legal defenses available in South Carolina's jurisprudence to insure the voluntary, knowing and intelligent

nature of the negotiated guilty plea. The counsel Meetze failed to inform the Appellant of the Protection of Person's and Property Act and the accompanying body of law in line with this Act, and this is significant in that the Appellant's decision to forego trial and plea guilty revolved around his adamant believe he has the right to defend himself and his property while weighting the advise of counsel Meetze or lack of advise from counsel Meetze. The trial counsel is ineffective such that Appellant's plea is involuntary, unknowing and unintelligent because the Appellant has demonstrated there is a reasonable probability that, but for counsel Meetze's errors, the Appellant would not have plead guilty and would have insisted on trial. (See Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The trial counsel is clearly prejudicial under the second prong of Strickland and Hill in that there is a reasonable probability that had counsel Meetze informed the Appellant of the existence of §16-11-410, et. al. "Protection of Persons and Property Act" and went over the accompanying case law on the Act with Appellant

then Appellant would have declined acceptance of the guilty plea and would have moved for a full evidentiary pre-trial review for immunity under the Protection of Persons and Property Act pursuant to State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (S.C. 2011); State v. Dickey, 394 S.C. 491, 716 S.E.2d 91 (S.C. 2011). The Appellant would have moved for a full blown pre-trial evidentiary hearing for immunity where he would testify, submit evidence, subpoena persons and documents, cross-examine witnesses, call experts and private investigators. The §16-11-410, et. al. authorizes such full blown evidentiary hearings for immunity where a defendant can lay out all that he or she would like the court to hear, and this defendant would have utilized such a mechanism. If the adamant demand for filing a motion for bond this Appellant pursued is an indicator, then it is reasonable to belief this Appellant would pursue a mechanism to let the court know his version of the events of the criminal charges against where the Appellant has doggedly attest he acted to defend himself

and his property. (See State v. Douglas, 768 S.E.2d 232).

In analyzing and in determining the denial of this issue the PCR Judge found as a matter of law and fact that "counsel testified he went over the reasons why a 'Stand Your Ground' defense would not work in Applicant's case." (See Appx. pg. 109 paragraph 2). Not so. This PCR Judge's determination on this point is flatly contradicted by the pcr transcript record. The pcr record actually reads, "I don't recall ever going over that with him" (Appx. pg. 100 line 6) and "I'm certain I didn't bring it up to him and I didn't go over that law with him" (Appx. pg. 100 line 9 - line 10); these are the testimonial responses of counsel Meetze when question by the attorney general at the pcr evidentiary hearing on whether he informed the Appellant of South Carolina's stand your ground law. This PCR Judge's finding is not supported by any evidence of probative value in the record, and is actually contradicted by the pcr record.

The PCR court's findings of fact and conclusions of law that the two-prong standards of Strickland v. Washington, 104 S.Ct. 2052 and Hill v. Lockhart, 106 S.Ct. 366 (1985) are not met in this PCR application on this issue are legally erroneous and are not supported by any evidence of probative value in the record. This PCR denial must be reversed and the defendant Pettigrew be granted relief. (See Simuel v. State, 701 S.E.2d 738, 739 (2010), "On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record. However, if there is no evidence to support the PCR court's ruling the appellate court will reverse;" see also Lounds v. State, 670 S.E.2d 646 (S.C. 2008) and Pauling v. State, 565 S.E.2d 769).

The Applicant has shown that counsel Meetze's conduct has fallen below an objective standard of reasonableness under the facts of this case and the Appellant has demanstrated a reasonable probability that, but for counsel Meetze's errors, the Appellant would not have plead guilty and would have rejected the plea and pursued trial. (See Hill v. Lockhart, 106 S.Ct. 366 (1985)).

The Appellant would have moved for immunity under the Protect of Persan's and Property Act in defending himself for the force he used to stop the decedent's appearance of reaching for a weapan (Appx pg. 39 line 13-14 and line 18-19; Appx. pg 96 line 24-25) and the decedent driving his car toward Appellant to run him over (Appx. pg. 39 line 20 - pg. 40 line 3; Appx. pg. 96 line 25 - pg. 97 line 3), the Appellant would not have pled guilty but instead would have followed this course of action had he been properly advised by counsel Meetze.

