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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Brooks P. Goldsmith, Circuit Court Judge

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LARRY PROPHET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001089

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# PETITION FOR WRIT OF CERTIORARI

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# INDEX

## ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to present James Hamrick, Petitioner's special education teacher, as a witness during the Family Court waiver hearing where Hamrick would have testified as to Petitioner's intellectual, emotional, and developmental disabilities, his lack of maturity and sophistication, and the poor environment in which he was raised since this evidence was relevant to the eight *Kent*[1] factors that must be considered by the Family Court when determining whether to transfer jurisdiction to the Court of General Sessions and likely would have changed the outcome of the waiver hearing?

[1] Kent v. United States, 383 U.S. 541 (1966).

## STATEMENT

On December 16, 2010, Investigator Joshua Mauldin, on behalf of the State of South Carolina, filed juvenile petitions against Petitioner charging him with kidnapping, armed robbery, first degree criminal sexual conduct, and first degree burglary for events that occurred on December 14, 2010 when Petitioner was fifteen years old. App. 294-297. A waiver hearing was held in Family Court on May 7, 2012 before the Honorable Leslie K. Riddle. App. 1. Deputy Solicitor K. Luck Campbell and Assistant Solicitor Foster Matthews represented the state, and Melissa Armstrong represented Petitioner. App. 1. By order dated May 18, 2012, Judge Riddle ordered that jurisdiction be transferred to the Court of General Sessions. App. 145.

A Richland County Grand Jury subsequently indicted Petitioner at the June 2012 term of General Sessions for kidnapping, armed robbery, first degree criminal sexual conduct, and first degree burglary. App. 286-293. Petitioner pled guilty as indicted on March 18, 2013 before the Honorable G. Thomas Cooper, Jr. App. 146. Deputy Solicitor K. Luck Campbell and Assistant Solicitor Joanna McDuffie represented the state, and Melissa Armstrong represented Petitioner. App. 146. Petitioner was sentenced by Judge Cooper to forty-five years suspended upon the service of thirty years imprisonment and five years probation for first degree burglary, thirty years concurrent for armed robbery, thirty years concurrent for first degree criminal sexual conduct, and a consecutive sentence of fifteen years suspended upon the service of five years probation for kidnapping. App. 203, l. 18 – 204, l. 14. He did not appeal.

On November 6, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 206-214. The state filed a return to this application dated March 4, 2014. App. 215-219. With the assistance of counsel, Petitioner filed an amended application for post-conviction relief on March 16, 2015. App. 220-221. The matter proceeded to an evidentiary hearing on April 1, 2015 before

the Honorable Brooks P. Goldsmith. App. 222. Assistant Attorney General J. Clayton Mitchell, III represented the state, and Kristy Grafton Goldberg represented Petitioner. App. 222. By order dated May 8, 2015, Judge Goldsmith denied Petitioner relief. App. 276-285.

This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to present James Hamrick, Petitioner's special education teacher, as a witness during the Family Court waiver hearing where Hamrick would have testified as to Petitioner's intellectual, emotional, and developmental disabilities, his lack of maturity and sophistication, and the poor environment in which he was raised since this evidence was relevant to the eight *Kent*[2] factors that must be considered by the Family Court when determining whether to transfer jurisdiction to the Court of General Sessions and likely would have changed the outcome of the waiver hearing.

**Family Court Waiver Hearing**

The state presented four witnesses during Petitioner's waiver hearing before Judge Riddle: Investigator Joshua Mauldin, Major Stan Smith, Probation Officer Anthony McClain, and Department of Juvenile Justice (DJJ) Psychologist LaShonda Smith.

Josh Mauldin of the Richland County Sheriff's Office testified about the details of the allegations. On the night of the incident, he took a statement from the homeowner, seventy-nine year old Elaine Henrick, at Palmetto Health Richland Hospital. Henrick claimed she was watching television in her family room when two young black males entered, pointed a shotgun at her, and ordered her to "take them to [her] money." The men allegedly ransacked the home and stole over five hundred dollars in cash as well as jewelry and a television. Before the men left, they allegedly forced Henrick by gunpoint into a bedroom, ordered her to disrobe, and then vaginally and anally penetrated her. Henrick claimed both men ejaculated during the sexual assault. App. 9, l. 16 – 13, l. 20; App. 14, l. 21 – 15, l. 11.

[2] Kent v. United States, 383 U.S. 541 (1966).

