

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County  
Eugene C. Griffith, Jr, Circuit Court Judge

ANTWAN GRAYSON, PETITIONER,  
v.  
STATE OF SOUTH CAROLINA, RESPONDENT,

APPELLATE CASE NO. 2015-000823

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PETITION FOR WRIT OF CERTIORARI

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ANTWAN D. GRAYSON  
PRO SE

BRCI-SCDC/MA-260-B-side  
4460 Broad River Road  
Columbia, SC 29210

INDEX

INDEX	1
ISSUES PRESENTED	2
STATEMENT	4
ARGUMENTS	6
Exhibit	26
CONCLUSION	27

## ISSUES PRESENTED

- 1, Whether Petitioner's Sixth and Fourteenth Amendment Rights to effective assistance of Counsel were violated when trial Counsel failed to review all of the discovery materials with petitioner prior to trial thereby preventing petitioner from fully accessing the extent of the State's evidence against him and making an informed decision to reject the State's plea offer and ~~not~~ proceed to trial?
- 2, Whether Counsel was ineffective when he failed to object to the solicitor leading the witness?
- 3, Whether Counsel was ineffective when he failed to review ALL the RULE 5 discovery material with petitioner prior to going to trial, nor took time to discuss the evidence or prepare a defense?
- 4, Whether Counsel prejudice the petitioner by failing to ask for a continuance?

ISSUES PRESENTED [continued]

- 5, Whether Counsel prejudice the petitioner by failing to investigate Indictments?
- 6, Whether Counsel prejudice the petitioner by failing to prepare for trial?
- 7, Whether Counsel prejudice the petitioner by failing to allow him to plea?

## STATEMENT

A Greenville County Grand Jury indicted Petitioner at the May 4, 2010 term of General Sessions for armed robbery, kidnapping, First degree Criminal Sexual Conduct, and possession of a weapon during the Commission of a violent crime. App. 594-599. His case was called to trial on March 28, 2011 before the Honorable Robin B. Stilwell, and a Jury. App. 1. Assistant Solicitor Kristie Bjorndal Hodge represented the state, and Randall Lee Chambers represented Petitioner. App. 1.

On March 30, 2011, the jury found Petitioner guilty. App. 482, 1.9-483, 1.6. He was sentenced by Judge Stilwell to concurrent terms of thirty years imprisonment for armed robbery, thirty years for kidnapping, thirty years for first degree Criminal Sexual Conduct, and five years for the weapons offense. Judge Stilwell ordered these sentences be served consecutive to a fourteen year sentence Petitioner was currently serving for a Probation revocation. App. 495,

STATEMENT [Continued]

1.7-496, 1.2.

The South Carolina Courts of Appeals affirmed petitioner's convictions. State v. Grayson, OP. NO. 2013-UP-263 (S.C. App. filed June 19, 2013), App. 512-513

On August 21, 2013, Petitioner filed an application for Post-Coviction relief (PCR). He filed an amended application On November 19, 2013. App. 515-530. The state filed a return to this application dated April 8, 2014. App. 531-536. The matter proceeded to an evidentiary hearing On December 18, 2014 before the Honorable Eugene C. Griffith, Jr. App. 537. Senior Assistant Deputy Attorney General Karen C. Ratigan represented the State, and Caroline N. Hortbeck represented Petitioner, App. 537. By Order dated February 7, 2015, Judge Griffith denied Petitioner relief. App. 585-593.

This petition for writ of Certiorari follows.

## ARGUMENTS

[1.] Petitioner's Sixth and Fourteenth Amendment Rights to the effective assistance of Counsel were violated when Counsel failed to review all of the discovery materials with Petitioner Prior to trial thereby preventing Petitioner from fully accessing the extent of the State's evidence against him and making an ill-formed decision to reject the State's plea offer and Proceed to trial.

### FACTS AT TRIAL...

The state alleged at trial that on the night of March 16, 2009, Petitioner approached the complainant, Crystal Byers, as she was walking to her apartment and put a gun to her mouth. When Byers claimed she did not have any cash or anything of value in her apartment, Petitioner and his accomplice allegedly forced Byers to drive the two men to an ATM, where she withdrew cash from her mother's account.

