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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marlboro County
Thomas A. Russo, Circuit Court Judge

ALFONSO STATON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

I. When Petitioner's appointed counsel failed to timely appeal the denial of a motion for a new trial based on after discovered evidence, did the PCR Court err in finding Petitioner was not entitled to a belated appeal?

II. When Petitioner was represented at trial by a part-time solicitor from the same circuit, did the PCR Court err in finding his right to due process was not violated?

STATEMENT

In November of 1994, the Decedent was found on partially submerged on Burnt Factory Road in Marlboro County. Her face hands and legs were bound with duct tape. According to the autopsy she had either been suffocated with duct tape or drowned. App. 261-262. On December 1, 1994, Johnny "Ringo" Pearson (Ringo) gave a statement to Jerry Starnes of the Marlboro County Sheriff's Department and Tommy Frazier of SLED. App. 2041-2050. In that Statement Ringo claimed to have duct taped the Decedent while having "kinky" sex and then accidentally pushed her off a bridge. App. 2049. Ringo was arrested however, was not declare competent to stand trial for over ten years. App. 1729, ll. 16-18.

About a week after Ringo was arrested, Petitioner was overheard stating that Ringo had duct taped the decedent but that Ring did not intend on killing the decedent he only planned on raping her. App. 252.

Investigators believed that the mentally incompetent Ringo was not acting alone. Although there was no physical evidence linking the killing to any other person, Marlboro County Law Enforcement with the assistance of Chesterfield County Law Enforcement and SLED began looking at people close to Ringo. Over the next several months more than 10 people were investigated as possibly involved. Two of the suspects were Danny Davis and Robert Ransom.

Danny was first questioned in January of 1995. At that time, he never mentioned Petitioner as being involved. App. 855, l. 24 – App 856, l. 13. On March 2, 1995, Danny Davis wrote a second statement. the following people were involved: Robert Graham; Ricky Stuckey; Joe Stuckey; an unnamed person who was related to Rickey Stuckey; Leroy Staton (Petitioner's

Uncle); and Danny's lifelong friend Robert Ransom. App. 2038-2039. However, this statement never mentions Petitioner. Danny Davis was arrested and charged with murder.

Eight days later, Investigator's armed with Danny's Statement confronted Danny's lifelong friend Robert "Bobby" Ransom. Ransom had already been implicated as a principal in the kidnapping, rape, and murder of Decedent. However, Ransom told a different story than the one relayed to investigators by Danny on March 2nd. Ransom mitigated his role as someone merely present for the rape and murder. App. 892-932.

Investigators then took Ransom to meet with his lifelong friend Danny at the Chesterfield County Jail. Ransom talked to Danny about what happened. Danny would later admit that he did not remember everything but Ransom told him what happened. App. 830, l. 16—App. 831, l. 18.

After speaking with Ransom, Danny gave a different statement that was in line with what he had been told by Ransom. Danny's March 10, 1995 statement mentions three other people that were previously not mentioned: Jeffrey Walls, Martin McIntosh and Petitioner. App. 855, l. 24 – App 856, l. 13.

Based on Ransom's story and the new version of Danny's statement, the State's theory of the case is that one or more of the co-defendants kidnapped the decedent. While being held, the State alleges that she was sexually assaulted.[1] At some point, she either died from suffocation or from drowning. Several days after being kidnapped, the State alleges that eight of the codefendants piled into a single car along with the decedent a drove her to a bridge on burnt factory road. App. 892-932.

[1] Petitioner was acquitted of the sexual assault.

Trial

Petitioner was indicted by the Marlboro County Grand Jury for murder, kidnapping, criminal sexual conduct in the first degree and criminal conspiracy. In March 1997, Petitioner was called to trial before the Honorable Edward B. Cottingham and a jury. For his trial Petitioner was represented by William B. Rogers. The State was represented by Ralph Wilson. Petitioner was tried jointly with Leroy Staton, Ricky Stuckey, Jeffery Walls, Robert Graham and Martin McIntosh.[2] Ringo was not tried with Petitioner[3].

