

Dated: August 4, 2016.

**RECEIVED**

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, S.C. 29211

AUG 09 2016

**S.C. SUPREME COURT**

RE: State of South Carolina, Respondent,  
v. Andre C. Wallace, #346096, Petitioner,  
Case No. 2015-002200

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case.  
Also enclosed are the following:

- (1). The original and six copies of the Petitioner's pro-se petition.
- (2). Proof of service of the notice of appeal and a true copy of the Petitioner's petition for writ of certiorari served on all Respondents in this action.
- (3). A copy of the Appendix, along with orders of dismissal from the PCR Court.
- (4). This appeal is being filed with the South Carolina Supreme Court in pursuant to a \* Johnson v. State, S.C. 310, 364 S.E.2d. 201 (1988), petition that the Petitioner's former counsel submitted indicating that this appeal is without merit and moved to be relieved as counsel of record. The Petitioner was hereby given forty-five (45) days of the date of letter received on June 29th., 2016.

Respectfully submitted,

Andre C. Wallace

Andre C. Wallace, #346096

LCI. Wando-A#210

P.O. Box 205

Ridgeville, S.C. 29472

Pro-Se Petitioner

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

AUG 09 2016

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Certiorari to Williamsburg County

Steven H. John, Circuit Judge **S.C. SUPREME COURT**

\_\_\_\_\_  
Andre C. Wallace,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent,

APPELLATE CASE NO.2015-002200

\_\_\_\_\_  
PRO-SE PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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Other Counsel of Record:

Julie Coleman,Esquire  
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ISSUES PRESENTED

1. Was the Petitioner deprived of his Sixth Amendment rights to receive effective assistance?
2. Was the Petitioner deprived of his due process rights under the Fourteenth Amendment?
3. Was the Court in error with its decision to deny the PCR application based upon the determination of reasonableness?

## STATEMENT

In May of 2011, the Williamsburg County Grand Jury indicted Petitioner Wallace for criminal conspiracy, burglary first degree, murder and possession of a weapon during the commission of a violent crime, indictment #2010-GS-45-0028. On May 17, 2011, Petitioner proceeded to jury trial before the Honorable George C. James, Jr. Charles D. Barr represented Petitioner at trial. Kimberly V. Barr prosecuted the case. The jury found Petitioner guilty of criminal conspiracy, burglary first degree and the weapons charge. The jury, however, could not reach a verdict on the murder charge and the judge declared a mistrial on the murder charge. Judge James sentenced Petitioner to thirty-five (35) years for burglary, five (5) years consecutive for conspiracy and five (5) years consecutive for the weapons charge, resulting in an aggregate sentence of forty-five (45) years. A motion to reconsider the sentence was filed and Judge James ordered the sentences to run concurrently rather than consecutively, resulting in an aggregate reduced sentence of thirty-five (35) years. The notice of intent to appeal was timely filed and the direct appeal perfected. Benjamin John Tripp represented Petitioner for the direct appeal. On November 26, 2014, the South Carolina Court of Appeals dismissed the appeal. State v. Wallace, Op. No. 2014-UP-428 (filed November 26, 2014).

On September 11, 2012, the State recalled the murder case for trial before the Honorable Clifton Newman. After the trial started, Petitioner entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), for a negotiated sentence of thirty-five (35) years to run concurrent to his other charges. Jonathan M. Milling represented Petitioner for the re-trial and plea. Kimberly V. Barr again prosecuted the case.

On April 18, 2013, Petitioner filed an application for post conviction relief in regard to the murder plea. The State filed a return on September 26, 2014. On July 14, 2015, an evidentiary

hearing was held before the Honorable Steven H. John at the Sumter County Courthouse. Charles Brooks, III, represented Petitioner at the PCR hearing. Daniel Gourley represented the State. In a written order signed August 4, 2015, Judge John denied relief and dismissed the application. A timely notice of intent to appeal was served on October 23, 2015. This petition for writ of certiorari follows.

## ARGUMENT

The Petitioner was deprived of his sixth amendment rights to receive effective assistance of counsel.

In the application for (PCR) post-conviction relief the Petitioner alleged violation of his constitutional rights his sixth amendment and denied effective assistance of counsel in which the PCR Court failed to address in its fact-finding and conclusion of law. Making the one bite of the apple in his PCR process unreliable. The Petitioner also alleged that his counsel was inadequate when he coerced his client into an plea of North Carolina v. Alford, without fully advising his client about the consequences of his plea. The Petitioner alleges that his guilty plea was not knowingly, voluntarily, nor intelligently made. In the case of \* Boykin v. Alabama, 395, U.S. 242, 23 L.Ed.2d. 274, 89 S.Ct. 1709 (1969). A defendant must possess an understanding of the law in relation to the facts of his case, and to be fully aware of the direct consequences of his plea, including the actual value of any commitments made to him by the Court, prosecutor, or his own counsel. Counsel did not advise the Petitioner of an Lessor included Offense. In the case of \* Hill v. Lockhart, 474, U.S. 52, 88, L.Ed.2d. 203, 106 S.Ct. 366, (1985). The Petitioner is asserting that he did not have the opportunity to make an informed decision to reject the plea bargain and to plead to an second-degree murder. The Peitioner concludes that the failure of his counsel to advise him of relevant law is " deficient performance" sufficient to satisfy the first-prong of the ineffective assistance analysis.