Byers also claimed that after they returned to her apartment complex, Petitioner allegedly made Byers have vaginal sex with him in the backseat of her car. After they

had sex, Petitioner allegedly made Byers drive back to her apartment and retrieve her cell phone. Byers claimed that after she gave her cell phone to Petitioner, he simply walked away and she called 911 from her mother's telephone. See App. 86, 1.9-111, 1.18.

Petitioner's alleged accomplice and Codefendant, Curtis Wilkie, testified against Petitioner at trial and corroborated Byer's claim regarding the armed robbery. However, Wilkie maintained that he got out of the car before the alleged sexual encounter. See App. 234, 1.5-251, 1.23. Notably, Wilkie admitted to having numerous pending charges at the time of Petitioner's trial, including three counts of armed robbery, two counts of kidnapping, and one count each of first degree burglary and attempted burglary in Spartanburg County, as well as the charges related to this case, specifically armed robbery, kidnapping, and conspiracy. App. 256, 1.10-257, 1.8.

Petitioner's account of events differed

significantly from Byers' allegations. He testified that on the night of March 16, 2009, he received a telephone call from an individual who wanted to buy crack cocaine. As a result, he walked to Byers' apartment complex with Wilkie to meet the individual. While they were waiting for the man, who never showed up, Byers pulled up, rolled down her car window, and asked Petitioner if he had any crack. Petitioner testified that Byers said she did not have any money and asked Petitioner and Wilkie to ride with her to the ATM. The men agreed and drove with Byers to the bank. Byers ultimately traded eighty dollars she obtained from the ATM for "four rocks". Petitioner maintained that after Byers smoked this crack in the car with him, she wanted more and, in addition to trading her cell phone for more crack, she also offered to have sex with Petitioner in exchange for payment. Petitioner said they had sex in the backseat of Byers' car while Wilkie waited outside in the "Breezeway." After that, he went home. App. 356, 1.23 - 361, 1.25.

The Jury deliberated for over five hours and ultimately found Petitioner guilty, App. 477, 1.24-483 1.6. Judge Stilwell sentenced him to a term of thirty years imprisonment consecutive to a fourteen year sentenced Petitioner was already serving for a probation revocation. App. 495, 1.7-496, 1.2.

## PCR Hearing. . .

Petitioner testified at the PCR hearing that after his arrest for this offense he was incarcerated at the local detention center for five months before he was ultimately transferred to the Department of Corrections because of a probation revocation. While he was housed at the County Jail, trial counsel visited Petitioner once. During this meeting, the two discussed the possibility of bond being set and potential witnesses trial counsel could contact. However, while petitioner was in the custody of the Department of Corrections, trial counsel never visited him. Petitioner testified that, in addition to the lack of in person meetings, counsel only sent

him one letter, and this letter simply indicated that, if Petitioner needed to communicate with counsel, he should contact his assistant, Tracy. App. 542, 1.4 - 544, 1.11.

Additionally, Petitioner testified that he was transported to Court in Greenville County twice before his trial. On these two occasions, he briefly spoke with trial Counsel in the "holding cell" at the Courthouse. The two again discussed potential witnesses and Petitioner provided counsel with contact information for these individuals. App. 546, 1.14 - 547, 1.12. Counsel also informed Petitioner during one of these meetings of a plea offer made by the state. The solicitor was willing to recommend a twenty-two year sentence to be served concurrently with the fourteen year sentence Petitioner was serving for his probation revocation if Petitioner pled guilty. Petitioner asserted that he rejected this offer because he was unaware of the extent of the evidence the state had against him. App. 551, 1.24 - 552, 1.5; App. 567, 11.7-24.

Besides the one meeting at the detention center and the 2 (two) brief encounters at the courthouse, Counsel also spoke with petitioner during a video conference three days before trial. During the video conference, trial Counsel "out the blue" told Petitioner they were proceeding to trial in three days. App. 546, 11.5-9.

At no time during any of their brief encounters did trial Counsel review the discovery materials with Petitioner or provide him with a copy. App. 548, 11.5-20; App. 568, 11.3-8. Specifically, Petitioner testified that he did not hear the recording of the 911 call made by Byers until it was played for the jury during his trial. He also never saw the photographs the state obtained from the bank of him in Byers' car at the ATM machine until his trial. Petitioner testified that if he would have known about the 911 tape and the photographs then he would have accepted the state's plea offer and pled guilty. App. 550, 1.16-551, 1.23.

