



LAW OFFICE OF  
**JEREMY A. THOMPSON**  
LLC

January 18, 2016

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JAN 21 2016

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211-1330

**S.C. SUPREME COURT**

RE: Jaques Jamar Sullivan, #335849 v. State of South Carolina; 2014-002008

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Reply to Return to Petition for Writ of Certiorari in the above-captioned matter. I would appreciate your filing the original and six copies, clocking the extra copy, and returning the extra copy to me in the enclosed self-addressed, stamped envelope. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,

  
Jeremy A. Thompson  
Attorney and Counselor at Law

JAT/

Enclosures

cc: Karen Ratigan, Senior Assistant Deputy Attorney General (w/ enclosure)  
Jaques Jamar Sullivan, #335849 (w/ enclosure)  
Sara Polk (w/ enclosure)

**Mailing Address:**

P.O. Box 12891, Columbia, SC 29211

**Physical Address:**

1612 Marion Street, Suite 210, Columbia, SC 29201

☎ : 803-779-2555

☎ : 803-779-2556

✉ : jeremyatlaw@yahoo.com

🌐 : www.jathompsonlaw.com

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Appellate Case No. 2014-002008  
Lower Court Case No. 2012-CP-23-6281

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**S.C. SUPREME COURT**

JAQUES J. SULLIVAN, #335849,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**JEREMY A. THOMPSON**  
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC  
P.O. Box 12891  
Columbia, SC 29211  
(803) 779-2555  
(803) 779-2556 FAX

**ATTORNEY FOR PETITIONER.**

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## ARGUMENT IN REPLY

In its Return, the Respondent argues that the Petitioner failed to prove either prong of Strickland v. Washington, 466 U.S. 668 (1984). With regard to Strickland's performance prong, the Respondent argues

Petitioner failed to present any credible evidence or testimony that trial counsel represented both Julia Anderson and Petitioner at the same time and that there was an actual conflict of interest in Petitioner's case. The only "evidence" presented by Petitioner to support his contention are the exhibits he entered into evidence at the PCR hearing. Exhibit 1, however, merely has the name Julia Anderson written across the top of the page. Exhibits 2 and 3 are similarly not helpful to Petitioner's case, as the mere fact that trial counsel represented Julia Anderson on charges in October 2010 – more than one year after Petitioner's trial in July 2009 – does not prove trial counsel represented Anderson at the same time he was representing Petitioner on these charges.

Return at 8. The Petitioner asserts that this argument understates the evidence that was presented at the PCR hearing. There was a significant amount of evidence regarding the dual representation, including the Petitioner's testimony, the Petitioner's girlfriend Pamela Stewart's testimony,<sup>1</sup> and Clerk records showing defense counsel listed as counsel of record for Anderson. Most importantly, the Petitioner presented a June 12, 2009, letter from assistant solicitor Fretwell to defense counsel, which listed discovery materials enclosed with the letter pertaining to Anderson's case. This letter does not "merely ha[ve] the name Julia Anderson written across the top of the page," as the Respondent contends. Return at 8. There is no doubt that the letter pertained to Anderson, and not to the Petitioner, because it refers to a drug charge that arose out of Greenville on February 2, 2008, brought by Officer AH Skardon. Officer Skardon testified before the

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<sup>1</sup> The Petitioner would note again that the PCR court made only one credibility finding: "this Court finds trial counsel to be credible in his assertion that he did not recall discussing Anderson with the Applicant and that he would not discuss one client with another." App. p. 352. Notably, the PCR court did not find that the Petitioner or Stewart were not credible.

Greenville County Grand Jury on Anderson's simple possession of cocaine charge, arising out of her possession of cocaine on February 2, 2008. See App. pp. 357-358. The words "Julia Anderson" written on that letter were not placed there by accident—assistant solicitor Fretwell merely listed the Petitioner's name in the heading incorrectly. That letter was sent to defense counsel because he represented Anderson, and the date of the letter shows that he represented Anderson at the same time he represented the Petitioner. The import of all of this evidence is clear: defense counsel represented the Petitioner and Anderson at the same time.