This Court has made the following factual statement concerning the evidence presented at trial:

> State's case against [the codefendants] consisted primarily of the testimony from co-defendants, Danny Davis and Bobby Ransom.
>
> Davis and Ransom testified they observed Victim tied up and lying on a couch or bed during a cookout and party at two co-defendants' mobile home. Both accompanied several co-defendants on a trip to move Victim from the mobile home to an abandoned house. Ransom testified he was smoking marijuana and drinking creek liquor (a type of "white lightning" or moonshine) when several co-defendants arrived at his house the next night and asked him to join them on a trip back to the abandoned house. When he saw his visitors approaching, Ransom drank the remaining half of a pint of creek liquor he had been drinking so they would not ask him for any.
>
> Davis and Ransom testified Petitioner and another co-defendant were waiting when they arrived at an abandoned house where Victim had been left the previous night. Several unidentified co-defendants carried Victim, still bound by tape, to the car and put her in the back seat beside Ransom. Ransom testified he began "freaking out" when the "liquor hit [him]" and he begged them to stop Victim from "crying all over [him]," although she really was not. The eight co-defendants - including Davis, Ransom, and

[2] In 2004 Martin McIntosh's case was reversed. In 2007, he plead guilty to misprisonment of a felony and is currently not incarcerated.

[3] The State continued to seek the death penalty against Ringo. Ringo was declared incompetent until approximately 2007 at which time death was taken off the table and Ringo plead to 33 years. He was released in 2013.

[McIntosh]- rode in a single car to a bridge, where unidentified co-defendants placed Victim's body in the pond.

Davis and Ransom were cross-examined at length about their extensive history of alcohol and substance abuse. Davis testified he suffered brain damage from a traumatic head injury 10 years earlier, as well as anxiety, sleeplessness, and depression. He was a victim of child abuse and had extensively abused alcohol and illegal drugs for years. He testified he drank heavily every day during November 1994. His alcohol use caused him to forget events and confuse things. During his two-year incarceration preceding the trial, Davis testified he saw nonexistent shadows, heard "a lot of [nonexistent] voices," and talked with imaginary friends. He was taking anti-psychotic and anti-depressant medications during his incarceration and the trial.

Ransom testified he had been paralyzed from the chest down since 1983. In November 1994, he had been on a drinking binge for some three years and eight or nine months. He often blacked out and suffered from memory loss. He had been hospitalized at psychiatric facilities three times before 1996 for abuse of alcohol and numerous drugs, including Valium, Xanax, sleeping pills, amphetamines, powder cocaine, crack cocaine, acid, marijuana, and "huffing" gasoline. He drank two quarts to a gallon of alcohol each week, including creek liquor.

Davis and Ransom testified on cross-examination they were good friends who grew up together. Davis often visited the reclusive Ransom at his house in 1994, and they saw one another frequently during a four-month period after the crime until their arrest. Police in March 1995 brought Ransom from another jail to see Davis in jail so Ransom could "confront" Davis about the crimes. The two confessed to police the same afternoon at the same location, and, for the first time, Ransom implicated Petitioner.

At his guilty plea prior to [Petitioner's] trial, Davis stated, "a lot of this stuff I can't quite remember, but my co-defendant [Ransom] has - he's told me everything." While insisting he was trying to tell the truth at [Petitioner's] trial, Davis testified he had changed his story "a lot of times," although not every time he talked to police during fifteen to twenty interviews. He "told [police] what they wanted to hear." In fact, he testified he no longer had an independent recollection of even being at the bridge that night, but based his trial testimony on some other source.

State v. McIntosh, 358 S.C. 432, 595 S.E.2d 484 (2004).

Petitioner was convicted of murder, kidnapping, and conspiracy. Petitioner was acquitted of criminal sexual conduct. Petitioner was sentenced to life in prison. Petitioner appealed. Petitioner's codefendants were also convicted of murder.

Danny Davis and Robert Ransom were sentenced to 15 years for voluntary manslaughter. Martin McIntosh would have his conviction reversed and plead to 15 years under Alford.

Post-Trial History

For his direct appeal, Petitioner was represented by Joey Savitz. The State was represented by Creighton Waters. The South Carolina Court of Appeals affirmed in an unpublished opinion. Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. Certiorari was denied on November 21, 2002. App. 2143.

