

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable D. Craig Brown, Circuit Court Judge

Certiorari to Aiken County

Honorable D. Craig Brown, Circuit Court Judge

Dennis F. Sanders

PRO. SE. PETITIONER,

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

APPELLATE CASE NO 2015-002204

APPELLATE CASE NO 2015-002205

PRO. SE. PETITION
FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

DENNIS F. SANDERS, #245612

McC.I. F1-150 B

386 REDEMPTION WAY

MCCORMICK, SC 29899

- PRO. SE. PETITIONER

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INTRODUCTION

. I, Dennis F. Sanders, respond to the September 7, 2016 Notice letter of S.C. Supreme Court. In both Appellate Case No. 2015-002204 and Appellate Case No. 2015-002205 (consolidated by Notice letter dated 9-7-2016), by establishing that the Petition 'To Be Relieved As Counsel' [filed by: John H. Strom, Attorney for Sanders in Appellate Case No. 2015-002205 ; David Alexander, Attorney for Sanders in Appellate Case No. 2015-002204] should be Denied, to allow Appellate Counsel opportunity to formally Brief preserved issues for this Court's review- notably , the PCR Court accorded undue weight of credibility to Sander's Plea Counsel John Carrigg, although Carrigg clearly abandoned a defense against unlawfully obtained drugs being basis of any charges against Sanders due to seeking to talk to Sanders.

Outlined below, Sanders will set forth two (2) Brief Arguments of why this Court should Reverse the noted PCR Court's final decision rendered on December 16, 2015, or , alternatively deny Appellate Counsel's Petition To Be Relieved As Counsel and direct them to formally adjudicated claims within Sander's PCR action.

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ARGUMENTS

.1.- The PCR Court committed Reversible Error by according undue weight of credibility to Plea Counsel during Carrigg on claim of Plea Counsel Carrigg's failing to properly prepare, being based upon Sander's unrefuted PCR testimony.

(a) - Sanders testifying in PCR to support Ineffective Plea Counsel claim of Plea Counsel Carrigg "... fail[ing] to properly prepare..." see APP.Pg.45, No.(5) 10(a),11(a) (quoted in part), outlined, with reference to the noted Search Warrant for the truck , that the initial reason for wanting to search the truck was not included in the warrant... see APP.Pg. 98, ln.(s) 7-24 (emphasize ln.(s) 14-17) Plea Counsel Carrigg's own PCR testimony was clear that he thought the search warrant of the truck was weak... see APP. Pg.142, ln(s) 4-13, yet none of the record reveals Plea Counsel Carrigg preparing a defense based upon the premises supporting why the search warrant was weak to Plea Counsel Carrigg; thus, enough proof to assert that if Plea Counsel Carrigg did in fact conduct a factual and legal investigation into the search warrant for the truck (that he thought was weak), he should have found the U.S. Supreme Court's decision in Franks v. Delaware, 438 U.S. 154, 98 S.CT. 2674, 57 L.Ed 2d 667 (1978) where he could've challenged the admissibility of all evidence seized from the truck based upon fundamental defect in premises supporting search warrant at trial- and a recent decision from the S.C. Court of Appeals illustrates that if a search warrant is challenged under Franks, regarding a substantial omission, and found to lack sufficient

facts of criminal activity , all evidence derived there from "... must be suppressed". see State v. Robinson, 408 S.C. 268, 278, 758 S.E.2d 725,730 (S.C. App. 2014).

Plea Counsel Carrigg's failure to pursue suppression of evidence derived from an otherwise invalid search that he admitted "was weak", provides support for Sanders' claim that Plea Counsel Carrigg failed to properly prepare.

