

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
D. Garrison Hill Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

Frederick A.D. Irby

Petitioner

v

State of South Carolina

Respondent

Johnson Petition for Writ of Certiorari
from Petitioner; Pro-Se.

Appellate Case No. 2011-202767

Mr. Frederick A.D. Irby #339195

Mr. Frederick A.D. Irby #339195

Murray Born #180

Broad River Correctional Institute

4460 Broad River Rd

Columbia, S.C

29210

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Facts : Issues Presented

- * Trial counsel erred in advising petitioner to plead guilty as charged because petitioner claimed he was innocent and pled guilty to protect others from criminal prosecution
- * Trial counsel felled to challenge the validity of the Arrest Warrants
- * Trial counsel felled to have indictments quashed
- * Trial counsel violated petitioners Six Amendment Right
- * By not giving all Brady and Rule 5 material to petitioner in a timely matter as required by law. And the willingness to keep Discovery Material from petitioner, shows a serious case of Attorney Misconduct.
- * Trial counsel felled to conduct a thorough investigation of the charges, statements, and evidence of the case
- * Trial counsel felled to negotiate a plea in accordance to the facts of law against the petitioner
- * Trial counsel felled to do/or put in with the Clerk of Court, any motions for petitioner : Preliminary hearing, Speedy Trial, Motion for Dismissal, etc
- * Did the plea counsel provide the petitioner with enough information to make a voluntarily and intelligent decision to plead guilty?
- * Did the plea counsel fail to work out a negotiation plea offering that was consistent with the circumstantial evidence the State had against him?
- * Did counsel fail to verify the date Grand Jury convened on for "rubber stamping" the indictments : Bob Arial

Statement

The petitioner Frederick A.D. Irby pled guilty to armed robbery, murder, and possession of a weapon during the commission of a violent crime during the February 2006 term of the Greenville County General Sessions Court before Judge C.V. Ryle.

The petitioner was sentenced to imprisonment for a period of thirty years for murder, twenty-five for armed robbery and five for possession of a weapon during the commission of a violent crime, App. 1-24. The petitioner did not enjoy the benefit of an appeal in this case. H.C. Harbin represented the petitioner at the plea proceedings.

On May 25, 2010, and July 24, 2011, the petitioner filed a PCR application and an amended PCR application, respectively, with the Greenville County Office of the Clerk of Court, App. 26-32; App. 38-46. The respondent filed a return dated September 15, 2010, requesting that a hearing be held in the case, App. 33-36. On August 2, 2011, a PCR hearing was held at the Greenville County Court House before Judge D.B. Hill, App. 42-96. E.S. Sanders represented the petitioner at the PCR hearing.

On August 29, 2011, Judge Hill issued an Order of Dismissal in the case, App. 98-106. A Rule 59(e), a SCRPC motion was filed on September 20, 2011, after which time the respondent filed a return dated September 15, 2011, App. 117-119. Judge Hill denied this motion on September 27, 2011. The petitioner appealed this judge's Order, and as a result, this petition for a Writ of Certiorari follows with the petitioner's Writ of Certiorari Brief.

Argument

Trial counsel erred in advising petitioner to plead guilty as charged because petitioner claimed he was innocent and pled guilty to protect others from criminal prosecution. The petitioner's undisputed testimony is that he would not have pled guilty to charges, but for defense counsel's advise, which is sufficient to prove that petitioner would not have pled guilty.

During the plea proceedings, the State's solicitor explained the facts which led to the charges levied against the petitioner. On January 31, 2006, the victim was found dead from a gunshot to the back of the head. One of the State's witness (R.A) informed the police that on or about January 31, 2006, The petitioner and another State's witness (V.H) went to the victim's house and that State's witness (V.H) told him the petitioner had killed the victim; App. 12, lines 16-25. The plea judge was aware of the fact that Accomplice liability had been explained to petitioner and petitioner maintained he was not the shooter or triggerman; App. 15-1, 3-22. At the plea hearing, petitioner responded as follows on the question of pleading guilty:

Court: And so the question is, do you want to plead guilty?

Petitioner: No!

Court: Are you still wanting to plead guilty?

Petitioner: On behalf of my family, I will.

App. 8, lines 10-11.

Court: So you told him you were innocent and that you were actually covering for somebody else, and he told you it didn't matter.

Petitioner: That's what he said.

App. p 74, lines 5-22

Also, noting that there are several inconsistencies in the two State's witnesses statements. Statements that petitioner never viewed, because plea counsel did not provide copies of the Rule 5 to him. The petitioner stated in effect that he would not have pled guilty had he seen the statements and not been advised by plea counsel to plead guilty despite his innocence. App 68, lines 2-5; App. 60, 1, 15-p 63, 1, 22. Trial counsel testified at the PCR hearing, admitting that he advised the petitioner to plead guilty, despite the inconsistencies of these co-defendants statements. App 79, 1, 23-p. 81, 1, 16. The petitioner's PCR counsel showed that the trial counsel's professionalism and conduct fell below an objective standard of reasonableness and was deficient performance. There is a reasonable probability that, but for trial counsel's errors, the petitioner would not have pled guilty, but would have insisted on going to trial. This is a meritorious defense case with a real controversy, as to real facts arising from conflicting or fabulous and doubtful evidence, and, or fabrication of the evidence, and the court has expressed that specific performance of a plea agreement is an allowable remedy where one has been denied constitutionally guaranteed effective assistance of counsel.