Mauldin also claimed that while he was at the hospital, he spoke with Temple Hart, the nurse who treated Henrick that evening. According to Mauldin, Hart maintained that Henrick's injuries were severe. The Sexual Assault Nurse Examiner (SANE) report completed by Hart indicated Henrick had vaginal bleeding, swelling and bruising to her labia, and deep lacerations on the sides of her vaginal wall. App. 6, l. 23 – 8, l. 20.

A sexual assault kit was collected from Henrick that night and submitted to the Richland County Evidence Department. App. 9, ll. 1-5. Vaginal and anal swabs collected as part of the kit tested positive for semen and matched the DNA profile of fourteen year old Zacoata Lopey. Fluid located on the carpet in Henrick's bedroom also tested positive for semen and matched Petitioner's DNA profile. App. 16, l. 12 – 17, l. 5.

After questioning several of Henrick's neighbors, law enforcement developed Lopey was a possible suspect. Lopey lived across the street from Henrick and many neighbors believed he was responsible for several recent burglaries in the area. Officers questioned Lopey at Spring Valley High School. Mauldin testified that Lopey confessed to burglarizing Henrick's home while armed with a shotgun and to sexually assaulting her. He also allegedly implicated Petitioner. App. 18, l. 3 – 25, l. 23.

After Lopey confessed, Petitioner was taken into custody and questioned. According to Mauldin, Petitioner ultimately admitted to burglarizing Henrick's home, but vehemently denied sexually assaulting her. App. 26, l. 5 – 40, l. 6.

While Mauldin was completing the charging documents for both boys, Petitioner and Lopey were brought into the same room at the sheriff's office to be fingerprinted. Mauldin claimed the boys were laughing, "high fiving," and "rapping and singing." App. 40, l. 16 – 42, l. 10. The state later used these alleged actions to argue Petitioner showed no remorse.

Major Stan Smith likewise testified about the investigation, including the development of Lopey as a suspect and Lopey and Petitioner's alleged confessions. His testimony was largely cumulative to what Mauldin stated on the stand. App. 49, l. 20 – 58, l. 6.

Anthony McClain, who supervised Petitioner on probation for two months, testified about Petitioner's prior juvenile adjudications and other pending juvenile charges. His prior adjudications included two counts of simple assault and battery, disturbing schools, and violation of community evaluation for which he received a probationary sentence. He also had pending charges for malicious injury to personal property, simple assault and battery, and petit larceny. App. 62, l. 3 – 65, l. 7. Petitioner was only on probation for two months before his arrest for this event, meaning he was unable to complete the terms of his probation or take advantage of any of the resources offered by DJJ, including academic assistance, counseling, psychiatric medication management, and psychoeducational testing. App. 65, l. 8 – 67, l. 7.

Lastly, the state called LaShonda Smith, a psychologist with DJJ, to testify. Smith was court ordered to "conduct a waiver evaluation," which required her to "look at various psychological aspects including intellectual functioning, academic functioning, [and] personality." It also required her to complete a clinical interview of Petitioner to access his mental health. App. 79, l. 12 – 80, l. 14. As part of her evaluation, Smith reviewed Petitioner's school records from Blythewood Academy, which only covered a two month period from October 2010 until December 2010. She did not have access to his elementary or middle school records. In addition to these brief school records, Smith also reviewed Petitioner's prior DJJ evaluation from September 2010, his records from Columbia Area Mental Health, and records pertaining to the allegations. App. 80, l. 15 – 82, l. 18.

Smith learned from Petitioner's mother that he was hospitalized at William S. Hall Psychiatric Institute due to his self-harming behavior.[3] Petitioner's mother also told Smith that Petitioner had a quick temper and "got frustrated with himself" easily. App. 83, l. 15 – 84, l. 14.

Smith claimed that records from Petitioner's counselor and his prior evaluation from September 2010 indicated Petitioner had been diagnosed with disruptive behavior disorder, not otherwise specified. Smith said disruptive behavior disorder is a "catchall . . . diagnosis for juveniles or adolescents who display various types of behavior problems that don't necessarily fall into the . . . criteria for Oppositional Defiant Disorder or Conduct Disorder." App. 88, ll. 2-17. However, despite this prior diagnosis, Smith diagnosed Petitioner with conduct disorder based on her independent assessment. She described conduct disorder as "a disorder about breaking rules." App. 103, ll. 1-16. Additionally, Smith testified that Petitioner had previously been prescribed Risperdal, which is an "anti-psychotic medication . . . used oftentimes to control behavior of people who tend to have severe anger problems," but, according to his mother, Petitioner had failed to take the medication consistently. App. 94, l. 1 – 95, l. 2.