On July 10, 2003, Petitioner filed an application for Post-Conviction Relief (PCR). For his PCR, Petitioner was represented by Candice Lively and the State was represented by Karen Ratigan. An evidentiary hearing was convened on January 11, 2005, before the Honorable John Milling. On September 16, 2005, Petitioner's PCR was dismissed. App. 2143-2144.

Petitioner appealed the denial of his PCR application. For the appeal of his PCR Petitioner was represented by Wanda Carter, and the State was represented by Karen Ratigan. The Supreme Court of South Carolina granted certiorari on two issues. While his PCR appeal was pending Petitioner wrote Solicitor Rogers to get several documents in his file. Rogers sent him a memorandum stating that the he had been relieved of counsel by Judge Smoak but then placed back on the case by Judge Cottingham. In this memorandum, it states the following:

> [Solicitor Rogers] was informed that Judge Smoak wanted me to inform all of [his] criminal clients that [he] would be unable to represent them because of a conflict of interest. [He] the then notified [his] clients of [that] decision.

App. 2054-2055.[4]

On February 23, 2009, this Court dismissed Petitioner's first PCR appeal as improvidently granted. App. 1974-1975.

On May 6, 2009, pursuant to Rule 29(b), SCRCrimP, Petitioner filed a Motion for a New Trial Based on After-Discovered Evidence (hereinafter 29(b)). Petitioner alleged both the conflict of interest and Ringo's statement. For this hearing, Petitioner was represented by the Fourth Circuit Public Defender Office.

The 29(b) was heard in October 2011 before the Honorable Howard P. King. Will Grove represented Petitioner at the hearing. While at the hearing the state asserted the following:

> They went back on record before Judge Smoak, who was the chief administrative judge at that time in Dillon. He then advised on record that he was not relieving Mr. Rogers for Mr. Staton because there was no conflict of interest.

App. 1958, ll. 22-25. However, not evidence was produced to Judge King to support this claim. The 29(b) was denied by written order dated October 19, 2011. This order was mailed to Petitioner on January 4, 2012. App. 1978. Petitioner filed a motion to reconsider. On January 15, 2012, Judge King denied the motion to reconsider. App.1981.

Petitioner filed a notice of appeal on February 13, 2012. Petitioner's claim was appeal was dismissed by order dated March 27, 2012. App. 1983. Petitioner filed a petition to reinstate the appeal on April 3, 2012.

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[4] Petitioner Alleged that this is incorrect. In his motion to set aside the Conditional Order of Dismissal, Petitioner alleged Solicitor Rogers is uncertain if he ever informed Petitioner about the nature of the conflict. App. 2021. If a hearing on the merits would have been granted, Petitioner would have called Mr. Rogers to refute this claim. App. 2124-App 2125.

On August 28, 2012, Petitioner filed a federal habeas petition. Pursuant to *Rhines*,[5] The Honorable Kaymani West has recommended that the habeas be held in abeyance pending the outcome of Petitioner's state claims. App. 2059-2087.

On September 7, 2012, South Carolina Court of Appeal denied Petitioner's Petition to Reinstate the Appeal. Two weeks later, on September 21, 2012, Petitioner filed a Petition for Writ of Certiorari to this Court. In that petition, Petitioner again requests that Counsel be appointed. The State filed a return on October 30, 2012. This Court denied Petitioner's Petition for Writ of Certiorari.

On April 26, 2013, Petitioner filed the current PCR action alleging that 29(b) Counsel was ineffective. Petitioner's PCR also alleges that 29(b) Counsel was ineffective in failing to file an appeal of the 29(b) and request a belated 29(b) appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) and *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 2002.

On October 22, 2013, the Honorable J. Michael Baxley issued a Conditional Order of Dismissal. Petitioner responded to the Conditional Order of Dismissal and Judge Baxley directed the parties to schedule a hearing on Petitioner's motion to amend the pleadings and motion to set aside the conditional order of dismissal. App. 2142.