II. Is there any evidence of probative value which support the PCR court's conclusion that the guilty plea was not unknowing, involuntary and unintelligent where trial counsel labored under actual conflict of interest at the time the guilty plea was entered.

The Appellant testified that he was unhappy with the representation counsel Meetze rendered. The Appellant was so unhappy that he actually reported counsel Meetze conduct to the attorney oversight department of the S.C. Supreme Court, the Commission on Lawyer Conduct, the Commission on Indigent Defense as well as filing motions to the court and Judge Nettles to remove counsel Meetze from this case. (See Appx. pg. 79 line 4 - line 23). After the Appellant filed these motions and grievances to remove counsel Meetze and to report his conduct the relationship between Appellant and counsel Meetze deteriorated drastically to the point it was an antagonistic client-attorney relationship. (See Appx. pg. 80 line 8-10; pg 83 line 1-3; pg. 85 line 14-17; pg. 87 line 3-7; pg. 87 line 24 - pg. 88 line 5; pg. 88 line 11 - pg. 89 line 1 and pg. 90 line 21 - pg. 91 line 12).

The Appellant's right to counsel is grounded in the Sixth Amendment guarantees that "in all criminal prosecution, the accused shall enjoy the right... to have the assistance of counsel for his defense." (See U.S. Const. Amendment VI). The amendment withholds from courts in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel. (See Johnson v. Zerbst, 304 U.S. 458, 463 (1938); Gideon v. Wainwright, 372 U.S. 335 (1963); and Argersinger v. Hamlin, 407 U.S. 25 (1972). Additionally, the right to assistance of counsel at trial also means the right to effective assistance of counsel. (See Mc Mann v. Richardson, 90 S.Ct. 1441 (1970) and Cuyler v. Sullivan, 100 S.Ct. 1708 (1980).

Here, the conflict of interest created by the Appellant's filing of multiple disciplinary investigations complaints against counsel Meetze created an actual conflict of interest between Appellant and Meetze such that the attorney-client relationship

deteriorated to the point it was nonexistent. This is actual denial of the assistance of counsel altogether. The actual denial of the assistance of counsel altogether, whether at trial or on appeal, is legally presumed to result in prejudice and can never be treated as harmless error. A proceeding simply is unfair if the accused is denied counsel at a critical stage and it is always presumed to be prejudicial and harmful to the defendant. (See Penson v. Ohio, 109 S.Ct. 346 (1988); United States v. Cronic, 104 S.Ct. 2039 (1984); Lomax v. State, 665 SE2d 164; Thomas v. State, 551 SE2d 254 (2001)

The trial counsel Meetze testified at the per evidentiary that the conflict between him and the Appellant drove the Appellant to plead guilty instead of trial because the friction between them made going to trial with Meetze a non-option for Appellant. (See Appx. pg 94 line 24 - pg. 95 line 5; Appx. pg. 101 line 9-11).

The PCR court's findings of facts and conclusions of law that the threshold showing of due process violation of involuntary, unknowing and unintelligent guilty plea are not met in this pcr application on this issue are legally erroneous and are not supported by any evidence of probative value in the record. This PCR denial must be reversed and the defendant Pettigrew be granted relief. (See Simuel v. State, 701 S.E.2d 738, 739 (2010), "On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record. However, if there is no evidence to support the PCR court's ruling the appellate court will reverse;" see also Lounds v. State, 670 S.E.2d 646 (S.C. 2008) and Pauling v. State, 565 S.E.2d 769).

III. Is there any evidence of probative value which support the PCR court's conclusion that counsel was not ineffective for failing to move for suppression of one written statement and one video statement on the grounds they were coerced and involuntary.