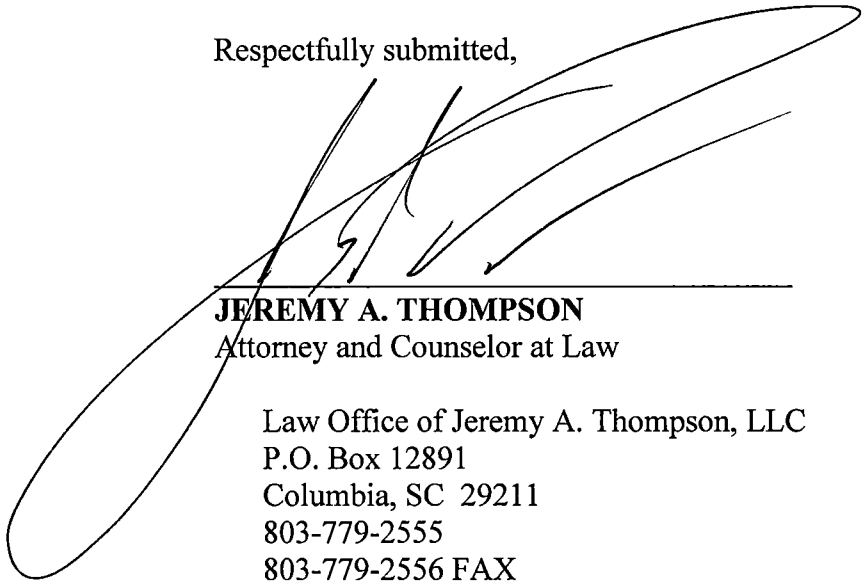
With regard to Strickland's prejudice prong, the Respondent initially correctly notes that prejudice is presumed where defense counsel operated under an actual conflict of interest. See Return at 10. The Respondent then, however, argues that "Petitioner cannot demonstrate prejudice in this case because the State presented overwhelming evidence of guilt." Return at 10. The Respondent, therefore, has made the same critical error that the PCR court made in analyzing Strickland's prejudice prong in this case. Compare Return at 10 with PCR App. p. 352 (footnote 3) ("It is especially difficult to demonstrate how the Applicant could have suffered any prejudice, as the State presented overwhelming evidence of the Applicant's guilt.") As the Supreme Court held in Strickland, "prejudice is presumed when counsel is burdened by an actual conflict of interest." 466 U.S. at 692. Thus, there is no need to analyze an actual conflict of interest case under Strickland's standard prejudice rubric. Instead, relief is mandated when an actual conflict of interest is established. As such a conflict has been established in this case, relief should be granted.

With regard to the other arguments advanced by the Respondent as to why this certiorari should be denied, the Petitioner would rely upon his arguments advanced in his certiorari petition.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on this issue.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Thompson', is written over a horizontal line. The signature is highly cursive and loops around the line.

**JEREMY A. THOMPSON**  
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC  
P.O. Box 12891  
Columbia, SC 29211  
803-779-2555  
803-779-2556 FAX  
[jeremyatlaw@yahoo.com](mailto:jeremyatlaw@yahoo.com)

**ATTORNEY FOR PETITIONER.**

This 18<sup>th</sup> day of January, 2016.

STATE OF SOUTH CAROLINA  
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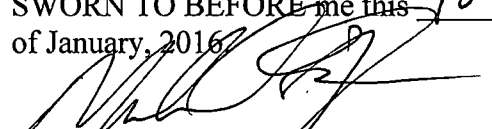
RESPONDENT.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two copies of the Reply to Return to Petition for Writ of Certiorari have been served upon opposing counsel, Karen Ratigan, Senior Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 18<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
**JEREMY A. THOMPSON**  
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 18<sup>th</sup> day  
of January, 2016.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 7/10/2022