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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

Michael D. Jackson,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000012

PETITIONER'S PRD SE FOR WRIT OF CERTIORARI

Statement

The Applicant seeks Certiorari to the Supreme Court of South Carolina pursuant to an application filed Sept 4, 2013. Applicant's Counsel filed an Amended application on May 6, 2014 and a second amended application in Oct 2014. The application is granted on the grounds that the Applicant was shackled throughout the trial in front of the jury to which trial counsel did not object, trial counsel failed to strike a juror who knew an employee in the Fifth Circuit Solicitor's Office, and lied about it intentionally. Trial counsel failed to put up testimony regarding applicant's drug use and lack of sleep prior to giving statement to law enforcement, and trial counsel's "strategy" of admitting the defendant had a boxcutter with no blade which did constitute a weapon under the armed robbery statute. Respondent made it's return on January 7, 2014. An evidentiary hearing into the matter was convened on July 14, 2015 at the Richland County Court House. The Applicant was present at the hearing and represented by Anna Good, Esquire. The respondent was represented by J. Clayton Mitchell of the South Carolina Attorney General's Office.

At the hearing, the applicant testified on his own behalf, The State offered no testimony. This Court also had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the applicant, The applicants records from the South Carolina Department of Corrections, and the exhibits entered into evidence by Applicant.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted in the June 2009 term of the Richland County Grand Jury for on an amended indictment of Armed Robbery (2007-GS-40-1683). He was represented by Carol McCurry, Esquire. On June 22-25, 2009, the Applicant underwent a trial pursuant to which he was found guilty as charged. He was sentenced by the Honorable L. Casey Manning to confinement for a period of life without parole.

A timely notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on December 1, 2011. State v. Jackson, No. 2011-UP-522 (S.C. Ct.App. December 1, 2011). The Remittitur was issued on April 7, 2013.

In his current Application and two amended Applications, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - A. Counsel failed to strike juror during selection after juror lied;
 - B. Counsel failed to object to all statements made by defendant, due to sleep deprivation, defendant had been getting high on crack for 14 days before giving statements to sheriff which was used as evidence against him;
 - C. Strategies and Tactics of Counsel;
 - D. Trial counsel failed to request a Neil v. Biggers hearing prior to trial;
 - E. Trial counsel failed to call Applicant to testify during Jackson v. Denno hearing;

- F. Trial counsel failed to object to Crime Stoppers tip, which bolstered the testimony of the victim;
- G. Trial counsel failed to properly object to witnesses testifying how the facts caused the crime to be an armed robbery;
- H. Trial counsel failed to present the proper facts in order to allow Applicant to receive a strong armed robbery jury charge; and
- I. Trial counsel failed to object to client being shackled and in handcuffs during entirety of trial, prejudicing him in front of the jury.

At the PCR hearing, the record was developed concerning the issues related to the Applicant being shackled during the trial, the Jackson v. Denno hearing, the issue surrounding the juror who knew an employee of the Fifth Circuit Solicitor's Office, and trial counsel's strategy regarding the box cutter as a weapon under the armed robbery statute.

This is a very difficult case in which Applicant was sentenced to life imprisonment without parole (LWOP) following his conviction for armed robbery. The LWOP sentence was triggered because of the classification as a repeat offender.

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that he was represented by Carol McCurry and that he met Ms. McCurry for the first time in January 2009, some two years after she was first appointed. Applicant testified he only met with Ms. McCurry two times from April 2007 until the date of trial in June 2009, the first meeting lasting about 30 minutes, and the second lasting about 20 minutes. The first meeting consisted of Ms. McCurry telling the Applicant the

solicitor's office would give him an offer if he would cooperate with them and give information on two individuals involved in another case. Applicant chose not to give any information.

Ms Carol McCurry never attempted to get applicant a plea

Applicant further testified he wrote Ms. McCurry requesting to relieve her as his counsel in April 2009, which she did not file a motion. He subsequently wrote a letter to the Office of Disciplinary Counsel for her actions prior to his June 2009 trial date. Ms. McCurry came to visit Applicant after this letter, and the visit lasted approximately 20 minutes, in which Ms. McCurry informed the Applicant a trial was coming and she was going to us a case out of Virginia regarding his drug use/sleep deprivation during the Jackson v. Denno hearing.