During the PCR hearing, the petitioner testified he did not want to plead, but, he had no chance of stating his case, App 58, lines 12-19.

The petitioner stated he was innocent and did not want to plead guilty,

that he did not commit the crime, App 60, lines 13-14. The petitioner

added he pled guilty only, because, he was covering for someone and

he had to "choose.... between his life or destroying someone else's life," App.

65, l. 11-19. The petitioner explained further at the PCR hearing as follows:

"I put my life on the line for something that I did not do....

I'm in here because I didn't say other things, that was

basically, pointing fingers towards other people, I didn't

want to do that, because I felt it would hurt other folks."

App 71, l. 20-p72, 1-11.

Court: And your testimony today is that, basically you were

pleading guilty to cover for somebody else.

Petitioner: Basically.

Court: Did you ever tell Mr. Harbin that?

Petitioner: How could I?

Court: Well, how could you not? You say you were fighting

for your life and that you were covering for somebody

else. Why didn't you tell your lawyer, I'm innocent,

somebody else did it?

Petitioner: I tried. But he said he knew that other people

was pointing the finger at me, and they have those

statements. When I asked for the statements again,

that's a moot point or something like that, he said, it doesn't matter.

On or around about November 9, 2007, the petitioner received his only visit from his first appointed lawyer (Bill Godfrey) which lasted about thirty minutes. It was not until October 23, 2008, before he gets his first visit from replacement counsel (Chase Harbin). This visit was recorded as lasting thirty minutes. The petitioner was not indicted for murder of the victim until December 15, 2009, of which no Grand Jury conveyed on. This is more than two (2) years after his arrest, prior to his indictment, the petitioner was on his own trying what he could to get the information and/or materials about his case. Evidence, warrants, indictments, witness statements, photos, and etc, so he could help and assist with his defense with trial/plea counsel. Trial counsel has a duty ... to investigate all witnesses who allegedly possessed knowledge concerning the petitioner's guilt or innocence. The unprofessionalism of the lawyer's decision not to conduct an investigation is directly related to the information the petitioner's supplied, according to Strickland, 466 U.S. 691, 104 S.Ct. 2066; Bobbs, 305 S.C. 299, 408 S.E.2d 233 (1991). The investigator of Greenville County said his investigation yielded no leads originally or suspects originally. No warrants were obtained at the time of the murder. Around about a year and a half later, he called it a "Cold Case", he got a phone call from one of the suspects; he had some information about his involvement in and with the murder of the victim and he was willing to give this information to law officials. Both co-defendants gave inconsistent statements against petitioner saying he/petitioner killed the victim.

The petitioner testified at the PCR hearing that he received one thirty (30) minute visit from his first appointed counsel on November 9, 2007, approximately two weeks after his arrest. Between that visit and January of 2010, a period of nearly two (2) years and three (3) months, petitioner received one thirty-two (32) minute visit and a subsequent letter from the plea counsel. Stating that he would not provide copies of discovery to petitioner, but, instead that he would go over the discovery with him in full. The petitioner further testified plea counsel never gave him the statements by the witnesses. The first time he saw the statements was after PCR Counsel provided them to him. The petitioner further testified he was unaware of the inconsistencies in those statements of the State's two (2) key witnesses. The petitioner further testified that he was not made aware of the weaknesses of State's case against him, by plea counsel. Petitioner also testifies (with evidence of Visitation Log) that plea counsel never truly communicated with him. Petitioner testified that plea counsel spent what time they had trying to convince him to plead guilty. Petitioner testified that had plea counsel provided him with the information that was withheld from him, that he would not have pled guilty but insisted on going to trial.

Trial counsel's performance and unprofessional errors fell below the prevailing norms, and that there is a different probability that but for counsel's errors, the petitioner would not have pled guilty, but would have insisted on going to trial. PCR hearing Tr. p 79, lines 14-17; p 54-55 lines 5-25; 1-3; 22-25 p 56 lines 1-12.

The plea counsel could not remember who or where the Discovery came from, the Solicitor's Office or Public Defender's Office.

Plea counsel showed a lot of confusion about giving the petitioner the Discovery materials, so that petitioner could help assist with the defense for his case. The State's two key witnesses statements were not with the material that was given to the petitioner by the plea counsel.

If petitioner had seen the statements for himself, and the many inconsistencies of them - he would have insisted on going to trial.

PCR Tr. p 77-79 lines 13-16; p 80 lines 1-12, 8; p 60 lines 11-13; p 58 lines 16; p 75 lines 3-6; p 68 lines 2-16.

This information would have aided the petitioner in making a voluntary and intelligent decision to plead guilty. Had plea counsel given petitioner all of the discovery materials and all of the State's key witnesses

statements, the petitioner would not had pled guilty, but would have had insisted on going to trial. Petitioner wanted to go to trial. Plea

counsel would not withdraw the guilty plea. PCR Tr. p 56-58, lines 18-25; 17; (1-2; 3-8) 4-5; p 59 lines 9; p 68 lines 2-16; p 73-74, lines

6-19; 4; 14-18; 23-25; p 75 lines 1-2; 3-6.