In the relevant case of \* Cuyler v. Sullivan, 466, U.S. 335, 64 L.Ed.2d. 333, 100, S.Ct. 1708 (1980). The Petitioner alleges that he was denied effective assistance of counsel thats guaranteed by the sixth amendment because his lawyer had an conflict of interest. Conflict by agreement with the prosecutor, and the co-defendant which adversely affected the counsel's performance. Counsel acted as a friend rather than an advocate.

ARGUMENT CONT:

The Petitioner was deprived of his sixth amendment rights to receive effective assistance of counsel.

Counsel failed to disclose the elements of the crime charged. A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving or because he has detrimental reliance on his counsel for competent advice and with incomplete understanding of the charges in which he is pleading guilty too, his guilty plea cannot stand as an intelligent admission of guilt. See \* Henderson v. Morgan, 426, U.S. 645, 59, L.Ed.2d. 108, 96, S.Ct. 2253 (1976). There is no doubt the sixth amendment's guarantee of a right to counsel must necessarily include the right to effective assistance of counsel. See\* United States v. Cronin, 466, U.S. 648, 80, L.Ed.2d. 657, 104, S.Ct. 2039 (1984). The ineffective advice led not to an offer's acceptance, but to it's rejection, because the outcome of the Petitioner's plea process would have been different with competent advice. Therefore, the ineffective assistance received from counsel made the plea process unreliable. Attorney coerced the Petitioner into an plea agreement, because he was forced to choose between his interest vs. his client's, quoting the case of \* Stoia v. United States, 109, F.3d. 392, (CA 7 1977). Prejudiced by the misadvice of his plea counsel, the Petitioner would not have pled guilty, but would have insisted on going to trial in the case of \* Lockhart v. Fretwell, 506, U.S. 364, 113, S.Ct. 838, 122 L.Ed.2d. 180, (1993). Counsel has a duty to fully inform his client. See \* Smith v. United States, 348, F.3d. 545 (CA\_ 2003). A criminal defendant has a right to expect at least that his attorney will review the charges with him by explaining the elements, explain the consequences of exercising each option available. See \* Boria v. Keane, 99 F.3d. 492 (2nd. Cir. 1996).

## ARGUMENT

The Petitioner was deprived of Fourteenth Amendment rights to receive due process under the United States Constitution.

The Petitioner PCR application was denied without addressing this constitutional violation that the Petitioner was denied equal protection of the law. In the case of \* Mason v. Balcom, 531, F.2d. 717, Counsel must be familiar with facts and the law in order to advise the defendant of the options available. See\* Bradbury v. Wainwright, 658 F.2d. 1083, 1087, (5th. Cir. 1981). The guilty plea does not relieve counsel of the responsibility to investigate potential defenses so that the defendant can make an informed decision. Had counsel investigated, he would have known that there were co-defendant's that gave statements but did not testify at trial, neither was the defendant familiar with this co-defendant, have never seen, nor have ever spoken a word to ever in life. Co-defendant whom gave statements that were inconsistent with what actually occurred. Counsel would have known that they <sup>were</sup> coerced by the solicitor to make false statements that went uncorrected, in exchange for shorter sentences. Counsel gave erroneous advice to pleading guilty to the charge of murder when all the elements were not discovered, Counsel failed to file an appeal when requested to do so. But, for the counsel's erroneous advice the outcome of the case would have been different. A guilty plea if induced by promise or threats which deprive it of the character of a voluntary act, is void. A conviction based upon such a plea is open to collateral attack. Co-defendants statements violated the Bruton Rule, See\* Bruton v. United States, It is clear that the use of a co-defendant's confession against another defendant at a joint trial is restricted. Co-defendants confession to use to determine the Petitioner's culpability was prejudicial.

ARGUMENT CONT:

The Petitioner was deprived of his Fourteenth Amendment rights to receive due process under the United States Const.

Counsel who failed file Notice of Appeal, if the defendant requested from his conviction,"and the lawyer dropped the ball, then the defendant has been deprived not of effective assistance of counsel, but of any assistance of counsel on appeal. Abandonment is a per-se violation of the sixth amendment. See\* Castellanos v. United States, 26, F.3d. at 718 (original) Id. at 720 a lawyer's abandonment of his client is ineffective per se. Counsel's complete failure to challenge the State to an meaningful adversarial testing prejudiced the Petitioner's case, and the decision not to investigate is not strategy, but it's unreasonable. See\* Hunter v. Moore, 304 F.3d. 1066 (CA 11 2003); An ineffective assistance claim should be analyzed under Cronic rather than Strickland, if the defendant either, "is denied counsel at a critical stage of his trial", or if counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing. The Petitioner was being denied PCR relief only because his Miranda rights were being used against him during questioning or colloquy of the Court, the prosecutor or his own counsel. Therefore, the Petitioner was deprived, because the right to be protected against compulsory self-incrimination under the Fifth and Fourteenth Amendment has been disregarded. " No State shall deprive persons of life, liberty, or property without property due process of law." Procedural due process in terms of "notice" and the opportunity for a full and fair hearing, the opportunity to be heard by an unbiased judicial platform, and safeguards to ensure a fair trial.