The case was called before the Honorable Thomas Russo. At the hearing the parties agreed not to call any witnesses. Respondent explained to the Court that the hearing was concerning Petitioner's Motion to Amend the PCR and Respondent's Motion to Dismiss. App. 2112—2113. Petitioner asked for a full hearing. App. 2122. Petitioner also specifically asked for the remedy of a belated appeal. App. 2120

[5] *Rhines v. Weber*, 544 U.S. 269 (2005).

Petitioner explained that he had not subpoenaed witnesses because the matter before the court was only on a motions to amend and a motion to dismiss. App. 2124. Respondent agreed that the hearing was just scheduled for a motion hearing. App. 2125.

Ruling from the PCR Court

In the Final Order of Dismissal, the Court ruled on the following motions:

A) Petitioner's Motion to Amend

B) Petitioner's Motion to Set Aside the Conditional Order of Dismissal.

App. 2145. However, in ruling on the Motion to set aside the Conditional Order of Dismissal, the Court found that "[Petitioner] and Respondent fully argued the merits of each of these allegations at the hearing and presented relevant exhibits." App. 2145.

Concerning 29(b) Counsel's failure to timely file an appeal, the PCR Court found that Petitioner was not entitled to effective assistance of Counsel for post-trial motions. App. 2146 Therefore, the PCR Court denied Petitioner a belated appeal on this issue.

The PCR Court also found that Petitioner was procedurally barred from re-litigating the conflict of interest issue because it was previously raised in the Rule 29(b) motion. App, 2147. However, the Court also found that there was no conflict of interest. App. 2147.

In summarily dismissing the case the PCR Court noted the following:

> Based on the foregoing, the Court finds [Petitioner] has not shown a sufficient reason why the application was not untimely, successive, and failed to state a cognizable claim. [Petitioner] has not established any constitutional violations or deprivations that would require this Court to grant his application, nor has he presented sufficient reasons why Judge Baxley's conditional order should not become final. Therefore, for the reasons set forth above and in the Conditional Order of Dismissal, the Court finds this application for post-conviction relief must be denied and dismissed with prejudice.

App. 2151. This appeal follows.

ARGUMENT

I. When Petitioner's appointed counsel failed to timely appeal from the denial of a motion for a new trial based on after discovered evidence, the PCR court erred in finding Petitioner was not entitled to a belated appeal.

Relevant Facts

Petitioner's Rule 29(b) Counsel did not file a timely appeal of the Judge's ruling to deny the Motion for a New Trial Based on after discovered evidence. On October 19, 2011, Judge King issued an order on the Rule 29(b). In a letter dated January 24, 2013, Rule 29(b) Counsel stated the following:

> I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present inform of a judge for consideration Once I have it scheduled, I will let you know if that motion fails then an appeal of that motion can be filed.

App. 2036.

In his response to the conditional order of dismissal, Petitioner asserted that Austin[6] should be extended to the context of Petitioner's Rule 29(b) hearings where counsel has been appointed counsel but fails to appeal.

Citing to Clinkscales,[7] The PCR Court found that Petitioner was not entitled to effective assistance of Rule 29(b) counsel and denied Petitioner's request for a belated appeal.

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[6] Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

[7] State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (S.C. 1995) ("We hold that Clinkscales was not entitled to counsel. Clearly, the New Trial Motion on the ground of after-discovered evidence was not heard and determined at a critical stage. Moreover, the record does not contain evidence which would support a New Trial for after-discovered evidence.").

Discussion

Even in PCR where there is no right to effective assistance of counsel, this Court has fashioned a remedy to ensure appellate review. See Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin establishes a cognizable PCR claim for ineffective assistance of counsel when counsel fails to seek appellate review and the applicant had a right to assistance of Appellate Counsel. See id. 305 S.C. at 453, 409 S.E.2d at 396. In Austin, this Court held the following:

> In applying Anders on PCR, we have recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR. Supreme Court Rule 50(6) expressly provides for the appointment of counsel to seek appellate review on PCR.
>
> Because petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which has occurred, we find his allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance.

Id., 305 S.C. at 454, 409 S.E.2d at 396.