The petitioner's undisputed testimony that he would not have pled guilty to the charges, but for plea counsel's advice, the petitioner would not

have pled guilty. The plea counsel did not provide the petitioner with the necessary information to make a voluntary and intelligent decision to plead

guilty. Because of the plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability

that but for plea counsel's gross errors, petitioner would not have pled guilty but would have insisted on going to trial, according to Hill vs Lockhart, 474 U.S. 52, (1985).

The petitioner was showing some dissatisfaction with his plea counsel, but he did not know how to address it to the judge or court without embarrassing, discrediting, or offending his plea counsel. At this time the petitioner was not aware of just how he was to let the judge or court know that he was unsatisfied with his plea counsel's representation. Trip 4-5 lines 12-13; 16; 19-20; 25; 1-3; 6-7; 9-p, 7 lines 4-6; 19-20, -p 8 lines 8; 11; PCR Trip 58-60 lines 16-19; 9; 1-14. The petitioner was without understanding and confused about his constitutional rights, the petitioner knew something was wrong, but did not know with whom to address it too, nor how to address it properly to the court. After he had filed a complaint with the Bar Association / Discipline Action Counsel.

The petitioner asked about the Appeal System, this is where the judge should have stopped the trial and had not accepted / or rejected the guilty plea. Because, the plea counsel would not withdraw the guilty plea, the plea counsel should be / should have been considered to be ineffective assistance of counseling. Plea counsel should have insisted on going to trial. Petitioner did not know that he did not have to keep the same attorney, had he known this, he would have gone to trial. Petitioner did not understand the Appeal System.

Petitioner attempted to appeal, but he went about it incorrectly. He was then instructed to file a PCR application as soon as possible. The Transcript of the trial shows the petitioner did not want to plead guilty and said that he was not the shooter or triggerman. This is a meritorious defense case with a lot of conflicting doubtful evidence, fabulous and fabricated statements that contain some inconsistencies and causes a lot of controversy. The State's two key witnesses statements show through their statements that they had knowledge, Crux, and time to fix their stories to their favor... He said, "He would be my Alibi."

The State's Solicitor knowing he could not even get a warrant or indictment with these hearsay statements as evidence, but was so desperate on this "Cold Case" to solve it, that he forgot about justice and matters of law.

The State's Solicitor was hoping all of them would plead guilty - to him it made no difference who the triggerman/shooter was, as long as someone admitted to the "Cold Case." This was all he needed after a year and a half of investigation with no hopes of finding out what had happened. The truth is still hidden and justice has not been served. PCR, Trip 15 lines 13-15; p23 lines 12. The plea counsel should have withdrawn the petitioner's guilty plea here, because of the murder charge, the essential elements of the charge were not proved and/or a lesser included offense in which is the accessory after the fact. Petitioner testified - definitely - he was not the shooter or triggerman, this alone separates him from the murder charge.

Since the plea counsel's unprofessional and deficient performance fell below the prevailing professional norms, plea counsel failed to make any attempt to protect petitioner's interests regarding a significantly lower sentence. Petitioner had NO knowledge of the original plea offer changing. Had the plea counsel objected or withdrawn petitioner's guilty plea, plea counsel might have been able to convince the state's solicitor to reinstate the original plea offer and/or persuade the trial judge to impose a lesser included sentencing, whatever, the terms was inherently prejudicial. The deficient conduct prevented the petitioner from making an informed decision, thus, constituted deficient performance.

The trial judge knowing the petitioner was unsatisfied with his plea counsel's representation. Petitioner asked plea counsel to check and see if state witnesses stories remained the same, as what they told the police. Plea counsel said "I'm not going to do it, if you pay me, then I'll do it. But since you're -- you know, you're indigent, you're going to get the defense you deserve."

PCR Trip 66 lines 18-24,

Petitioner had filed many motions on his own and these included Motions to Dismiss Counsel from his case. As well as filing complaints with the Disciplinary Action Counsel of South Carolina. See attached

The layman, petitioner, requires the guiding hands of counsel in every step of his trial and/or appellate procedure of proceedings. If charged with a crime, he is incapable, generally - of even determining for himself whether the indictment is valid or whether the evidence presented can prove the allegations against him. He is unfamiliar with the rules of evidence, court, appellate court, statutes and/or the laws of the land. He lacks the skills and knowledge to adequately prepare his case and is incompetent to know what legal grounds to present in the appellate process, how to find them, how to prepare the legal terminology and principles of law that may apply to them in order to argue them. If indeed, he is extremely lucky to find them at all. Thus - it falls upon our court's prosecutors and attorneys to work in accordance to the laws, statutes, and constitution on ensuring that this does not happen.

The plea counsel's unprofessional deficient performance fell below the prevailing norms, the plea counsel's errors - when he told the petitioner, after petitioner asked him to go talk or investigate the state's two key witnesses and see if they would say the same thing as what they told the police the first time; plea counsel told petitioner blantly, "I'm not going to do it, if you pay me, then I'll do it. But since you're - you know, you're indigent, you're going to get the defense that you deserve."