The Appellant's statements in this case were coersed in violation of his constitutional rights. The U.S. Supreme Court has recognized that coersion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition. Thus the range of inquiry in this type of case must be broad, and the U.S. Supreme Court has insisted that the judgement in each instance be based upon the consideration of "the totality of the circumstances." (See Fikes v. State of Alabama, 352 U.S. 191, 77 S.Ct. 281). The question in each case is whether a defendant's will was overbourne at the time he confessed. If so, the confession cannot be deemed the product of a rational intellect and a free will. (See Blackburn v. State of Alabama, 361 U.S. 199, 206, 80 S.Ct. 274, 279; Reck v. Pate, 367 U.S. 433, 81 S.Ct. 1541).

In Seibert, the U.S. Supreme Court dealt with the police practice of questioning a suspect until incriminating information is elicited, then administering Miranda warnings. Following the warnings, the suspect is again questioned and the incriminating information re-elicited. The post-warning statement is then sought to be admitted. The factors to be considered in determining whether a constitutional violation occurred in this setting, according to Seibert plurality opinion, are:

(1) The completeness and detail of the question and answers in the first round of interrogation;

(2) The timing and setting of the first questioning and second;

(3) The continuity of police personnel; and

(4) The degree to which the interrogator's questions treated the second round as continuous with the first.

(See Missouri v. Seibert, 542 U.S. 600, 124 S.Ct 2601; and State v. Navy, 688 S.E.2d 838).

A trial judge's determination of whether a statement was knowingly, intelligently and voluntarily made, requires an examination of "the totality of the circumstances" surrounding the waiver. (See State v. Doby, 258 S.E.2d 896 (1979)). When reviewing a trial court's ruling concerning voluntariness the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. (See State v. Saltz, 551 SE2d 240, 252 (2001)).

Here, the PCR court did not undertake any analysis nor examination of the Appellant's case pursuant to Seibert nor Navy nor Blackburn nor Saltz nor Miranda. There is no evidence to support the PCR court's ruling that counsel was not ineffective for failing to move for suppression of the written statement and video statement on the grounds they were coerced and involuntary in violation of the U.S. Constitution.

This appellate court must reversed the PCR court's ruling on this issue. (See Simuel v. State, 701 SE2d 738, 739 (2010); Lands v. State, 670 S.E.2d 646 (S.C.2008); and Pauling v. State, 565 S.E.2d 769).

WHEREFORE this Appellant prays this Court deny appellate counsel's motion to be relieved, and order the appellate counsel to brief these issues more fully. Ultimately, the Appellant prays this Court reversed the PCR Courts denial and to the grant relief to the Appellant and Vacate the guilty plea and convictions in thier entirety.

Date: January 4, 2016

Carlynias Pettigrew

Carlynias Pettigrew
BRCI/351719/Manticello
4460 Broad River Rd.
Columbia, SC 29210

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Carlynias Pettigrew,
Appellant,

V.

State of South Carolina,
Respondent.

Appellate Case: 2015-001587

CERTIFICATE OF SERVICE

I do hereby certify that I have served a true copy of the "Pro Se Johnson Brief of Appellant" on the S.C. Supreme Court on January 4 2016 by depositing said document in the U.S. Mail, postage pre-paid, via hand delivery to the Broad River Prisan mailroom personnel, addressed to the following:

S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

SWORN and Subscribed before me
this 4 day of ~~December~~ January 2016.

Tennyson L. Montgomery
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 6/10/2018

Carlynias Pettigrew

Carlynias Pettigrew
BRCI/351719/Manticello
4460 Broad River Rd.
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Florence County
Edgar W. Dickson, Circuit Court Judge

CARLYNIAS PETTIGREW,
PETITIONER

V.

STATE OF SOUTH CAROLINA,
RESPONDENT

APPELLATE CASE NO. 2015-001587

6. DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APP

7.

8. I The Petitioner-Appellant proposes th
following be included in the Record on A
bc

The whomever this may concern:

On this day, the 23rd of July.