Similarly, Petitioner had the right to appeal the denial of his 29(b). *See* S.C. Code § 14-3-330 (2)(b) (recognizing appellate jurisdiction for the denial of a motion for a new trial). Since he had been declared indigent and appointed counsel for his 29(b) hearing, Petitioner would have been appointed counsel for his 29(b) appeal. See Rule 602 (e)(3), SCACR (noting that when counsel is appointed and files a notice of appeal counsel is immediately relieved and Appellate Defense is appointed); see also, S.C. Code § 17-3-360 (C) (Noting the duties of appellate defense to represent persons "who files a Notice of Intention to Appeal or Desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other or other involuntary placement in a state, county or municipal facility"). The Fourth Circuit Public Defender was appointed to represent Petitioner for his 29(b).

Had 29(b) counsel properly filed a notice of appeal, Petitioner would have been entitled to appellate counsel to assist with the 29(b) appeal. With the exception of one[8] municipal court case, all[9] 29(b) appeals in the past 20 years have been handled by counsel. See e.g., State v. Koon, (2013-UP-216) (Mr. Koon was represented by Appellate Defender, Robert Pachak); *State v. Harris*, 391 S.C. 539, 706 S.E.2d 526 (2011) (Mr. Harris was represented by Appellate Defender Celia Robinson); State v. Bennett, (2011-UP-208) (Mr. Bennett was represented by Appellate Defender Elizabeth Franklin-Best); State v. Watrus, (2010-UP-562) (Mr. Watrus was represented by Appellate Defender Celia Robinson); State v. Kromah, (2009-UP-322) (Ms. Kromah was represented by Tara Shurling); State v. Miller, (2009-UP-236) (Miller was represented by Appellate Defender Elizabeth Franklin-Best); State v. Jarell, (2009-UP-074) (Ms. Jarrell was represented by Appellate Defender Katherine Hudgins); State v. Rollins, (2009-UP-264); *State v. Mercer*, 381 S.C. 149, 672 S.E.2d 556 (2009) (Mr. Mercer was represented by Appellate Defender Robert Dudek and other appointed counsel); State v. Franklin, 341 S.C. 555, 534 S.E.2d 716 (2000) (Mr. Franklin was represented by Dan Stacey of Appellate Defense); State v. Needs, 333 S.C. 134; 508 S.E.2d 857 (1999) (Mr. Needs was represented by Appellate Defender Bob Dudek and Joseph Smith Deal); State v. Needs, 334 S.C. 618, 513 S.E.2d 98 (1999) (Mr. Spann was represented by John Blume and Diana Holt); State v. Taylor, 333 S.C. 159, 508 S.E.2d 870 (1998) (Mr. Taylor was represented by Appellate Defender Robert Dudek); State v. Clinkscales, 318 S.C. 513, 458 S.E.2d 548 (1995) (Mr. Clinkscales is represented by

[8] City of Columbia v. Assa'ad-Faltas, (2007-UP-193). However, Petitioner submits that Dr. Faltas's case presents and anomaly. See State v. Rau, 320 S.C. 385, 465 S.E.2d 370 (Ct. App. 1995) (Appellate Defense generally will not accept magistrate and municipal appeals).

[9] This is based upon Counsel's search of Lexis Advance.

Appellate Defender Anne Pearce[10]); State v. Freeman, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995) (Mr. Freeman was represented by Ed Clement and others); State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993) (Mr. Prince was represented by Ray Coit Yarborough and others). Additionally, nearly all of these cases involved attorneys from the office of appellate defense. Moreover, in Jarrell, the Court of Appeals conducted an Anders review, further signifying that defendants in appealing the denial of a Rule 29(b) motion are entitled to counsel. See Austin, supra. Clearly, Petitioner would have been entitled appointed counsel had the notice of appeal been properly filed.

Therefore, the reasoning this Court applied in Austin is equally applicable in Petitioner's case. Petitioner is being denied his right to appeal a is 29(b) hearing by no fault of his own. His appointed attorney failed to file his appeal. Therefore, Petitioner humbly ask the Court to "craft a remedy to correct the unfairness which has occurred." See Austin, 305 S.C. at 454, 409 S.E.2d at 396.

Belated Appeal Issues Presented

Pursuant to Rule 243(i)(2), SCACR, if a belated appeal was granted of the Order Denying Motion for a New Trial, Petitioner would argue the following Issues:

A) The 29(b) Court erred in applying the five factor's test described in Spann[11] to a newly discovered evidence claim based on a conflict of interest.