Because plea counsel's unprofessional errors and/or deficient performance resulted in an actual and substantial disadvantage

to the course of the plea counsel's advice to the petitioner to plead guilty to the charge of murder did deny and deprive the petitioner of a fair guilty plea trial. That does prejudice the petitioner from receiving the lesser included offense, showing that the plea counsel's representation fell below the objective standard of reasonableness and there is a reasonable probability that, but for plea counsel's errors, the petitioner did not want to plead guilty. Twice, in the trial transcript, the plea counsel had to stop the trial to counsel / advice, or talk to the petitioner - to plead guilty. Trip 8 line 11, p. 15 line 16. The petitioner would have insisted on going to trial. PCR Trip 60 lines 11-13; p. 68 lines 6; 10-11; p. 75 line 6. There is a reasonable probability, but for the plea counsel's advice/errors, the results of the proceedings and/or trial would have been different.

The plea counsel had been suggested, informed, and given some good reasons to believe by pursuing in a certain investigation would be fruitful to help and/or assist in weakening the State's two key witnesses statements, because of the plea counsel's deficient performance does prejudice the petitioner to a fair trial. The petitioner's plea counsel failed to negotiate a plea offering that was consistent with the circumstantial evidence the state had against him. PCR, Trip 83-84 lines, 23-25; 1-5.

This murder charge was a serious crime and the plea counsel needed to do a lot of investigation on this type of case. This case was around three (3) years old.

A "Cold Case" the investigator called it. If the investigator could not solve it with those inconsistent statements, what makes the state's solicitor or plea counsel believe that they could? What made the witnesses statements true?

Petitioner was repeatedly denied his requests for information concerning his case: materials of the discovery, any evidence, any warrants, any indictments, any witness statements, and etc. In order to help and assist with his defense with the plea counsel. Petitioner admitted that he could read and write.

When petitioner finally received his Discovery Materials, the State's witnesses statement were not a part of it, the due process code of law procedures according to the Brady's Violation, PCR Trip. 64 lines 6-16-p63 lines 11, 20-21.

The fact that this was a "Cold Case," this information that was forthcoming was hearsay, some true and some false, so you did not want to jump the gun. The State's solicitor called the murder a robbery went bad, in which the victim was found with two thousand - two hundred - sixty two dollars, cash money in his pocket, \$2,262. PCR, Trip. 71, lines 8-10. Even within the petitioner's booking Pop Sheet said that the petitioner has blue eyes, PCR Trip. 71 lines 12-13.

Dismissal with prejudice was proper because delay would skew fairness of trial and seriously undermine administration of justice, despite the seriousness of the offense. The charges must be dropped if the petitioner is not indicted within the Speedy Trial Act's time limits. Similarly - if the petitioner has not been brought to trial within the Act's time limits the petitioner may move and have the indictment or information dismissed, according to, Pragone; for nearly two (2) years, Mr. Anderson and Mr. Hurst both remained quiet. Neither came forward to give statements until petitioner's aunt and cousin claimed to have information.

Then petitioner was arrested. No warrant; S.C. code 23-15-60.

Since all of these statements were built on hearsay - it's hard to find the truth when everybody's story was/is different. The petitioner was prejudiced by the State's Solicitor two (2) year delay in his case.

The delay resulted in an actual and substantial prejudice and that the State's Solicitor's lack of reason for the delay violated the fundamental conceptions of justice. This delay gave the State's two (2) key witnesses enough time to Cook, Skew and Fix their stories to their favor.

Witness Hurst says that Witness Anderson said, "He would be my Alibi."

This statement alone, destroyed and damaged the State's whole case against the petitioner and did prejudice the petitioner for a fair trial.

The entry decision resulted in an actual and substantial disadvantage to the course of, and to the petitioner's release and/or a lesser included offense.

Under the Sixth Amendment provides in relevant part that

"In all criminal prosecutions, the accused shall enjoy the right to a Speedy and Public Trial." U.S. Const. Amend. VI

The Sixth Amendment Speedy Trial guarantee is binding on the States through the Due Process Clause of the Fourteenth (14) Amendment.

Because of the above matters, the petitioner was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution.

The plea counsel has taken an Oath - Sworn to protect petitioner's (my) interests and Constitutional Rights. In the matters of this case as listed above - plea counsel has not protected either one of them, and now I exercise my Civil Rights.

A note to the petition "not" to be Relieved as Counsel

- 1) She has reviewed the records and transcript of the petitioner's post conviction relief hearing which was held in August 2011.
- 2) She has, pursuant to Johnson 244 S.C. 310, 364 S.E2d 201 (1988), briefed one arguable legal issue which arose during the post conviction relief process.
- 3) In the petitioner's opinion seeking Certiorari on a mentioned defense, it needs to be heard, the judicial inquiry - it raises a question of law deserving of some investigation and/or discussion of a real controversy, as to real facts arising from conflicting, doubtful evidence, and fabulous fabricating witnesses statements as evidence.

Therefore, the Petitioner requests that the Honorable Court "NOT" to relieve Ms. Carter as counsel for Mr. Frederick A.D. Irbly # 339195.

Please - A - Thank U So Much!

II Argument

Did the General Sessions Court have Jurisdiction to hear my case, being that the state to seek or indict me within the allotted time limit, thereby procedurally barring it-self from seeking an indictment?

Was the State at default by back dating and "Rubber Stamping" the indictments on a day in which General Sessions Court did not convene?