Applicant testified on the day of trial, he was dressed in everyday clothes and not in jail uniform; however, he was shackled and handcuffed the entire time during the trial and the jury was able to see the shackles and handcuffs. Specifically, when he stood to be introduced to the jury panel, they were clearly able to see the shackles and handcuffs. Also, the Applicant testified he almost fell down one time due to the shackles on his legs in front of the jury. Applicant testified Ms. McCurry never requested the Court to allow the shackles or handcuffs to be removed for the jury selection or trial, nor did the judge address the issue. In addition, Applicant testified he was never housed at the SHU at Alvin S. Glenn Detention Center while awaiting trial, nor had he had any write-ups or caused any problems while incarcerated pending his trial date.

Applicant further testified during jury selection an issue regarding juror Tracy Michelle Jones arose. During jury selection, this particular juror did not mention knowing anyone in the Fifth Circuit Solicitor's Office. Subsequent to jury selection, in which Ms. Jones was selected as a juror, one of the Fifth Circuit Solicitor's Office law clerks Justin Kata recognized Ms. Jones, as he coached her daughters in swimming. The juror was brought before the court and asked about

pg 58T Ms. Jones lied, Justin Kata stated that he had a parents meeting and told the parents were he worked at, plus Justin Kata stated that they had swim practice that night, I fear they could be discussing my case

Line 23, 24

pg 107
Line 12, 13, 14, 19, 20, 21, 22, 23

this connection, to which she indicated she did not know he worked for them and she now recognizes him but could be fair and impartial. Applicant testified, and it is reflected in the record, that the judge requested trial counsel to discuss the situation with the Applicant overnight. Applicant testified Ms. McCurry never spoke with him regarding this issue and the juror and trial counsel kept the juror on the panel and did not elect to use an alternate juror. Applicant testified had Ms. McCurry discussed this issue with him, he would have told her to put the alternate on the jury and he would have initially struck Ms. Jones during jury selection if he

had known she had a connection to the Fifth Circuit Solicitor's Office. ~~Ms. Jones lied~~ Applicant would have struck juror for lying, he did not think she could be fair and impartial

Applicant further testified that a pretrial hearing was conducted known as a Jackson v. Denno hearing in which the voluntariness of the applicant's statement to law enforcement was challenged. Applicant testified one of the main issues during this hearing was the Applicant was sleep-deprived and had been coming down from a binge on crack cocaine when he gave his statement. Applicant testified she did cross-examine the officer regarding this circumstance. Applicant further testified Ms. McCurry did not present any evidence as to Applicant's condition while giving his statement to law enforcement; specifically, Applicant testified he wanted to testify as to his state of mind at the time and his actions leading up to his statement, but Ms. McCurry refused to let him testify. Applicant went on to testify he had been up for approximately 9 days when he gave his statement to law enforcement due to the fact that he had been using crack continuously for approximately the past week when he gave his statement to law enforcement. In addition, Applicant testified trial counsel never argued the statement should not be used during the trial and was not given voluntarily by using any case law she previously had indicated to Applicant she was going to use.

Finally, Applicant testified that during the trial Ms. McCurry used the "strategy" that the

Applicant was guilty, but not of armed robbery, as she indicated to the jury. He testified that Ms. McCurry told the jury that Applicant did have a box cutter but it couldn't be considered a weapon under the armed robbery statute because it did not have a blade in it. Applicant testified he is aware under the armed robbery statute that a weapon is not needed but if the alleged victim believes there is a weapon, it is still armed robbery. Trial counsel ultimately asked for a strong armed robbery jury charge, which was denied by Judge Manning. Applicant testified Ms. McCurry did not discuss this strategy with the defendant, and if he had known she was going to admit to the jury that he was there and had a box cutter, he would not have wanted her to use that defense during the trial.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume the counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witness presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application and amended applications for post-conviction relief, the transcripts and documents from prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Failure to Request Applicant to not be Shackled and Handcuffed During Trial

Applicant asserts that his trial attorney was ineffective for failing to request the Applicant not be shackled, nor handcuffed, during his trial in front of the jury. This court agrees. The Applicant has also proven that the deficiency in this regard satisfies the prejudice prong of Strickland.