Moreover, Smith testified that when she questioned Petitioner about the allegations, he admitted he was present during the burglary, but vehemently denied sexually assaulting Henrick. Petitioner also expressed remorse and "indicated that he felt the victim was probably frightened and that he wished he could say he was sorry to the victim." App. 97, ll. 4-20. Based on her evaluation, Smith opined that Petitioner could be rehabilitated and that he would benefit from the services

[3] Smith did not have access to Petitioner's records from William S. Hall Psychiatric Institute. There was no evidence presented during the hearing regarding when Petitioner was admitted to the institute, why he was admitted, or how long he was hospitalized. However, Smith did testify that she had records indicating Petitioner was hospitalized on at least two separate occasions. App. 95, l. 21 – 96, l. 1.

offered by DJJ during his incarceration. Part of her opinion was based on the fact that she found Petitioner's mother to be emotionally supportive. App. 104, ll. 14-21.

Lastly, Smith testified about Petitioner's mental health and intellectual disability. She maintained that the symptoms Petitioner described "were suggestive of depression and anxiety," but she did not diagnosis Petitioner with either. App. 91, ll. 15-21. As far as his intellectual functioning, Smith testified that Petitioner's IQ was accessed on four separate occasions: 2001, 2004, 2010, and 2011. However, there was a significant variation among the scores. Specifically, Petitioner's IQ scores ranged from 59 to 77. His latest score based on Smith's testing in 2011 was a 59. Smith said there are various explanations for the discrepancy in the scores. For example, she testified that IQ tests "rely fairly heavily on . . . school learned information" and the testing in 2001 occurred when Petitioner was only six years old before he had received any substantial schooling. Smith maintained that Petitioner's "significant academic deficits" would be "more pronounced" as he aged and the testing was repeated. App. 110, l. 13 – 111, l. 19.

In addition to this possible explanation for the discrepancy, Smith also testified that another explanation was the various methods of testing utilized. She explained that the "list three" test administered in 2001 and 2004 and "the abbreviated test" utilized in 2010 are significantly different from the "list four" testing she completed in 2011. App. 111, l. 20 – 113, l. 2. Again, Smith concluded Petitioner had a full scale IQ of 59 and diagnosed him as mentally retarded.

The state attempted to use the wide range of scores to suggest Petitioner's intellectual functioning was above the range of mental retardation. It also suggested Petitioner had purposefully impaired his score. However, Smith stated she had no concerns whatsoever that Petitioner was malingering during her administration of the IQ test. App. 100, ll. 11-20; App. 113, ll. 3-5.

After the state rested, Petitioner presented three family members as witnesses, including his mother, Anita Grissett, his cousin, Shereka Brown, and his aunt, Teresa Johnson. Grissett testified about Petitioner's emotional problems and his numerous attempts at a young age to harm himself. She stated Petitioner had been hospitalized at William S. Hall and attended counseling at Columbia Area Mental Health. Moreover, Grissett explained that Petitioner was easily manipulated by peers and described him as "a follower" as opposed to a leader. App. 123, l. 18 – 126, l. 9.

Because of his intellectual disability, Petitioner was placed into special education classes starting in elementary school. Grissett testified that Petitioner often became frustrated at school and would shut down due to his inability to successfully complete the work. This led to his behavior problems. App. 126, l. 10 – 127, l. 12.

Petitioner's sixteen year old cousin, Shereka Brown, testified about a specific occasion when Petitioner was shot. Brown was outside on the front porch of their home with Petitioner when a Jeep drove by and an occupant began shooting from the window. Brown testified that Petitioner pushed her down and fell on top of her in an effort to protect her. She credited him with saving her life. App. 130, l. 3 – 132, l. 3. Petitioner was ultimately shot in the buttocks and has a colostomy as a result of his injuries. App. 127, l. 13 – 128, l. 7.

Lastly, Petitioner's aunt, Teresa Johnson, testified that Petitioner has had anger and emotional problems since a very young age. He also displayed self-injuring behavior and spoke of "jumping off bridges" and wanting "to kill himself" on numerous occasions. App. 133, l. 11 – 135, l. 24.