Being that Bob Aric was Head Solicitor at the time and was engaged in the "Rubber Stamping" fiasco, would this further bring a show of prejudicial actions upon those awaiting trial? Myself, included.

See attached: Terms of Circuit and Family Court Dec. 2009

Inconsistent Statements

The following are some of the inconsistencies coming from the Supp. Appendix. The Statements from: p4 Ms Blakely, p5 Mr Anderson, p6 Mr Irby, p7-8 Mr Hurst:

Mr Hurst actually turned himself in after getting several calls from Mr Anderson who had ample opportunity to tell Mr Hurst that he had pinned the shooting on petitioner. For nearly two (2) years, Mr Anderson and Mr Hurst both remained silent, neither came forward to give statements until after the petitioner was arrested.

Anderson: Me and Lee was at my house on West Ave. It had just gotten dark when Fred came by... He said that he needed to do something.

Hurst: I asked Shag where we could get some marijuana and he said that we could call Fred when he got off from work. Around 7pm, Shag called Fred and he came over.... We was outside sitting on the porch when Fred pulled up. Me and Shag walked over to the car and we told Fred we wanted to get some weed.

Irby: I got a call from Shag on my cell phone. I was at my girlfriend's house, Shag said they was at his sister's house. I got in my car and drove over there. Shag said he wanted to get some weed, and that had been over to this place and got some weed and the dude shortened him. Shag asked me to take him to the Twin's house.

We all got in my car and I drove them over there, when we got there, Shag and Lee got out and went in the house.

Hurst: Shag couldn't go because of the other people at the house, Me and Fred drove over to the house.

Anderson: I had my niece with me so I couldn't go, but Lee went with Fred.

Blakely: Shag told my niece that Shag and Fred went to rob him. Shag hit the dude in the mouth, Shag told her, he hit the dude in the mouth.

Trby: I sat in the car for about ten minutes and I heard one shot, I started the car. Lee came out of the house running, Shag came out walking real fast.

Hurst: There was two other black guys there the dude was dealing with, they left, I went to the car.

Anderson: Lee said they took some weed and some money, Lee said there wasn't much of either.

Hurst: There was a big bag of marijuana in a ziplock bag on the table. Shag said if anybody says anything that he would tell them that I had been at his house the whole time and he would be my Alibi. Me and Shag talked some more about what happened because it was bothering me. Later, I started getting calls from Shag on the 3rd of November this year (2007).

Anderson: Fred told me that if I said anything about the murder that he would put me in it, because I knew about it after it happened and didn't tell anybody.

Irbly: Sometime later, I was talking to Lee about what happened. I asked him if they shot the dude. Lee said to think about it, that he didn't shoot him but he indicated that Shag did.

Blakely: They were in the living room talking. Fred knew a lot of talking had been going on about him killing the dude. Fred said "tell you what, I didn't kill him." Fred said he was tired of people thinking he killed him. Fred said his friend Shag was jealous of him and Shag was telling people that he killed him.

Blakely: Shag told her niece (Melinda Johnson) that Shag and Fred went to rob him. That Shag said he hit the dude in the mouth. M. Johnson: Her friend Rasheeda (Shag's cousin) said Shag said they didn't mean to do it. They went over there to rob them. Shag said that one of them hit him. I went to Fred's momma and talked to her about it. She said she was going to talk to him about it. I called her and asked her and she said that Fred said he didn't do it.

Everything Mr. Anderson spoke on were things that a person with personal knowledge would know about. He knew too much not to be as uninvolved as he claims to be. If he wasn't there as he claimed - only one person says he was... me. Two claims that he wasn't... them. So, how does he know what he knows. Why did he tell others that he struck the victim but not tell the police. Mr. Hurst claims to have only heard the gunshot; not witness it. While waiting at a locked vehicle, during a planned robbery. How is this? During robberies; speed is critical. Why is there a need for Mr Anderson's Alibi? A lot of information was forthcoming from these two not to be more involved as claimed. Why would they need to include me into a robbery that I already intended? They called me! Why such a long wait to inform the law? Why inform the law at All after waiting so long? Who has more motive? Why do they receive sentences so much shorter than petitioner? How is it that both of them were bothered by something that neither participated or even seen with their own eyes?

Too many questions with NO answers!

Conclusion

The petitioner has met his burden of proof in showing that in the above matters, plea counsel's unprofessional errors and/or deficient performance in gathering and providing the petitioner with sufficient information concerning his case to make a voluntary and intelligent decision whether or not to plead guilty; the petitioner requests that this Johnson Petition be granted, and that the petitioner be granted a new hearing with further instructions.

Also

Due process of law requires the state to establish each element of each offense by proof beyond a reasonable doubt. In re Winship, 397 U.S. 358 (1970)

The existence of each element of the offense must be established beyond a reasonable doubt. "We explicitly hold that the due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he has been charged."

In re Winship, 397 U.S. 358, 364 (1970), the process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof defined as evidence necessary to convince a trier of fact beyond a reasonable doubt. The reason for this rule

is that all presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent until he is proved to be guilty. State v. Hyder, 242 S.C. 372, 379; 131 S.E.2d 96, 100 (1963), Petitioner's claim arises out of the Due Process clauses of the Fifth (5) and Fourteenth (14)

Amendments, which protect an accused against conviction unless the state supplies proof beyond a reasonable doubt of each element necessary to constitute

the crime with which the accused is charged. In re Winship, 397 U.S. 358, 364 (1970); similar protections are provided in the South Carolina State Constitution; see S.C. const. art 2, section 3.