At the PCR hearing, Applicant testified he was shackled and handcuffed in front of the jury during the entire trial. More specifically, he stood in front of the jury while handcuffed and shackled during introductions during selection of the jury. In addition, he almost fell once in front of the jury due to his leg shackles. Finally, Applicant testified he had never been in the

p96.
line 17,18

SHU at the Alvin S. Glenn Detention Center pending trial, had no write-ups while incarcerated pending trial, nor did the trial judge make any mention of why the Defendant was a threat and should be constrained during the trial.

The standards of competence demanded in criminal matters include a wide range of reasonable professional assistance. Marzullo v. Maryland, 561 F.2d 5540 (4th Cir. 1997). To provide effective assistance does not require counsel to be infallible. An accused is entitled to a fair trial, not a perfect one. State v. Lewis, 255 S.C. 466, 179 S.E.2d 616 (1971).

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id., 466 U.S. 668. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) *and* McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).

Here, trial counsel did not once ask the court for the Applicant to be unshackled or to remove his handcuffs while in front of the jury, nor was a determination ever made by anyone involved in the trial the Applicant was a security threat in the courtroom which necessitated the constraints. This issue is expressly addressed in Deck v. Missouri, 544 U.S. 622 (2005) in which the Supreme Court of the United States held that

"the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilty phase, *unless* that use is "justified by an essential state interest"—such as interest

in courtroom security—specific to the defendant on trial."

In the present case, there is no indication either from testimony presented nor from the trial transcript the Applicant was a security threat in the courtroom and it was essential for him to wear constraints. By the Applicant being seen shackled in front of the jury, he was inherently prejudiced and it was in violation of the Constitution of the United States. Trial counsel's failure to address the Applicant's shackles and hand restraints fell well below the reasonable professional standard required of attorneys in criminal matters.

Based on this precedent and the record in this case, the court feels it must find that the failure to request the Applicant not be restrained in front of the jury or to obtain any finding as to why it was necessary for court procedure cannot be said to be harmless. In the court's estimation, this failure to object was deficient. Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), the court finds that trial counsel was deficient in this regard, and the Applicant was prejudiced by it.

Failure to Strike/excuse a Juror who Failed to Mention They Knew an Employee in the Fifth Circuit Solicitor's Office

Applicant asserts that his trial attorney was ineffective for failing to excuse a juror prior to the beginning of the case/testimony for not informing the parties about her relationship with an employee of the Fifth Circuit Solicitor's Office. This court agrees. The Applicant has also proven that the deficiency in this regard satisfies the prejudice prong of Strickland.

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Line 12,13,14

At the PCR hearing, the Applicant testified during jury selection, a juror did not mention knowing anyone in the Fifth Circuit Solicitor's Office. Subsequent to jury selection, in which Ms. Tracy Michelle Jones was selected as a juror, one of the Fifth Circuit Solicitor's Office law clerks Justin Kata recognized Ms. Jones, as he coached her daughters in swimming.

The juror was brought before the court and asked about this connection, to which she indicated she did not know he worked for them, and she now recognizes him but could be fair and impartial.

which is a lie because he stated he had a parents meeting 2 weeks prior, and mentioned were he worked their stories are contradicting, him, and her,

Applicant testified, and it is reflected in the record, that the judge requested trial counsel to discuss the situation with the Applicant overnight. Applicant testified Ms. McCurry never spoke with him regarding this issue and the juror and trial counsel kept the juror on the panel and did not elect to use an alternate juror. Applicant testified had Ms. McCurry discussed this issue with him, he would have told her to put the alternate on the jury and he would have initially struck Ms. Jones during jury selection if he had known she had a connection to the Fifth Circuit

Solicitor's Office. because Ms. Jones lied, Mr Justin Kata stated he had a parents meeting to tell the parents were he worked at plus, he stated that they had swim practice to night, which trusting her not to discuss my case is in question

To protect both parties' rights to an impartial jury, the trial judge must ask potential jurors

whether they have formed an opinion about a case or area aware of any bias or prejudice against a party. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). It is expected and required that jurors will answer truthfully and that they will disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It is therefore imperative that the jurors' answers be truthful and complete. *Id.* Where the court is informed of a matter that may justify the discharge of a juror, it must take some action and inquire into the matter, at least where juror competency is in question. State v. Ivey, 331 S.C. 118, 502 S.E.2d 92 (1998).