**Order Transferring Jurisdiction to the Court of General Sessions**

By order dated May 18, 2012, Judge Riddle found jurisdiction should be transferred to the Court of General Sessions. It appears her decision was based largely on the aggravated nature of

the allegations. The court analyzed the evidence presented during the waiver hearing pursuant to the eight factors outlined by the United States Supreme Court in Kent v. United States, 383 U.S. 541 (1966). When analyzing the sixth factor related to the "sophistication and maturity of the child as determined by consideration of his home, environmental situation, emotional attitude, and living pattern," Judge Riddle stressed Petitioner's history of behavioral problems and his admitted use of marijuana and alcohol. The court also briefly mentioned his home life, including the fact that he was raised by his mother and that his father was incarcerated. However, overall, the court's analysis under this specific factor and in general was rather limited. App. 138-145.

It appears the court failed to consider or give any weight to Petitioner's intellectual disability and mental retardation diagnosis when determining whether it was proper to transfer the case. This failure is likely because of the state's suggestion during the waiver hearing that Smith's assessment of Petitioner's IQ and intellectual functioning was unreliable due to the wide range of previous IQ scores Petitioner had received.

**Guilty Plea in the Court of General Sessions**

After the court advised Petitioner of the sentencing range for the offenses in which he was pleading guilty, his constitutional rights, and the consequences of his plea, the state presented Investigator Joshua Maudlin to inform the court of the facts of the case. App. 151, l. 2 – 153, l. 19; App. 160, ll. 4-5. Mauldin's recitation of the facts was similar to his presentation of the facts during his testimony at the Family Court waiver hearing before Judge Riddle. Several other members of law enforcement were also permitted to speak on behalf of the state.

Near the conclusion of the plea hearing, Petitioner presented Jack Hamrick as a witness in mitigation. Hamrick was Petitioner's special education teacher for over two years and worked closely with Petitioner on a daily basis. He told the court:

Larry [Petitioner] was my student. I worked very, very hard with Larry. And I don't know what the confidentiality issues are, but Zacoata [Petitioner's co-defendant] was also my student . . . I had worked as many as 40 hours a week for approximately two years with Larry very, very closely.

. . .

But what I can tell you is that I probably know Larry as well as anyone outside of his family, and in some respect probably better from the clinical standpoint. And I'm not an expert witness.

After Larry was referred to me - - I'd like - - I'd like to try to establish some type of rapport or at least contact with the family before the student is placed with me. I try to do my homework before the student is placed with me so I know more about the student.

So I drove out to Larry's house and got out of my truck, and I looked like a cop. And there were a bunch of gangbangers standing around in the yard in front of the house. I said, "Guys, I'm not a cop. I'm Larry's teacher."

And they - - they looked at me, and they had their pits on chains. And then one of them nodded that I could go in. I didn't have to open the door. There wasn't a door. And, you know, that's - - that's not uncommon with the students that - - that I work with. They're - - they're black, poor, developmentally disabled, emotionally disabled. But I started working with this population in 1979.

I've only seen two students who were mentally retarded. **And you can say whatever you want, but Larry is mentally retarded.**

**He was also learning disabled**. Statistically that's almost impossible. That means he's having two standardizations below the mean in a performance area.

And with the 69 I.Q. what that meant was that if you really worked real hard with Larry - - **when he came to me he couldn't read**. He couldn't - - he couldn't decode. He didn't know what ha, ha, ha, was or su, su, su was. He had - - he had no - - **he didn't have basic academic skills of any kind. Couldn't count, couldn't read, very difficult to understand his speech.**

So he didn't say anything for about a week. He was intimidated being in this new classroom with this male teacher. But I would talk to him anyway like I do my students. And finally he relaxed a little bit and opened up and was talking about some of the things that he had done to get sent to my program.

And he said - - he said if I'm bad I can go live with my dad. And I said what makes you think that if you act out that you're going to get to live with your dad. He

said if I be real bad I get to go stay with my dad. And I found out that he thought that he could go to prison and live with his dad.

Larry's a concrete thinker, and that may explain some of the discrepancies in the yeses and noes that you got from him today. **He has no idea what you're talking about.** And there's - - there's - - **a week of explanation from Ms. Armstrong [plea counsel] is not going to change that.**

He's - - Zacoata [Petitioner's co-defendant] was - - we don't call them sociopathic. At that age we call them conduct disorder. But he was a stoned-cold, heartless sociopath from day one. Very few of my students are. Most of them have legitimate emotional disabilities, developmental disabilities and behavior problems. They act the way they do for a reason.