Randy Chambers, Petitioner's trial Counsel,

testified that as far as he knew, he received a full copy of the discovery materials from the State. He said he reviewed all of the discovery materials with Petitioner before his trial with the exception of the recording of the 911 call made by Byers because he "didn't have any way to do that -- when he [Petitioner] was in jail nor the photos." App. 575, 11.1-21. Chambers also maintained that he provided Petitioner with a complete copy of the discovery. According to Chambers, if a client ask for a copy of his or her discovery materials, then his assistant, Tracy Burkette, would provide the individual with a copy. App. 575, 1.22-576, 1.22.

Additionally, Chambers testified that he conveyed the State's plea offer to Petitioner, but Petitioner rejected the offer because "he was adamant in his innocence." App. 578, 1.25-579, 1.7. According to Chambers, the two had discussed Petitioner's "version of what happened" and this became their "whole defense." Specifically, Petitioner told Chambers that Byers approached him at an apartment complex and "was looking to buy drugs." Byers

ultimately drove to an ATM to withdraw cash to pay for the drugs and later had consensual sex with petitioner in exchange for more drugs. App. 576, 1.23-577, 1.19.

## Order of Dismissal . . .

The PCR court found Petitioner failed to meet his burden of proving trial Counsel did not review all of the discovery materials with him. The court found credible trial Counsel's testimony that he reviewed the discovery materials with petitioner and provided him with a copy. Moreover, the court found Petitioner's testimony that he would've pled guilty had he been aware of all of the state's evidence against him not credible because Petitioner "was always adamant about his innocence." App. 589-590.

## Discussion . . .

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial

Counsel failed to review all of the discovery materials with Petitioner prior to trial thereby preventing Petitioner from fully accessing the extent of the State's evidence against him and making an informed decision to reject the State's plea offer and proceed to trial. If Petitioner would have been aware of all the evidence, specifically the recording of the 911 call made by Byers and the photographs of Petitioner in Byers car at the ATM machine, Petitioner would have accepted the State's plea offer and pled guilty in order to receive a more favorable sentence.

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 in evaluating 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).

Trial Counsel's performance was deficient because he failed to adequately communicate with Petitioner and review with Petitioner the state's "WHOLE" evidence against him before Petitioner rejected the state's plea offer and proceeded to trial. The evidence presented at the PCR hearing showed Counsel met with Petitioner at most on three occasions before

Petitioner's trial: once shortly after Petitioner's arrest while Petitioner was still housed at the local detention center and twice in the holding area at the Greenville County courthouse when Petitioner was transported for court appearances. Counsel also held a video conference with Petitioner three days before trial.

The lack of time counsel spent with Petitioner, along with Petitioner's statement/testimony at the PCR hearing, prove that it is unlikely trial counsel adequately reviewed with Petitioner all of the discovery materials. Counsel admitted he did not play the recording of the 911 call made by Byers nor showed Petitioner any photos to go over them before Petitioner trial. This left Petitioner in the dark and prevented him from making an illformed/informed decision about whether he should reject the state's plea offer and proceed to trial or accept the offer in hope of receiving a more favorable sentence.

Petitioner was prejudiced by trial counsel's deficient performance because if counsel would

have reviewed with Petitioner all of the discovery materials before trial and adequately communicated with Petitioner, Petitioner would have pled guilty in exchange for a favorable plea deal instead of proceeding to trial. Petitioner testified that if he had known the extent of the State's evidence against him, he is one "hundred percent sure [he] would have [taken] a plea." App. 549, ll. 11-15; App. 551, ll. 6-23.

Therefore, the PCR court erred by finding Petitioner failed to prove trial counsel rendered ineffective assistance of counsel and that he was prejudiced by counsel's deficient performance. Respectfully, this Court should reverse the order of the PCR court and remand for a New Trial.

[2] Counsel was ineffective when he failed to object to the solicitor leading the states witness. Tr. Page 257; line 24 - Page 258; line 10. "Mr. Wilkie, is Antwan Grayson present in the courtroom today, the one robbed this victim Crystal Byers?" "Answer," NO ma'am.