The right to a new trial in circumstances relating to improper juror silence during *voir dire* is not absolute: relief is required only when the court finds the concealed information would have supported a challenge for cause, or would have been a material factor in the use of the party's peremptory challenges; the inquiry must focus on the character of the concealed

information, not on the mere fact that a concealment occurred. Long v. Norris & Associates, 342 S.C. 561, 538 S.E.2d 5 (App. 2000).

In this matter, information came forward that a juror failed to disclose she knew an employee in the Fifth Circuit Solicitor's Office, specifically Justin Kata who was the swim instructor for her daughters. The juror was questioned and it was determined that she did ~~not~~ conceal the information intentionally, as she was ~~not~~ aware that Mr. Kata was an employee of the Fifth Circuit Solicitor's Office. The trial judge informed the parties of the development and instructed the trial counsel for Applicant to discuss the issue with him overnight ^{which she didn't do} and let the court know the following morning whether they would like to keep the juror on the panel or use an alternate.

Applicant testified that trial counsel never spoke with him about this issue, and he wanted to strike the juror and use an alternate since the juror did not disclose she knew an employee of the solicitor's office and the fact that he believed she may be biased if on the jury. Trial counsel kept the juror on the panel, and Applicant was subsequently convicted of armed robbery.

it only takes 1 juror to get mistrial

Based on this precedent and the record in this case, the court feels it must find that the failure of trial counsel to request the removal of this juror and use an alternate cannot be said to be harmless. In the court's estimation, this failure to use the alternate juror when given the option by the trial judge is nothing short of prejudicial to the Applicant. Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), the court finds that trial counsel was deficient in this regard, and the Applicant was prejudiced by it.

Failure to Present Testimony Regarding Applicant's Drug use and Lack of Sleep Prior to his Statement to Law Enforcement

Applicant asserts that his trial attorney was ineffective for failing to present testimony

regarding Applicant's drug use and lack of sleep prior to his statement to law enforcement during the Jackson v. Denno hearing. This court agrees. The Applicant has also proven that the deficiency in this regard satisfies the prejudice prong of Strickland.


At the PCR hearing, the Applicant testified that one of the main issues during the Jackson v. Denno hearing was the Applicant was sleep-deprived and had been coming down from a binge on crack cocaine when he gave his statement. Applicant testified his attorney did cross-examine the officer regarding this circumstance; however, Applicant further testified Ms. McCurry did not present any evidence as to Applicant's condition while giving his statement to law enforcement. Specifically, Applicant testified he wanted to testify as to his state of mind at the time and his actions leading up to his statement, but Ms. McCurry refused to let him testify. Applicant went on to testify at the PCR hearing, if he had testified during the Jackson v. Denno hearing, he would have stated he had been up for approximately ⁹ 9 days when he gave his statement to law enforcement due to the fact that he had been using crack continuously for approximately the past week when he gave his statement to law enforcement. In addition, Applicant testified trial counsel never argued the statement should not be used during the trial and was not given voluntarily by using any case law she previously had indicated to Applicant she was going to use.

A Jackson v. Denno hearing is required outside of the jury's presence for all of the statements a defendant has made. Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774 (1964). The Defendant has a right to testify at a Jackson v. Denno hearing regarding any statements he allegedly made. The trial judge must make a preliminary determination of the voluntariness of a confession and exclude it if in no circumstances could the confession be deemed voluntary. If the evidence presents a fair question as to its voluntariness, as where certain facts bearing on the

issue are in dispute or where reasonable men could differ over the inferences to be drawn from the undisputed facts, the judge must admit the confession and leave to the jury, under proper instructions, the determination of its voluntary character and also of its truthfulness. *Id.* If it is determined at the hearing that the confession was involuntary, a new trial, at which the confession is excluded, is required. *Id.*

In the current case, law enforcement indicated they were aware that the Applicant had been on a crack binge and was tired due to a lack of sleep during their testimony. However they indicated they believed he understood what was going on and it did not affect him in any way. The trial counsel did not put any evidence forth to prove otherwise that the Applicant's state of mind was impaired and he was unable to make a voluntary statement, which would have been accomplished through the testimony of the Applicant during the pre-trial hearing. Applicant testified at the PCR hearing that he wanted to testify and trial counsel would not let him. He went on to testify as to what his testimony during the pre-trial hearing would have consist of.