B) The 29(b) Court abused its discretion in finding that Petitioner was aware of the conflict of interest in 1995, when there is no evidence to support this finding.

[10] It is important to note that this is the case the PCR Court relied upon in denying relief.

[11] State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1998).

C) The 29(b) Court erred in charging Petitioner with the knowledge of the conflict of interest based on his trial attorney's knowledge where there is no indication that Petitioner was informed of the conflict until 2007.

D) The 29(b) Court erred in finding that Petitioner failed to act on the knowledge of the conflict of interest in a reasonable time, given the only evidence in the record is that Petitioner learned of the conflict in 2007 and filed his motion for a new trial within three months of the dismissal of his first PCR appeal.

II. When Petitioner was represented at trial by a part-time solicitor from the same circuit, did the PCR Court err in finding his right to due process was not violated.

The right to conflict-free representation derives from the Sixth Amendment as applied to the states by the Due Process Clause of the Fourteenth Amendment. The right to effective assistance includes the right to conflict free representation. See Rubin v. Gee, 292 F.3d 396, 401 (4th Cir. 2002). In Glasser, the United States Supreme Court held the following:

> "To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for Kretske is at once difficult and unnecessary. The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

Glasser v. United States, 315 U.S. 60, 75-76, 62 S. Ct. 457, 467 (U.S. 1942). When Counsel timely objects to a conflict of interest, the defendant need not show prejudice to warrant reversal. Holloway v. Arkansas, 435 U.S. 475, 490, 98 S.Ct. 1173, 1181-82 (1978). An "attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial." Id., 435 U.S. at 485, 98 S. Ct. at 1179 (U.S. 1978).

It is hard to imagine a more egregious conflict of interest than to have the prosecuting attorney, represent a criminal defendant in the same circuit that he tries cases. See Zuck v. Alabama, 588 F. 2d 436 (5th Cir. 1979) (finding an actual conflict of interest when defense counsel's law firm had previously represented the prosecutor on an unrelated civil matter); cf. Young v. United States, 481 U.S. 787 (1987) (finding an actual conflict of interest when appointed prosecutor also represented another party). Certainly, Solicitor Rogers would have been hesitant to present the reasonable alternative defense that the law enforcement he worked with coerced his testifying codefendants. To adequately attack local law enforcement for the overly zealous interrogation techniques used in this case would undermine all the cases he was prosecuting.

This conflict is evidenced by Solicitor Rogers hesitation cross examine officers is evidenced by brevity of his cross-examination of the law enforcement officers that testified. Despite the police induced collaboration of Danny Day and Robert Ransom, Solicitor Rogers did not attack the methods used by law enforcement in obtaining the only two witnesses that implicated Petitioner. In the nearly 1700 pages of trial transcript, eight (8) law enforcement witnesses testified for the State. Law enforcement testimony accounted for approximately 130 pages of trial transcript. Solicitor Rogers only cross examined three (3) of the law enforcement witnesses. The sum of all three of these cross-examinations would fit on one page and ten lines of transcript. App. 293 19, l. 25 – App. 294, l. 9; App. 334, l. 21 – App. 335, l. 16; App. 383, ll. 7-14. The record shows that Solicitor Rogers avoided attacking law enforcement. Had the case not been summarily dismissed, Petitioner would have been able to question Mr. Rogers more fully on the conflict. App. 2124-2145. This decision not to attack law enforcement is evidence

that the conflict of interest was effecting Trial Counsel's representation of Petitioner's right to Due Process was violated.

CONCLUSION

Petitioner respectfully requests this Court grant certiorari to consider this case.

Respectfully submitted,

Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

ATTORNEY FOR PETITIONER

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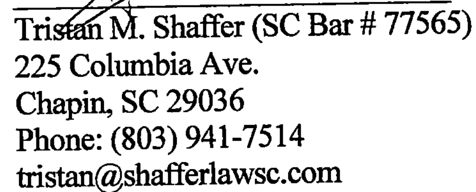
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Johanna Valenzuala on the date below.



Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

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