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(b)- The PCR Court overlooked Sanders' unrefuted testimony to accord Plea Counsel Carrigg more credibility than Sanders, see... APP. Pg. 342, ln(s) 12-13 based on Plea Counsel inaction on noticed weakness in premises of search warrant, noted above, to seek out speaking with Sanders (which, in essence, in no way, save notice, deals materially with Counsels duty to exercise such skill and knowledge to protect Sander's fundamental right to remain at liberty until proven guilty of a criminal offense by sufficient evidence, beyond reasonable doubt- mandating any reasonable counsel to file all necessary dispositive motions where official misconduct (here, police officers using fruits of an unlawful search warrant to support plea offer(s) to make Sanders believe he would get LWOP if he declines entering plea offer) is supported by evidence see...APP. 342, ln(s) 13-16... In other words the PCR Court found Plea Counsel Carrigg's desire to speak with Sanders as more important than pursuing suppression of the unlawfully obtained evidence used to support charges against Sanders- which Plea Counsel Carrigg could've raised without speaking to Sanders at all, especially considering that household/ goods / items did not imply any criminal conduct was on-going within the vehicle itself. see, e.g, State v. Bullington, 802 N.E.2d (Indiana 2004) (Court found lack of probable cause to search truck based on an alleged purchase of precursor, where no prudent person would believe that a violation of law has

or is occurring regarding the truck) ; accord People v. Kazmierski, 25 P.3d 1207 (Colorado 2001) (Finding "... that defendants purchased precursors to methamphetamine production was, without more, an insufficient basis to search the defendants home.")

(c)- Finally, because Sanders' PCR testimony is unrefuted, that the initial reason for wanting to search the truck was not included in the warrant see... APP.Pg.98 ln(s) 14-17. and Plea Counsel Carrigg's PCR testimony of trying to contact Sanders see...APP. Pg. 143 ln(s) 4 to APP. Pg. 143, ln(s) 24 instead of pursuing suppression of the unlawfully obtained evidence, which supports charges of January 25, 2011 against Sanders, that Plea Counsel Carrigg acknowledged derived from a search warrant that "was weak" see...APP. Pg. 142,ln(s) 4-13, the PCR Court committed reversible error in according undue weight of credibility to Plea Counsel Carrigg, to ultimately deny PCR relief to Sanders- who, wanting to defend against State's charges, would've proceeded to trial and had the opportunity to move under Franks for suppression of evidence supporting the January 25, 2011 charge(s). Plea Counsel Carrigg was notably ineffective for abandoning a defense (suppression of evidence derived from a defective search warrant).

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.2- Appellate Counsel(s) Alexander and Strom should not be relieved as Counsel where the matters addressed in Sanders' Rule 59(e) Motion ... APP. Pg. 349 to 352... does not appear within the PCR Court's final order, see... APP.Pg.362-380; then meritorious claims so raised in the PCR proceeding and ruled upon by the PCR Court needs to be raised in this proceeding to be later exhausted if Sanders seeks to invoke 28 U.S.C. § 2254.

CONCLUSION

.WHEREFORE, as Sanders so moves in pro.se capacity, he prays that this Court Reverse the denial of relief in lower PCR Court; alternatively, this Court should Deny Appellate Counsel's Petition To Be Relieved As Counsel to have Appellate Counsel draft remaining properly reviewable PCR claims for review in this Appellate Court.

1s/ Dennis F. Sanders

Dennis F. Sanders, #245612

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386 Redemption Way

McCormick S.C. 29899

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RESPONDENT.

APPELLATE CASE NO. 2015-002204

APPELLATE CASE NO. 2015-002205

AFFIDAVIT OF SERVICE

I, Dennis F. Sanders, declare in the presence of the below-
signed Notary Public on below- noted date, that I did deposit
an Original Draft of my PRO. SE. Petition For Writ Of Certiorari
into the custody of the McC.I. Mail Room Clerk (below-signed
Notary Public) for said material to be immediately forwarded
by sufficient U.S. Postage to Julie Coleman, Esq., Ass't S.C.
Atty. Gen., P.O. Box 11549, Columbia , SC 29211, at same time
forwarding same to Clerk, S.C. Supreme Court, P.O. Box 11330,
Columbia, SC 29211 for filing.

1/ Dennis F. Sanders

Dennis F. Sanders, #245612

McC.I. F1-150 B

386 Redemption Way

McCormick, SC 29899

Sworn and Subscribed

to before me this

9th day of November, 2016

Michael Carmel

1/ [Signature]
Notary Public, South Carolina

* My Commission Expires: July-09-2026

STATE OF SOUTH CAROLINA

Dennis F. Sanders #245612
RHU-70

McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

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Daniel E. Shearhouse
Clerk for South Carolina Supreme Court
Columbia, SC 29211

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