Based on this precedent and the record in this case, the court feels it must find that the failure to allow the Applicant to testify as to his state of mind regarding his drug use and sleep deprivation cannot be said to be harmless. In the court's estimation, this failure to present the Applicant's testimony was prejudicial. Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), the court finds that trial counsel was deficient in this regard, and the Applicant was prejudiced by it.

Failure of Trial Counsel to Properly Argue a "Strategy" of Admitting the Defendant had a Box Cutter with No Blade Did  Constitute a Weapon under the Armed Robbery Statute did not Allow for the Applicant to Obtain a Lesser Included Charge of Strong Arm Robbery

Applicant asserts that his trial attorney was ineffective admitting to the jury that the Applicant committed the crime and only used a box cutter with no blade. In addition, he asserts his trial counsel failed to properly argue the case in order to obtain a lesser included charge of strong arm robbery. This court agrees. The Applicant has also proven that the deficiency in this regard satisfies the prejudice prong of Strickland.

At the PCR hearing, Applicant testified that during the trial Ms. McCurry used the "strategy" that the Applicant was guilty, but not of armed robbery, as she indicated to the jury. He testified that Ms. McCurry told the jury that Applicant did have a box cutter but it couldn't be considered a weapon under the armed robbery statute because it did not have a blade in it. Applicant testified he is aware under the armed robbery statute that a weapon is not needed but if the alleged victim believes there is a weapon, it is still armed robbery. Trial counsel ultimately asked for a strong armed robbery jury charge, which was denied by Judge Manning. Applicant testified Ms. McCurry did not discuss this strategy with the defendant, and if he had known she was going to admit to the jury that he was there and had a box cutter, he would not have wanted her to use that defense during the trial.

A trial judge must charge a lesser included offense if there is any evidence from which it can be inferred that the defendant committed the lesser charge. State v. Heyward, 350 S.C. 153, 564 S.E.2d 379 (App. 2002) and Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005). The test for determining if a lesser included charge should be given is whether the greater offense includes all of the legal and factual elements of the lesser. If the lesser offense contains an element not included in the greater offense, the lesser is not included in the greater. State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000); Hope v. State, 328 S.C. 78, 492 S.E.2d 76 (1997). A mere contention that the jury might accept the State's evidence in part and reject in

part does not support a request for a lesser charge. State v. Morris, 307 S.C. 480, 492 S.E.2d 819 (1991).

Under S.C. Code of Laws Section 16-11-330(A), armed robbery is defined as "A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon."

In the present case, trial counsel argued to the jury that the Applicant committed the crime and use a box cutter without a blade to scare the victim. This is the exact definition of armed robbery under the South Carolina law, as the Applicant alleged he had a deadly weapon by his actions and words and was using a representation of a deadly weapon which a person present during the commission of the robbery could have reasonably believed to be a weapon. While trial counsel does have discretion to use a certain strategy during trial, this particular strategy falls below the professional standard a criminal attorney should use when developing a defense to a case, as it admitted to the jury the guilt of the defendant exactly under the statute. A lesser included charge was not allowed by the court based on this strategy.

Based on this precedent and the record in this case, the court feels it must find that the strategy to admit the defendant's guilt of armed robbery to the jury cannot be said to be harmless. In the court's estimation, this failure was highly prejudicial. Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), the court finds that trial counsel was deficient in this regard, and the Applicant was prejudiced by it.

Conclusion

Based on all of the foregoing, this court finds and concludes that the applicant has met his burden regarding ineffective assistance of counsel on the issues specified above. This Court should grant the application for writ of Certiorari Relief based on the grounds the applicant was shackled throughout the trial in front of the jury to which trial counsel did not object, trial counsel failed to strike a juror who knew an employee in the Fifth Circuit Solicitors Office, trial counsel failed to put up testimony regarding Applicant's drug use and lack of sleep prior to his statement to law enforcement, and trial counsel's "Strategy" of admitting the defendant had a box cutter with no blade which did constitute a weapon under the armed robbery statute. These failures of trial counsel were not harmless and prejudiced the Applicant. As a result of the Application for Writ of Certiorari Relief be granted. The Applicant shall be entitled to a new trial. This case should be remanded to the General Sessions Court of Richland County for further actions.