"Question," Antwa Grayson, the person you were in the car? "Answer," NO ma'am. "Question," Are you sure about that? "Answer," Yes, he is in here. "Question," Where is he? "Answer," He's sitting right there in the white shirt right there beside the man in the gray." The state was allowed to coach/lead the witness to identify the Petitioner and got the Petitioner sentence to 30 years ran consecutive with the probation violation [he] is already doing, which gives the Petitioner 44 years in all. However, if counsel was effective when the state asked the States witness, if Petitioner was in the courtroom and he said NO twice, Counsel should have objected to the next question due to the fact that the state was leading their witness to identify Petitioner in court, and then counsel should've asked for an acquittal due to misidentification testimony because the state's witness stated twice that the person who did the crime with him was not in the courtroom, which would've been in Petitioner favor.

[3] Counsel was ineffective when he failed to review ALL the 'RULE 5' discovery material with the Petitioner prior to going to trial, nor took time to discuss the evidence or prepare a defense. In the Petitioner case, Counsel was prejudice and Ineffective assistance because counsel failed to review all evidence and material photos that the state used at Petitioner trial beforehand. If Petitioner was aware of this evidence, instead of going to trial, Petitioner would have took the plea offer of 22 years from the solicitor. Counsel was also ineffective and prejudice the Petitioner by failing to review the 911 call with the Petitioner before advising Petitioner to go to trial. see, Blaine Lafler v. Anthony Cooper, 132 S. Ct. 1376 (2012). It states: When determining the remedy for ineffective assistance of Counsel relating to defendants rejection of a plea offer, if the sole advantage a defendant's would have received under the plea is a lesser sentence, which is typically the case when the charges that would have been admitted as part of the plea bargain

are the same as the charges the defendant was convicted of after trial, the court may conduct an evidentiary hearing to determine whether the defendant has shown a reasonable probability that, but for counsel errors, [he] would have accepted the plea, and if the showing is made, the court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received at trial, or something in between. U.S.C.A. Const. Amend. 6. However, if counsel was effective and showed petitioner the photos, petitioner would have took the plea for 22 years for everything and would be making out at the age 37 instead of 55.

[4] In the petitioner case, counsel prejudice the petitioner by failing to ask for a continuance. Now because of counsel error, the state gain a advantage over petitioner because [he] was left in the blind and didn't know what they was going to do, Nor did petitioner know any of the defense his counsel had because they never talked really to prepare for

trial. Now if Counsel was effective and was using his intelligence of the law, he would have asked for a Continuance because Petitioner and Counsel needed it and because it was in their best interest so they could gather more witnesses and build a better defense, so that Petitioner could know what they was using as a defense. In U.S. V. NICHOLS, 56 F.3d 403 (1995 2nd Cir); The Judge said they was there to make sure you- (the defendent) is able to help your Counsel with the trial and preparation; Now how could Petitioner do any of that when Counsel Never talked about trial preparation with Petitioner?

Therefore I Respectfully ask the Court to ~~reverse~~ the order of the PCR Court and remand for a New Trial.

[5]

In the Petitioner case, Counsel Prejudice the Petitioner by failing to investigate Petitioner Indictments. By Counsel error which led Petitioner to be pre-

Judice; Petitioner went to trial and the State prosecuted [him] and gave [him] 30 years. However, if Counsel was effective, he would have investigated Petitioner Indictments more seriously and checked the "Terms of Circuit and Family Court Calander of May 2010," he (the counsel) would have seen that NO General session Court was held on the 4<sup>th</sup> of May 2010. Petitioner indictments was done on May 4<sup>th</sup>, 2010 which was NOT a General Session Court date, which means the procedure was violated dealing with Statute: 14-9-210; And it says; the state/Court "MUST" true bill a indictment inside a Court of the General Session. Therefore the state violated a Jurisdictional Statute. So by Statute 14-9-210 being violated, "ALL" indictments that Petitioner was charged with illegally by NULL indictments shall/MUST be thrown out/quashed. Now if [he] would have had them quashed, then Petitioner would never had to go to trial, nor would Petitioner have 30 extra years. See "Terms of Circuit and

22

Family Court - May 2010 - Calander. see  
Walker v. State, 723 S.E. 2d 610 (2012).

Therefore I Respectfully ask the Court  
to Reverse the order of the PCR Court  
and ~~quash~~ all Null indictments.