Conclusion

Wherefore, Ms. Carter's petition to be relied as counsel should be denied and ordered to redraft petitioner's Pro-Se brief and reverse Petitioner's convictions and sentences and remand this case trial court for a new trial; also to include the next phase with further instructions

Respectfully Submitted,
Frederick A.D. Irby #339195
BRCI Murray Dorm #180
4460 Broad River Rd
Columbia, S.C. 29210

Pro Se Petitioner

STATE OF SOUTH CAROLINA

In The Supreme Court

Frederick A.D. Irby

Petitioner

v

State of South Carolina

Respondent

Proof of Service

I am an Inmate and the Petitioner in the above caption action. A regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by Mail. On this date I have served a copy of the Johnson Petition in the above matters, one copy as asked by the South Carolina Supreme Court, by depositing the same in the United States Mail at the Broad River Correctional Institute mail system, postage prepaid by first class.

Respectfully Submitted

Frederick A.D. Irby #339195

Frederick A.D. Irby #339195

BRCI Murray Dorm #180

4460 Broad River Rd

Columbia, SC.

29210

Sworn to and Subscribed

before me this _____ day

of October of 2012

Notary Public of S. Carolina

~~Eugene K. Smith~~
My Commission Expires

My Commission Expires April 4, 2018

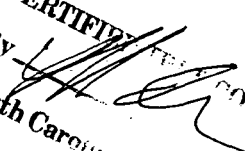
December 2009 Go To Date

Terms of Circuit and Family Court December 2009

Holidays:
Fri Dec 25 - Christmas Day
Mon Dec 28 - Day After Christmas (Observed) (Observed)

Circuit Number	12/7/2009	12/14/2009	12/21/2009	12/28/2009
13	Common Pleas Non-Jury Few, John JOHNSON General Sessions Greenville Miller, Edward HISKELL 7, 8, 9 WOODS 10, 11 General Sessions Greenville Pyle, C. JENKINS General Sessions Greenville Welmaker, G. HUDGINS Common Pleas Greenville Stilwell, Robin DIGIROLAMO	Common Pleas Non-Jury Miller, Edward HUDGINS General Sessions Pickens Welmaker, G. HANKS General Sessions Pickens Williams, James HERRON Common Pleas Greenville Stilwell, Robin HISKELL General Sessions/State Grand Jury 14 Greenville Hill, D. NO CR NEEDED 14 am JENKINS 14 pm	General Sessions 21 Greenville Stilwell, Robin DIGIROLAMO 21	General Sessions 30 Greenville Few, John WOODS 30 Common Pleas 30 Greenville Few, John WOODS 30
	Family Court 7, 8, 9 Greenville Johnson, R. Kinard SMITH 7, 8, 9	Family Court Greenville Johnson, R. Kinard SMITH	Family Court 21 Greenville Verdin, Letitia H. BEST 21	Family Court 29 Greenville Johnson, R. Kinard SMITH 29

	<p>Family Court Pickens Johnson, Alvin D.</p> <p>TIBBS</p>	<p>Family Court Pickens Johnson, Alvin D.</p> <p>TIBBS</p>	<p>Family Court 22 Greenville Kinlaw, Alex</p> <p>BEST 22</p>	<p>Family Court 29 Pickens Johnson, Alvin D.</p> <p>MCBRIDE 29</p>
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	<p>Family Court Greenville Verdin, Letitia H.</p> <p>MCGOWAN 7, 8 WOODS 9 MCGOWAN 10, 11</p>			

CERTIFIED COPY
 By 
 South Carolina Judicial Administration

State of South Carolina
County of Greenville

The State,

Vs.

Frederick A.D. Irby,
defendant.

In the Court of General Sessions
Thirteenth Judicial Circuit

Warrant No.(s); I-474168

thru I-474170

Motion to Dismiss Counsel

(page 1 of 2)

Now comes the above defendant pursuant to the right to effective Counsel and Due process of law, as well as the fundamental fairness guaranteed by the S.C. Constitution Art. I § 3 and 14, United States Constitution amendments 6 and 14, who would move for the dismissal of appointed Counsel in these matters, Mr. Hunter Chase Harbin (esq.).

To begin with, Mr. Harbin has only made contact with the defendant twice with a total combined time spent with the defendant being less than (5) five minutes. In which, Mr. Harbin was very brash, and appeared to be indifferent to the outcome of these cases.

Furthermore, in the past (12) twelve months, Mr. Harbin has failed his duty in many aspects. The most essential and elemental being that Counsel has not filed any pre-trial motions and/or made any effort to develop any evidence in the defendant's behalf. And, only appears to be interested in coercing a plea of guilt from his client.

(Cont:)

(page 2 of 2)

In addition, Mr. Harbin has failed to keep his client abreast of developments at every stage of the judicial and/or Adversarial process which would leave the defendant unable to make good solid decisions at crucial stages in these cases.

Nor has Mr. Harbin ever been counsel in any cases of this seriousness and/or complexity. Are when his client faced so much punishment and/or incarceration if convicted.