Conclusion

Trial Counsel was ineffective from the very beginning, Chief Administrative Judge appointed Ms. Carol McCurry to represent applicant April 10, 2007, Ms. Carol McCurry was supposed to see applicant within (5) working days if incarcerated, which applicant was in Alvin S. Glenn Center until trial 29 months total. Ms. Carol McCurry did not see applicant until January 8, 2009 21 months after Ms. Carol McCurry was appointed to represent applicant, (see attached order from Chief Admin. Judge) which is clearly ineffective, and could presume prejudice. Applicant's Counsel Ms. Carol McCurry only seen applicant (2) times before trial, approximately 50 minutes total. Trial Counsel failed to show up in Court for any type of Hearing's, disobeyed subpoena from court's not once but multiple times from A.G.'s office. Ms. Carol McCurry failed to show up for PCR Hearing that would of had a different outcome if Ms. McCurry would had showed up, Ms. McCurry could have testified that I was shackled in front of jury during the whole entire trial, along with my other issues present at my PCR Hearing, I could not get my full bite at the apple because of Ms. McCurry lack of respect for the Court's,

Roseboro V. State, 317 S.C. 292, 454 S.E. 2d 312 (1995)

Being that trial counsel did not testify at the PCR Hearing, in fact trial Counsel was unwilling to participate in the proceeding, such must be deemed a failure to articulate a valid reason. Therefore an adverse inference be held and my testimony deemed credible. Pursuant to Rule 60(b) at a minimum this court must or should reconsider. If anybody's credibility should be in question, it should be Ms. Carol McCurry. (Also see exhibit 1, and 2 from PCR Hearing)

Petitioner's Conviction should be reversed, ~~and granted a new trial~~

Respectfully Submitted

Michael Jackson

Pro Se ADA Applicant

In The State Of South Carolina

To: The Supreme Court Of South Carolina

RECEIVED

JUL 27 2016

2013-CP-40-5285 S.C. SUPREME COURT

Michael D. Jackson _____ petitioner.

vs

The State Of South Carolina _____ Respondent.

Proof of Service

I Michael D. Jackson certify that I have today served the within notice of writ of Certiorari upon the respondent by depositing a copy of it in the United States Mail Postage Prepaid Addressed to Supreme Court Of South Carolina, Mr. Daniel E. Shearouse Clerk Of Court P.O. Box 11330 Columbia South Carolina 29211. I further certify that all parties required by Rule to be served have been served this 18th day of July 2016.

Respectfully Submitted,

Michael D. Jackson

Pro Se ADA Applicant

BARBARA A. SCOTT
CLERK OF COURT



MAILING OFFICES
POST OFFICE BOX 2766
COLUMBIA, SC 29202-2766

KIM M. HARPER
Chief Deputy Clerk of Court

PHONE: (803) 576-1950
FAX (803) 576-1785
TDD 748-4999

RICHLAND COUNTY JUDICIAL CENTER
1701 Main Street
Columbia, S.C. 29201

Exhibit A

April 10, 2007

Carol A McCurry
Attorney at Law
1735 Augusta Rd
West Columbia, S.C. 29169
(803) 936-0051

RE: State of SC vs Michael Jackson Warrant# J556037, 1906850-851

Dear Ms. McCurry:

Pursuant to Rule 608 and an Order from the Chief Administrative Judge for General Sessions, I am appointing you to represent the Defendant in the above matter due to a conflict with the Public Defender's Office. Your name was obtained from the new Rule 608 Criminal appointment list. If you feel you need to be relieved from this appointment, please review Rule 608. If additional charges should surface you will be responsible to represent this defendant on those charges also.

I am enclosing all materials that have been forwarded to us by the Public Defender's Office.

The Chief Administrative Judge has directed that you must schedule an appointment for the defendant to see you or see the defendant if incarcerated within five (5) working days.

Sincerely,

Handwritten signature of Kim M. Harper in cursive.

Kim M. Harper
Chief Deputy Clerk of Court

kmh
Enclosure

Copy: 5th Circuit Solicitor
Richland County Public Defender Office
Defendant - Alvin S Glenn Detention Center
County
File

Michael D. Jackson 294410 Edisto B-33
Lieber Correctional Inst

P.O. Box 205

Ridgeville, S.C.

29472

RECEIVED

JUL 18 2016

MAILROOM
LIEBER CI

THE SUPREME COURT OF SOUTH CAROLINA

Daniel E. Shearouse Clerk of Court

P.O. Box 11330

Columbia S.C. 29211