Occasionally you get a kid at that age who is a true antisocial personality disorder. And that was Zacoata. He wasn't capable of remorse. He took pleasure in other people's pain. And he was – he was a nasty, sick kid. And if I was called to testify for Zacoata we would be having this conversation.

**Larry was like most people with developmental disabilities. If he had three wishes, all three of them would be that he could be like other people.** And that's - - **that's universal with people with mental retardation**. They want to be like other people. They want to be with other people. They want to look like other people.

**So Larry was the perfect storm for gang initiation** and inclusion in peer groups. And I saw it week after week after week, year after year.

That, for example, if Zacoata had been crying in that interrogation room, Larry would have been crying. If he [Zacoata] had been breakdancing, Larry would have been breakdancing. If he would have been high-fiving, Larry would have been high-fiving.

Zacoata was a charismatic, manipulative antisocial personality disorder. And he did obviously take pleasure. I didn't know the details of this case. I didn't want to know. I severed my ties with Larry when I heard that he had been arrested.

Larry came to visit me about three weeks before this happened. And I - - he hadn't been my student for years. But he stayed in touch with me.

And I remember talking to him and saying, you know, Larry, I know that you're into some bad shit, you know, and it doesn't have to be that way. And I talked to him about working in his - - in his uncle's garage, because he did have mechanical aptitude. And I gave him - - I gave him a book about how - - how West Coast Choppers are made from basically just salvage, because he liked motorcycles.

So I was trying to - - even to the last trying to - - encourage Larry to step away from the gangs. And it was just too powerful. He was - - **he was vulnerable.**

And, again, you know, he needs to suffer. He needs to pay for what he did. But his - - **his suffering started when he was born because he was black, dark complected [sic], retarded, learning disabled, born into a - - a shirt storm**, Your Honor. Excuse my language. And that's the way his life has been, and that's the way it is today.

THE COURT: What's the likelihood that that will ever change given the fact that inevitably he is going to be incarcerated?

JACK HAMRICK: Right. If Larry was released and fell under the influence of people like Zacoata he would offend again.

THE COURT: I meant what is - - what is his potential for development if at all, if any?

JACK HAMRICK: Larry could learn to be a - - if he could learn measurement Larry cold be a gainfully employed mechanic.

THE COURT: But his mental functioning is not likely to increase.

JACK HAMRICK: No. That's why it's called **developmental disabilities** because there are no retardation - - because as you know, Your Honor, there's - - he'll - - **he'll be socially and emotionally and cognitively fixed at the age that he is now, which, you know, arguably is about eight years old.**

THE COURT: Thank you, Mr. Hamrick.

App. 191, l. 25 – 197, l. 8 (emphasis added).

The court ultimately sentenced Petitioner to an aggregate of forty-five years suspended to thirty years imprisonment and five years probation. App. 203, l. 18 – 204, l. 14. Lopey, who pled guilty in the Court of General Sessions before Petitioner, received an almost identical sentence. When sentencing Petitioner, it appears Judge Cooper was heavily influenced by the sentence Lopey received as he questioned the solicitor about it on multiple occasions and immediately before he announced Petitioner's sentence. App. 199, l. 11 – 200, l. 6; App. 201, l. 25 – 202, l. 20.

**PCR Hearing**

Petitioner's plea counsel, Melissa Armstrong, explained that she called three of Petitioner's family members to testify during the waiver hearing. In addition to these witnesses, the state also presented the testimony of LaShonda Smith, a DJJ psychologist who evaluated Petitioner. Armstrong maintained that Smith's testimony was favorable to Petitioner because Smith diagnosed Petitioner with mental retardation and opined that he was able to be rehabilitated with the proper therapy and treatment. However, Armstrong noted that the state challenged part of Smith's testimony, specifically her conclusion that Petitioner is mentally retarded, because Petitioner had previously received several fluctuating IQ scores that placed him above the cutoff for mental retardation. Consequently, there was a dispute at the waiver hearing regarding Petitioner's actual IQ and whether he was intellectually disabled. App. 246, l. 23 – 247, l. 3.

