STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

George C. James, Jr., Circuit Court Judge

Lionel Bradley,

Petitioner,

V.

State of South Carolina,

Respondent,

APPELLATE CASE NO. 2015-002425

PRO-SE SUPPLEMENTAL BRIEF FOR CERTIORARI

By: Lionel Bradley, #266225
BRCI-Montecello Unit
4460 Broad River Road
Columbia, S.C. 29210

FACTUAL STATEMENT OF THE CASE

a. Petitioner Lionel Bradley, was arrested in September of 2011, charged with various drug related offenses. According to the indictments in this case. A "Certified True Stamped " filed indictment by a Sumter County Grand Jury, on February 9, 2012, charged Petitioner with (1) Possession with Intent to Distribute crack cocaine; while (2) in the Proximity of a School Park.

A "unfiled, uncertified, copy of what appears to be an indictment", not filed with the Sumter Conty Clerk, alleges that Petitioner on September 19, 2011, possessed a controlled substance, to wit: Cocaine Base in excess of ten (10) grams; in violation of §44-53-375, of South Carolina Laws (1976) as amended.

Count two of this same indictment "uncertified" or autheticated, alleged the Petitioner also Possessed Marijuana, Less than one ounce, in violation of §44-53-370, South Carolina Code of Laws.

b. Subsequently, Petitioner was appointed Assistant Public Defender Tiffany Butler. Ms. Butler during her investigation of the case and after "requesting discovery from the State". Noticed that "she did not receive any drug analysis report for the trafficking charge", in the form of establishing "the actual chemical composition of the substance or its weight".

When discussing the case with Petitioner, Ms. Butler never possessed the above State's evidence, but relayed the State's plea offer of eight (8) years imprisonment. Petitioner initially rejected the State's offer "without seeing all the evidence".

In otherwords, Petitioner denied having ten (10) grams of crack cocaine in his possession on the date in question.

c. Ms. Butler then conveyed that Petitioner's case would proceed to trial. On the morning of trial, Petitioner appeared at the court house and explained "he had not received a letter of a trial date", but was there as result of a phone call informing him such was taking place. Petitioner also explained to Ms. Butler; "he was in the process of retaining a different attorney". Petitioner then left the courthouse and went to the other attorney's office. The case was called to trial, and a Bench Warrant was issued for the Petitioner.

Ms. Butler, never asked the court for a continuance to allow Petitioner to be present for the start of his trial and selection of the jury. Despite the fact Petitioner had explained sufficient reason for his "tardiness" as well as his "absence".

While at the other attorney's office, Petitioner "telephoned Ms. Butler", to convey "he was on his way back to the courthouse". (Tr. tr. p. 18). Yet, Ms. Butler failed to request a continuace and Petitioner did not participate in jury selections. In fact, the jury was already sworn when Petitioner arrived.

d. During preliminaries, Ms. Butler informed the court that; "she did not receive the SLED analysis for the drugs involved for the charge in which Petitioner was being charged". (Tr. tr. p. 19). Ms. Butler informed the court, "I have not seen it". That the State did not provide such report within the discovery. The

Solicitor was "instructed by the court to provide a copy of the discovery evidence (the SLED drug analysis)to Ms. Butler. (Tr. tr p. 19)

Ms. Butler did not request a continuance to go over the report with Petitioner, to determine whether sufficient evidence existed to take the case to trial. Trial began and several witnesses had testified for the State. Ms. Butler did not object to the introduction of the evidence regarding the drugs during trial. (Tr. tr. p. 77)

The trial began as one in absentia, but after a approximate 25 minute break. Ms. Butler notified the court that Petitioner indeed "did come back" to the courthouse, and the case was no longer one in absentia. Ms. Butler "did not make a motion for continuance based on the fact Petitioner still hadn't seen the evidence against him". After a few minutes of consultation between Ms. Butler and Petitioner, Ms. Butler informed the court that Petitioner no longer wished to proceed to trial, and wanted to enter a plea of guilty. (Tr. tr. p. 84)

e. The trial Judge asked Ms. Butler "if she had an opportunity to explain the charges to Mr. Bradley [Petitioner] contained within the indictment. Ms. Butler answered "Yes Sir".

Thereafter, the Judge asked Petitioner a few questions, such was answered by Petitioner, and the sentence of fifteen years ensued.

LEGAL ANALYSIS AND ARGUMENT

1. This pro-se Supplemental brief is being brought to the attention of this Honorable Supreme Court. As the result of Appellate Defender Robert M. Pachak, filing a Johnson petition (consistent with Anders for direct appeals) which essential details the brief or arguable issues has no merit.

The Court then gives the pro-se petitioner (as here) forty-five days to provide any additional arguments he may wish to convey that counsel either "didn't do an effective job in rasing the issues", or failed altogether to raise important issues.

Petitioner begins by respectfully arguing that his case has been improperly presented as a Johnson brief due to the merits in his case, and should have therefore been presented in a merits brief. Here's why.

As the Anders Court noted beginning with Griffin v. Illonois, 351 U.S. 12 (1956), it held; "that equal justice was not afforded an indigent appellant where the nature of the review depends on the amount of money he has", at 19, and continuing through to Douglas v. California, 372 U.S. 353 (1963), where a subsequent panel of the U.S. Supreme Court further concluded; "this Court has consistently held invalid those procedures where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a prelim-

iminary determination that his case is without merit, is forced to shift for himself".