[6]

Counsel was ineffective and prejudice  
the Petitioner by failing to prepare for  
trial. Counsel was prejudice and ineffective be-  
cause he let the state benefit off his error  
in winning their case. Counsel only wrote  
Petitioner "ONE" time and that was just  
to tell [him] to contract "Stacy" if  
Petitioner needed to talk to him, but Petitioner  
couldn't call so [he] wrote Counsel and  
got NOTHING back in return. Petitioner  
Never even talked about a defense, Nor  
did Counsel ever viewed the incriminating  
photos with Petitioner that the state gave  
Counsel and used on Petitioner at trial.  
Counsel didn't ever let Petitioner hear  
the 911 call, which shows Counsel did in-  
deed prejudice the Petitioner. In Coles v.  
Peyton, 389 F.2d 224 (1968), Shows the  
requirements to a Effective Counsel.

Now by Counsel not going along with the requirements within the Case Petitioner just stated, Constitutes a denial of Effective Representation of Counsel. Now if Counsel would have prepared for trial with Petitioner, Petitioner would have seen that everything was looking in the States favor and [he] the Petitioner would have took the Plea offer for only 22 years for everything. Now see: Pavel v. Hollins, 261 F.3d 210 (2nd cir. 2001). Also see: Williams v. Washington 59 F.3d 673 (7th cir. 1995). and it states; "Lack of preparation on part of defense counsel deprived Petitioner of effective assistance of Counsel."

Therefore I Respectfully ask the Court to reverse the order of the PCR Court and Remand for a New trial.

[7]

Counsel prejudice the Petitioner by failing to allow [him] to Plea. Tr. Pg 488 line 10-19. Now in Boykin v. Alabama 89 S.Ct. 1709, as long as a guilty Plea is entered

Voluntarily, knowingly and intelligently, by defendant(s) then they are allowed to Plea. So by counsel not allowing Petitioner to Plea was an error on counsel behalf which led to counsel prejudice the Petitioner,

Therefore Petitioner Respectfully ask the Court to reverse the order of the P.C.R. Court and Remand for a New trial.

**Terms of Circuit and Family Court  
May 2010**

Holidays:  
 Mon May 10 - Confederate Memorial Day  
 Mon May 31 - National Memorial Day

Circuit Number	5/3/2010	5/10/2010	5/17/2010	5/24/2010	5/31/2010
13	Common Pleas Non-Jury 3 Hill, D.  JENKINS 3	General Sessions  Greenville McIntosh, R.  TOLLISON	General Sessions  Greenville Miller, Edward  HISKELL	Common Pleas Greenville Hill, D.  JENKINS	Common Pleas Non-Jury Hill, D.  JENKINS
	General Sessions 3 Greenville Stilwell, Robin  DIGIROLAMO 3	General Sessions Greenville Stilwell, Robin  DIGIROLAMO	Common Pleas Greenville Pyle, C.  JOHNSON	General Sessions  Pickens Maddox, J.  HANKS	Common Pleas Greenville Miller, Edward  HUDGINS 31, 1, 2, 3 NO CR NEEDED 4
	General Sessions 7 Greenville Simmons, Charles  HUDGINS 7		General Sessions/State Grand Jury Greenville Stilwell, Robin  WOODS	Common Pleas Non-Jury Miller, Edward  HISKELL	Common Pleas Greenville Stilwell, Robin  DIGIROLAMO
				Common Pleas Non-Jury/PCR Stilwell, Robin  JOHNSON	Common Pleas Pickens Welmaker, G.  HANKS

PCR  
 Exhibit  
 6

# CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issues presented.

Respectfully Submitted,

At D. Grayson

Antwan D. Grayson

Pro se PETITIONER

This 17 day of February, 2016

STATE of South Carolina  
IN The Supreme Court

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FEB 22 2016

S.C. SUPREME COURT

Antwan D. Grayson  
Petitioner

v

State of South Carolina  
Respondent

Certificate of Service

Petitioner Antwan D. Grayson, declare under the penalty of Perjury that I mailed A copy of this Petition for WRIT OF CERTIORARI to the Parties listed below by placing A copy in the U.S. Mail addressed as below.

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Clerk Office

P.O. Box 11330

Columbia, S.C. 29211

Office of the Attorney General

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Respectfully

Antwan D. Grayson

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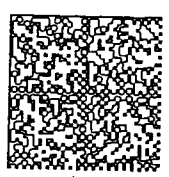
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