Therefore, for all of the foregoing reasons the defendant would pray that this court would dismiss Mr. Hunter Chase Harbin (esq.) from the above captioned cases.

It is so moved!

Respectfully Submitted,

Irby Frederick
Frederick A.D. Irby / Defendant

Sworn and Subscribed before me
This 4th day of August, 2009.

Colleen F Rollins / Colleen F Rollins
Notary Public

10-17-2016
my commission expires;



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Barbara M. Seymour
Deputy Disciplinary Counsel

Telephone: (803) 734-2038

April 14, 2009

PERSONAL AND CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

RE: Lawyer: Hunter Chase Harbin, Esquire
Matter Number: 09-DE-L-0392

Dear Mr. Irby:

This is to acknowledge receipt of your complaint against Hunter Chase Harbin, Esquire. This office will conduct an investigation into the matters you have reported in your complaint. You will not necessarily be contacted by our office prior to a decision in your complaint; therefore, if you have any additional information or documentation to support your allegations, you should submit it at this time.

In the meantime, we want to give you some understanding about what this office and the Commission on Lawyer Conduct can do, and, more importantly, what we cannot do in connection with your complaint. It is important that you understand that neither this office nor the Commission can take any action to protect or promote your personal interests. You should not delay in seeking advice or taking action needed to protect those interests.

The authority of this office and the jurisdiction of the Commission are limited to issues of whether a lawyer has committed misconduct within the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, adopted by the Supreme Court of South Carolina. Where misconduct is found, sanctions may be imposed upon a lawyer ranging from a confidential letter of caution all the way up to disbarment. If our investigation does not reveal evidence of lawyer misconduct, your complaint will be dismissed.

Frederick Alphonso Demetres Irby
April 14, 2009
Page Two

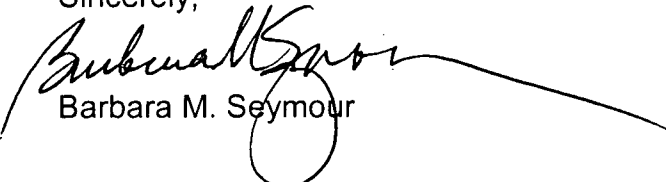
Often, persons filing complaints against lawyers seek advice about their cases or request help in getting a lawyer to take certain action. However, under the applicable rules, the efforts of this office and the Commission must be directed toward promoting institutional values for the benefit of the public as a whole, and not toward obtaining relief for or rendering assistance to any individual complainant.

Neither this office nor the Commission has authority to give advice or to seek to obtain any relief on behalf of an individual complainant. We do not have any authority to determine whether the outcome of a case was fair; nor do we have the authority to intervene in any matter pending before a court or to seek to change a decision made by court. We do not have the authority to make a lawyer take any particular action on your behalf.

We take this opportunity to advise you of the limited role of this office and the Commission so that you will be aware that we cannot provide you with assistance or advice and that you should promptly seek assistance or advice that you might need from legal counsel or other sources.

You will be notified as to the final disposition of your complaint in this matter. Keep in mind that it is often many months after receipt of a complaint before a final disposition of can be made. Please refer to the case number set out above in any future correspondence or inquiries to this office concerning this matter.

Sincerely,



Barbara M. Seymour

BMS/clg



The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Susan B. Hackett
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211
Telephone: (803) 734-2038

April 28, 2009

PERSONAL AND CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

RE: Lawyer: Hunter Chase Harbin, Esquire
File Number: 09-DE-L-0392

Dear Mr. Irby:

I have been assigned the preliminary investigation into the allegations of misconduct that you have made against Hunter Chase Harbin. In order to complete that investigation, I need additional information from you. Please provide copies of all letters you have sent to Mr. Harbin and copies of all letters you have received from Mr. Harbin. If you are unable to make copies, please send the originals with a request that I make a copy and return the original to you. Please provide the dates of all phone calls to Mr. Harbin and state whether you spoke to Mr. Harbin, left a message, or simply hung up.

Please respond in writing within fifteen days from the date of this letter. Thank you for your cooperation in this matter.

Sincerely,

Susan B. Hackett

SBH/



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Susan B. Hackett
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211
Telephone: (803) 734-2038

May 19, 2009

PERSONAL & CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

Re: Lawyer: Hunter Chase Harbin, Esquire
Matter Number: 09-DE-L-0392

Dear Mr. Irby:

This office has conducted a preliminary investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by The Supreme Court of South Carolina.

This office is not authorized to give any advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain any individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed by you at trial or on appeal using appropriate procedures.

