

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**RECEIVED**

JUN 20 2016

Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge

**S.C. SUPREME COURT**

SUPREME RAHEEM ACKBAR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001052

PETITIONER'S PRO-SE RESPONSE FOR  
WRIT OF CERTIORARI

SUPREME R. ACKBAR

Petitioner

Lieber Coll, Inst.

P.O. Box 205

Ridgeville, SC 29472

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## ISSUE PRESENTED

Whether the PCR Court erred in finding that counsel adequately conferred with Petitioner, conducted a proper investigation, was thoroughly competent in his representation and that counsel's conduct does not fall below the objective standard of reasonableness?

## STATEMENT

IN November of 2009, the Spartanburg County Grand Jury indicted Petitioner for murder, indictment #2009-GS-42-5943. ON February 7, 2011, Petitioner proceeded to jury trial before the Honorable J. DeHann Cole. Attorney Roger Poole represented Petitioner. The jury returned a verdict of guilty and Judge Cole sentenced Petitioner to life imprisonment. A timely notice of intent to appeal was served on February 17, 2011. The appeal was denied in an unpublished opinion on September 12, 2012. Petitioner filed for post conviction relief on December 17, 2012. ON March 26, 2015 the PCr. Court denied and dismissed the application with prejudice. This petition follows

## ARGUMENT

The PER court erred in finding that Counsel adequately conferred with petitioner, conducted a proper investigation, was thoroughly competent in his representation and that Counsel's conduct does not fall below the objective standard of reasonableness?

### Factual Background

On June 4, 2010 Petitioner was granted additional evidence by the PER Court to which trial Counsel and Respondent has never provided. App. 8, l. 7-12, App. 9, l. 11, App. 10, l. 13-22, App. 12, l. 13-21, App. 13, l. 2-25, App. 15, l. 24 - App. 16, l. 13, App. 17, l. 14-16. During opening arguments trial counsel submitted to the court that some witnesses may have a reason for testifying the way they did. App. 65, l. 14-16, A direct review of App. 239, l. 1-19, App. 244, l. 17-22, App. 245, l. 2-12, 25- App. 246, l. 8 reveals the motive of Markus Wright.

Q. Had you not spoken with the police on the day of September 20<sup>th</sup>?

A. Yeah, when I turned myself in.

Q. Okay, well didn't you talk to them? When they came around asking questions right after this occurred, you spoke with the police, right?

A. Yeah

Q. Didn't you testify to that?

A. Yes, sir.

Q. You testified that you lied.

A. Yeah, I told 'em I didn't know anything.

Q. All right. And then you turned yourself in, okay, on September 26<sup>th</sup> of 2009 you gave a written statement, didn't you?

A. Yes, sir.

Q. And that first statement was a lie.

A. Yeah

Q. A total lie.

A. Yeah.

Q. And are you not charged with murder in this case?

A. Yes, sir.

Q. And isn't it your understanding that you will be allowed to plead to accessory after the fact of murder in this case?

A. Yes, sir.

Q. Your intention is to plead to accessory after the fact of murder, isn't it?

A. Yes, sir.

Q. And you're charged with murder at this point in time.

A. Yes, sir.

Q. And you understand that your exposure to prison time is less on an accessory after the fact than it is to the principal charge of murder.

A. Yes, sir.

Q. A sizable difference

A. Yes, sir.

Q. After you're charged with murder you're going to be allowed to plead to accessory after the fact, aren't you?

A. Yes, sir.

Q. And you know that if you don't testify you would not be given that deal, don't you?

A. Yes, sir.

Q. So that's why you're here today, isn't it?

A. Yes, sir.

A further direct review of App. 268, l. 6-21 reveals the false testimony and false evidence Respondent knowingly used to obtain Petitioner's tainted conviction. Despite Petitioner not expressing any partiality towards the PCR Court, the PCR Court's partiality towards Petitioner is plain and obvious as such trial counsel unequivocally admitted to failing to investigate by failing to interview key witnesses before trial. App. 461, l. 14-23, App. 500, l. 19-25, App. 501, ll. 1-13, 20-25.

### The PCR COURT'S RULING

The PCR Court's findings that counsel adequately conferred with Petitioner, conducted a proper investigation, was thoroughly competent in his representation and that counsel's conduct does not fall below the objective standard of reasonableness is not supported by the record. App. 522, ll.

### DISCUSSION

To make a confession admissible it must have been made voluntarily, without being induced by another by the slightest hope of benefit or ~~remotest~~ remotest fear of injury. OCGA § 24-3-50. A reward of lighter punishment is generally the 'hope of benefit' to which [OCGA § 24-3-50] refers. Presnell v. State, 241 Ga. 49 (243 S.E.2d 496) (1978), reversed on other grounds in 439 U.S. 14 (99 S.Ct. 235, 58 L.Ed. 2d 207 (1978)). Caffo v. State, 247 Ga. 751, 757(3), 279 S.E. 2d 678 (1981). Unless clearly erroneous, a trial court's findings as to the factual determinations regarding the voluntariness of a confession will be upheld on appeal, E.g., Caffo v. State, supra and cits. (Note: The record is absence of a Jackson v. Deno hearing.) See U.S. v. Bartko, 728 F.3d 327 (4th Cir. 2013). Government may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, regardless of whether the government solicited testimony it knew or should have known to be false or simply allowed such testimony to pass uncorrected. Riddle v. Ozmint, 631 S.E. 2d 70. See Reynoso v. Giarbino, 462 F.3d 1099, 1110-20 (9th Cir. 2006). Counsel's failure to interview key witnesses before trial about their knowledge of reward for information leading to conviction was ineffective assistance because credibility of witnesses "was determinative" and failure to interview had led to failure to "elicit essential impeachment evidence through cross-examination."

The trial judge must act with absolute impartiality in the performance of judicial duties, State v. Pece 447 S.E. 2d 186, Under Appr. Ct Rule 501, Code of Jud. Conduct, Canon 3CC, a judge should disqualify himself if his impartiality might reasonably be questioned. Judges Key 51 (4).

While the Supreme Court accords great weight to the trial judge's assurance of his own impartiality, a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. Judges Key 49 (1). It is not sufficient for a party seeking a judge's disqualification to simply allege bias; the party must show some evidence of bias or prejudice. Judges Key 49 (1). App. 523 11. ... IT IS THEREFORE ORDERED I.

### CONCLUSION

For the reasons set forth more fully above, petitioner prays and respectfully request the Supreme Court to issue an order for David Alexander, Esq. to raise this issue pursuant to App. 510, 11, 2-11 and then vacate petitioner's sentence.

Respectfully submitted  
S/ Supreme L. Ackbar  
Petitioner  
Lieber Corr. Inst.  
P.O. Box 205  
Ridgeville SC 29772

JUNE 12, 2016

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

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JUN 20 2016

Re: 2015-001052

**S.C. SUPREME COURT**

Dear Clerk of Court

PLEASE find enclosed for filing in your court Petitioner's second response for writ of certiorari per encouragement of David Alexander, Esq.,

Would you please notify petitioner when the filing is complete. Thank you and good day.

Sincerely  
S/ Supreme R. Acker  
Petitioner

SUPREME R. ACKBAR 275886  
A-8-14  
LIEBER CORRECTIONAL INST.  
P.O. Box 205  
RIDGEBVILLE, SC 29472

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JUN 14 2016

MAILROOM  
LIEBER CI

THE SUPREME COURT OF SOUTH CAROLINA  
DANIEL E. SHEAROUSE, CLERK OF COURT  
P.O. Box 11330  
Columbia, SC 29211

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