I, Pettigrew, motion to be appointed another attorney; such is due to insufficent counsel. And, it's a conflict of interest that I be appointed Public defender; because 1) they may be biased in handling my case. And 2) I felt and/or feel they will not give this case the proper attention. So, I ask they the court to appoint me an attorney PRO bond.

The grounds for this motion is that: the Public defenders office has been negligent in handling my case. And, havent done anything in aiding my case, in the 18 months I've been confined. I so move the court.

Signed,
Cordymias Pettigrew

On this 23rd of July

FILED
2012 JUL 24 AM 11:00
CONNIE ELLEN SHEARIN
CCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Ellen Shearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

In the Court of General Sessions

STATE OF SOUTH CAROLINA
County of Florence

The State,
vs
Carlyn'as Pettigrew,

Defendant;

Case Number(s) M273065

Notice of Motion
Motion for Conflict of Interest

FILED
2012 JUL 24 AM 11:00
RONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

To: Court of County 12th Circuit

This notice of Motion is for a hearing to dismiss my lawyer for Conflict of interest. I am requesting to have my lawyer V. Meetze, dismiss from my case. Reason's are i asked him to take me up for a bond he never did what i asked him to as my lawyer. Second, he's trying to make me take a plea and im not ready just yet. Then i asked him again to take me up for a bond hearing because i was in the county for 18 months because he never took me up for one reather i was able for one or not but, i would like to spend time with my son and family and work so i can pay for me a lawyer. He said, why i wont take the money but im trying to get out on bond with take that money and get a lawyer. Then he said you know and i know you are not going to get a lawyer. So i said please take me up for a bond he said tell your lawyer to take you up for a bond. Then i told him i would like him removed from my case. So he said the judge will not remove me from your case. He said a lot of people loved that but the judge will remove him from my case. I have a lot more grounds of conflict of interest with him, i'm not pleased with him persenting me. i need a good lawyer that will think you and God bless.

7 Jul 22 2012

Carlyn'as Pettigrew

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Client-Lawyer Relationship

RULE 1.0 Terminology

RULE 1.1 Competence

RULE 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

RULE 1.3 Diligence

RULE 1.4 Communication

RULE 1.5 Fees

RULE 1.6 Confidentiality of Information

RULE 1.7 Conflict of interest: Current Clients

RULE 1.8 Conflict of interest: Current Clients: Specific Rules

RULE 1.9 Duties to Former clients

RULE 1.10 Imputation of interest: General Rule

RULE 1.11 Special Conflicts of interest for Former and Current Government Officers and Employees

RULE 1.12 Former Judge, Arbitrator, Mediator or other Third-Party Neutral

RULE 1.13 Organization as client

RULE 1.14 Client with Diminished capacity

RULE 1.15 Safe Keeping property

RULE 1.16 Declining or Terminating Representation

RULE 1.17 Sale of Law Practice

RULE 1.18 Duties to Prospective client

RULE 2.1 Counselor
Advisor

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
The State,)
vs)
Carlynias Pettigrew)
Defendant)

Case Number(s) M273068

IN GENERAL SESSIONS

NOTICE OF MOTION
MOTION FOR BOND HEARING

FILED
2012 JUN -7 PM 12:10
CONNIE KELLY SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

TO: COURT OF FLORENCE COUNTY 12th CIRCUIT

This Notice of Motion is to request a bond hearing. I am currently being held at Florence Co. Detention Center, and have been incarcerated for over 16 months without being brought before the courts for a bond rather it was to be denied or granted. Under the 5th Amendment it protects the right to due process, isn't a bond appearence a part of this process.? I sincerely hope this Motion is acknowledge with fairness and without predjudicial nature of the charge aginst me. I patiently await a response from the proper authority of this matter.

June 5th 2012

Carlynias Pettigrew

CERTIFIED TRUE COPY
Connie Kelly Shearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

n Moti room 284

UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 02.08⁰
0008003534 JAN07 2016
MAILED FROM ZIP CODE 29210

The Supreme court of South carolina
DANIELE, SHEARouSE, CLERK OF COURT
Post OFFICE BOX 11330
COLUMBIA, South carolina 29