December 2009 Go To Date

**Terms of Circuit and Family Court
December 2009**

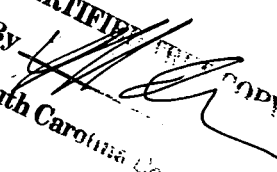
RECEIVED

OCT 24 2012

Holidays:
Fri Dec 25 - Christmas Day
Mon Dec 28 - Day After Christmas (Observed) (Observed)
S.C. Supreme Court

Circuit Number	12/7/2009	12/14/2009	12/21/2009	12/28/2009
13	Common Pleas Non-Jury Few, John JOHNSON General Sessions Greenville Miller, Edward HISKELL 7, 8, 9 WOODS 10, 11 General Sessions Greenville Pyle, C. JENKINS General Sessions Greenville Welmaker, G. HUDGINS Common Pleas Greenville Stilwell, Robin DIGIROLAMO	Common Pleas Non-Jury Miller, Edward HUDGINS General Sessions Pickens Welmaker, G. HANKS General Sessions Pickens Williams, James HERRON Common Pleas Greenville Stilwell, Robin HISKELL General Sessions/State Grand Jury 14 Greenville Hill, D. NO CR NEEDED 14 am JENKINS 14 pm	General Sessions 21 Greenville Stilwell, Robin DIGIROLAMO 21	General Sessions 30 Greenville Few, John WOODS 30 Common Pleas 30 Greenville Few, John WOODS 30
	Family Court 7, 8, 9 Greenville Johnson, R. Kinard SMITH 7, 8, 9	Family Court Greenville Johnson, R. Kinard SMITH	Family Court 21 Greenville Verdin, Letitia H. BEST 21	Family Court 29 Greenville Johnson, R. Kinard SMITH 29

<p>Family Court Pickens Johnson, Alvin D.</p> <p>TIBBS</p>	<p>Family Court Pickens Johnson, Alvin D.</p> <p>TIBBS</p>	<p>Family Court 22 Greenville Kinlaw, Alex</p> <p>BEST 22</p>	<p>Family Court 29 Pickens Johnson, Alvin D.</p> <p>MCBRIDE 29</p>
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<p>Family Court Greenville Verdin, Letitia H.</p> <p>MCGOWAN 7, 8 WOODS 9 MCGOWAN 10, 11</p>			

CERTIFIED COPY
 By 
 South Carolina Court Administration

RECEIVED

RECEIVED

OCT 24 2012

State of South Carolina
County of Greenville

S.C. Supreme Court

In the Court of General Sessions
Thirteenth Judicial Circuit

The State,

Warrant No.(s); I-474168
I-474170
Supreme Court

Vs.

thru I-474170

Frederick A.D. Irby,
defendant.

Motion to Dismiss Counsel

(page 1 of 2)

Now comes the above defendant pursuant to the right to effective Counsel and Due process of law, as well as the fundamental fairness guaranteed by the S.C. constitution Art. I § 3 and 14, United States Constitution Amendments 6 and 14, who would move for the dismissal of appointed Counsel in these matters, Mr. Hunter Chase Harbin (esq.).

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(Cont.)

(page 2 of 2)

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It is so moved!

Respectfully Submitted,

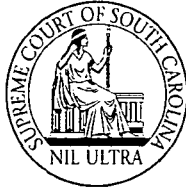
Irby Frederick

Frederick A.D. Irby / Defendant

Sworn and Subscribed before me
This 4th day of August, 2009.

Colleen F Rollins / Colleen F Rollins
Notary Public

10-17-2010
my commission expires;



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Barbara M. Seymour
Deputy Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038

April 14, 2009

PERSONAL AND CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

RE: Lawyer: Hunter Chase Harbin, Esquire
Matter Number: 09-DE-L-0392

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Frederick Alphonso Demetres Irby
April 14, 2009
Page Two

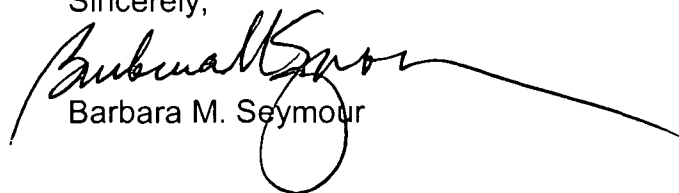
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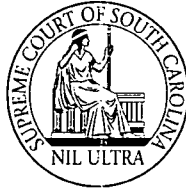
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Sincerely,



Barbara M. Seymour

BMS/clg



The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Susan B. Hackett
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211
Telephone: (803) 734-2038

April 28, 2009

PERSONAL AND CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

RE: Lawyer: Hunter Chase Harbin, Esquire
File Number: 09-DE-L-0392

Dear Mr. Irby:

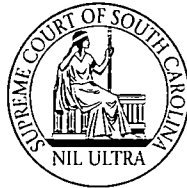
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Sincerely,

Susan B. Hackett

SBH/



The Supreme Court of South Carolina

OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Susan B. Hackett
Staff Attorney

Post Office Box 12159
Columbia, South Carolina 29211
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May 19, 2009

PERSONAL & CONFIDENTIAL

Frederick Alphonso Demetres Irby #615
Greenville County Detention Center
20 McGee Street
Greenville, SC 29601

Re: Lawyer: Hunter Chase Harbin, Esquire
Matter Number: 09-DE-L-0392

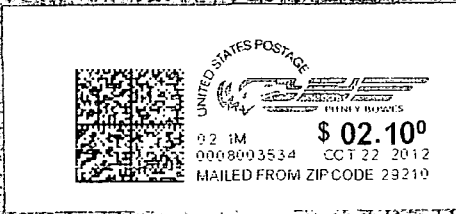
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Mr. Frederick A.D. Ivy # 339195
Broad River Correctional Institute
Murray Dorm # 180
4460 Broad River Rd
Columbia, SC
29210



* Attention *

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

RECEIVED

OCT 22 2012

BRCI
MAILROOM



* Legal *