Substantive due process safeguards to protect fundamental rights from arbitrary deprivations by the government.\*U.S. v Monroe, 580, F.3d. 552, Plea agreement was achieved without due process. The right to present a defense, the right to offer testimony of the witnesses and to compel their attendance is fundamental element of due process.  
\*Washington v St. of Texas 8. 388 US, 14

## ARGUMENT

The Court did err when its decision to deny the PCR application because its determination of the fact-finding and conclusion was unreasonable and contrary to Strickland.

In the order of dismissal the PCR judge wrote:

This Court notes that the Applicant argues that his Plea Counsel was ineffective in failing to advise him that his prior convictions were not admissible if he proceeded to trial and did not testify. First, this Court finds credible, Plea Counsel's testimony that he did advise the Applicant that his prior conviction were inadmissible. Plea Counsel further advised the Applicant that his statement would have been admissible at trial. This Court notes that the Applicant had already proceeded to trial and was convicted guilty on all charges except for his murder charge. This Court finds that the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test- that Plea Counsel failed to render reasonably effective assistance under prevailing norms. Furthermore, this Court finds that the Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland- that he was prejudiced by Plea Counsel's performance. This Court finds that the Applicant's allegations should be denied and dismissed with prejudice.

The PCR Judge erred. Because the plea counsel did not specifically testify that he did advise the Petitioner that his prior convictions could not be used against him unless he were to testify at trial. Petitioner had no understanding of the "phrase", your prior convictions would only have been admissible at the re-trial if you testified.

## ARGUMENT

The Court did err when its decision to deny the PCR application because its determination of the fact-finding and conclusion was unreasonable and contrary to Strickland.

In the case of \* Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 623, 625, (1999). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea, may be accomplished by colloquy between ~~the Court and the defendant~~, between the Court and the Plea Counsel, or both. In the case of \* Pittman v. State, 337 S.C. 597, 599, 524, S.E.2d. 623, 625 (1999) (quoting \* State v. Ray, 310, S.C. 431, 437, 427 S.E.2d. 171, 174, (1993)). The longstanding ~~test for determining~~ the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Whether the Courts decision was based upon an unreasonable application of Strickland and contrary to the S.Ct. precedent is found in the case of \* Childress v. Johnson, 103, F.3d 1221 (CA 5 1997).

The unreasonable application of Strickland is found in the case of Holland v. Jackson, 542 U.S. 649, 159, L.Ed.2d. 124, S.Ct. 2736 (2004). Also See\* Schriro v. landrigan, 127, S.Ct. 1940, 550 U.S. 465, L.Ed.2d.(). The Petitioner was only being denied PCR relief because his Miranda rights were being used against him and incriminated himself. Therefore, the Petitioner was deprived, "the right to be protected against compulsory self-incrimination under the Fifth Amendment and ~~Fourth~~ Fourth Amendment, " No State shall deprive persons of life, liberty, or property without due process of law." Procedural due process in terms of "notice", and the opportunity for a full and fair hearing, and also the opportunity to be heard by an unbiased judicial platform, and safeguards to ensure a fair trial. Substantive due process safeguards to protect fundamental rights from arbitrary deprivation by State governments.

CONCLUSION

Based on the following reasons, argued in this petition for writ of certiorari, and the issues raised the writ should be granted.

Respectfully submitted,  
/s/ Andre C Wallace  
Andre C. Wallace, #346096  
Pro-Se Petitioner

This 4, day of August, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Williamsburg County  
Steven H. John Circuit Judge

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Andre C. Wallace,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent,

APPELLATE CASE NO.2015-002200

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PROOF OF SERVICE

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I, Andre C. Wallace, #346096, certify that I have served an copy of the Petitioner's pro-se petition for writ of certiorari on all parties by depositing into the United States Mail postage prepaid, on this \_\_\_\_ day of \_\_\_\_\_, 2016. Addresses as follows: Ms.Sharon Staggers, Clerk of Court, for Williamsburg County, 125 Main Street, Kingstree, S.C. 29556, and Ms.Julie Coleman, Esquire, Rembert Dennis Building, 1000 Assembly Street Room#519, Columbia, S.C. 29201.

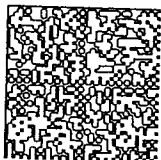
Dated: August 4, 2016

/s/ Andre C Wallace  
Andre C, Wallace, #346096  
LCI. Wando-A#210  
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Pro-Se Petitioner

Mr. Andre C. Wallace # 3460 MATERIAL

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Ridgerville, SC. 29472

THE Honorable Daniel E. Shearer  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
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