Armstrong provided no explanation as to why she did not present James Hamrick, Petitioner's special education teacher, as a witness during the waiver hearing. She testified, "I cannot think of a specific reason why he was not called. I don't know if it's that I had not heard of him at that point or had not interviewed him . . . I can't tell you." App. 246, ll. 17-22. However, she admitted that Hamrick's testimony would have been beneficial to Petitioner if he would have been presented as a witness.

**Order of Dismissal**

The PCR court found Petitioner failed to meet his burden of proving plea counsel was ineffective for failing to call Hamrick as a witness during the Family Court waiver hearing. The court emphasized Petitioner's failure to call Hamrick as a witness during the evidentiary hearing. However, the court noted that if Hamrick's testimony would have been consistent with the statements he made during Petitioner's plea hearing, the evidence would not have changed the

outcome of the Family Court's decision to transfer jurisdiction to the Court of General Sessions. The court maintained that "much of [Hamrick's] testimony was not favorable to [Petitioner]," particularly where Hamrick "stated at [the] plea hearing that if [Petitioner] was released it is likely he would reoffend if he fell under the influence of others." App. 283.

**Discussion**

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to present James Hamrick as a witness during Petitioner's waiver hearing in Family Court. If called as a witness, Hamrick would have testified about Petitioner's intellectual, emotional, and developmental disabilities, his lack of maturity and sophistication, and the poor environment in which he was raised. This evidence is directly relevant to the eight *Kent* factors that must be considered by the Family Court when determining whether to transfer jurisdiction to the Court of General Sessions. If plea counsel would have properly presented Hamrick as a witness, this evidence likely would have changed the outcome of the waiver hearing and led the Family Court to conclude that proper jurisdiction over the case remained with the Family Court.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable

professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

Here, counsel was deficient because she failed to present available, relevant, and favorable mitigation evidence during the waiver hearing. Hamrick's testimony was directly related to the Kent factors that must be considered by the Family Court when transferring jurisdiction to the Court of General Sessions, particularly the factor related to the "sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living." See Kent, 383 U.S. at 567.

Hamrick, who worked closely with Petitioner on a daily basis for over two years, strongly maintained that Petitioner was both mentally retarded and learning disabled, and did not have any "basic academic skills of any kind." App. 193, ll. 9-21. Hamrick also stated that Petitioner was "socially and emotionally and cognitively fixed" at approximately eight years old. App. 197, ll. 2-7. Hamrick further discussed Petitioner's poor home environment and the fact that he is easily influenced by peers and simply wanted to fit in with others. App. 195, ll. 1-14. Lastly, Hamrick maintained that Petitioner could be gainfully employed as a mechanic if he was released and had the potential to become a productive citizen. App. 195, l. 20 – 196, l. 24.

Petitioner was prejudiced because counsel's failure to present Hamrick as a witness during the waiver hearing prevented him from fully developing evidence related to his intellectual, emotional, and developmental disabilities, his lack of sophistication and maturity, and the poor environment in which he was raised. Further, counsel's failure to present this evidence left the

serious nature of the offense mostly unmitigated and prevented the Family Court from understanding why Petitioner may have engaged in such a deplorable act. Hamrick's testimony, coupled with the favorable aspects of Smith's testimony about Petitioner's intellectual disabilities and his ability to be rehabilitated, likely would have sufficiently countered the bad facts and led the presiding judge to conclude that jurisdiction of the matter should remain with the Family Court.

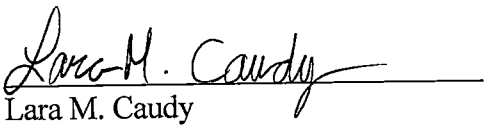
For example, Hamrick's statement that Petitioner is easily influenced by peers suggested he was less culpable than Lopey and likely simply went along with his friend during the burglary. This evidence also provided an explanation for why Petitioner was seen "high-fiving" and "singing and rapping" with Lopey after the boys were apprehended, which was used by the state to argue Petitioner showed no remorse. See App. 195, ll. 1-14.

Based on counsel's deficient performance and the resulting prejudice, this Court should reverse Petitioner's convictions and remand this case to the Family Court for a new waiver hearing.

## CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented with the ultimate relief of reversing his convictions and sentence and remanding this case to the Family Court for a new waiver hearing.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County
Brooks P. Goldsmith, Circuit Court Judge

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LARRY PROPHET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001089

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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 J. Clayton Mitchell, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of January, 2016.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of January, 2016.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.