Had appellate counsel properly reviewed the record in this case, the law on the issues and provided effective arguments on behalf of this indigent appellant. He would have posited the following legal positions.

INEFFECTIVE ASSISTANCE OF COUNSEL

In beginning where this case starts. Where ineffective assistance of counsel is alleged. The Court measures counsel's performance under the two-prong test of Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). See also Butler v. State, 286 S.C. 441 , 334 S.E.2d 813 (1985).

Petitioner has no problem meeting "both prongs" of Strickland where counsel began trial in absentia (1) knowing the defendant was not waiving his right to be present; (2) counsel was well aware the State had not provided evidence (crutial to establish the elements of a drug trafficking crime) prior to trial; (3) should have been aware of the Supreme Court's 2004 directive to Solicitors concerning the lack of producing discovery, which reads as follows:

> "It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forego discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel

> based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.
> Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, RLDE, Rule 407 SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately. [In relevant part]. Id. Chief Justice Jean Hoefer Toal, March 1, 2004 corrective letter Re: Plea Agreements and Discovery; TO All Solicitors in the State of South Carolina.

Thus, the failure by the State to provide crucial evidence to establish the "elements of the charged crime". Was not a new occurrence, based on the Supreme Court's letter above. And could be a violation of Due Process as it relates to prosecutirial misconduct.

The trial court suggested that the omission could be corrected "after the fact trial had begun". Yet such late correction is inconsistent with the rudimary demands of fair play. In otherwords, although the defendant and his attorney may have received a copy of the SLED analysis during trial. The origin and chain of custody could not be evaluated or investigated. Where especially, the defendant denied having the amount charged in the suspicious indictment on the day in question.

Trial counsel "didn't even object to the admission of the drugs under the circumstances of this case". Which is not acting within the wide range of professional norms. See Strickland. Id,. In Johnson v. State, 318 S.C. 194, 456 S.E.2d 442 (CT. App. 1995), coupled with the S.C. Supreme Court directive, a criminal defendant is Constitutionally entitled in a drug trafficking case, "a

chain of custody exposing the trafficking weight either 'before his trial or any subsequent plea"'.

> "because evidence involving drugs may easily be tampered with, the party offering the drugs into evidence must establish a chain of custody as far as practicable; however, the proof of the chain of custody need not negate the possibility of tampering. Instead, where the substance analyzed has passed through several hands, the evidence must not leave it to conjucture as to who had it and what was done with it between the taking and analysis."

The party offering the evidence must trace possession of the substance and what was done with it from the time it was taken until final analysis. See State v. Singleton, 319 S.C. 312, 460 S. E. 2d 573 (1995).

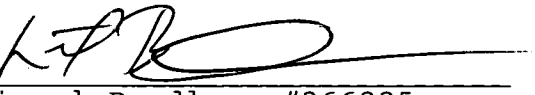
Next, in order for a plea of guilty to be valid, the defendant's plea must be made voluntarily, knowingly, and intelligently. See Bradshaw v. Stumpf, 545 U.S. 175, 182 (2005); but see O'neill v. Louisville/Jefferson City, 662 F.3d 723, 734 (6th Cir. 2001)(plea not knowing because defendant unaware of the elements of the offense charged).

A plea will be set aside if prejudice resulted from prosecutorial misconduct. See Ferrara v. U.S. , 456 F3d. 278, 297 (1st Cir. 2006). Here the State openly admonished the fact; "defense counsel did not have a copy of the SLED drug analysis report", coupled with the S.C. Supreme Court's acknowledgement, "such was a normal practice by solicitors in this State". In which the Court warned would lead to the identical claim being brought forward here. Which leaves but a single remedy. And that is to re-

spectfully ask this Honorable Court to follow-up on its 2004 directive, based on the solicitor in this case "not to take heed" in the warning, for which prejudiced this defendant where "he was not afforded (based on the time which the report was turned over), to investigate the composition and weight of the drugs through the chain of custody. Where the defendant firmly denied even possessing 10 grams or more on September of 2011.

For these reasons, and the "non-filed" indictment for the trafficking offense. Petitioner moves this Honorable Court to vacate the lower court's order, vacate and remand this case for a new trial and any further relief this Court deems just and proper.

Respectfully Submitted,

/s/ 

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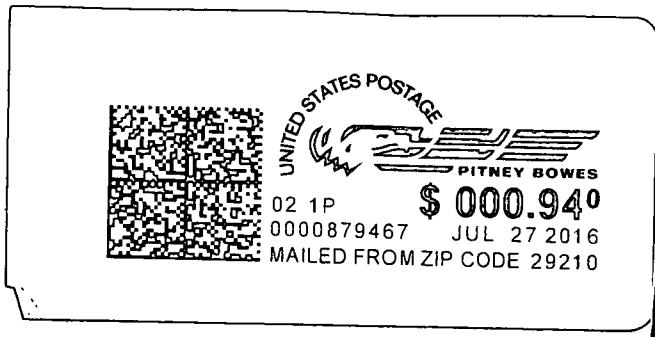

LEGAL MAIL

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