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JAN 19 2017

Gregory Quinn Gathers # 161538, Q1-A-113

S.C. SUPREME COURT

Perry Correctional Institution

430 OAK ROAD

Pelzer S.C. 29669

January 12, 2017

Daniel E. Shearouse

Clerk of Court

Re Gregory Gathers v State

Appellate Case No 2016-000993

Enclosed please find a copy of pro se response
to the petition filed by my counsel. The issues
that I believe the Court should consider

Thank you I Am yours truly

Gregory Gathers 161538, Q1-A-113

Pro se Petitioner

Perry Correctional Institution

430 OAKLAWN ROAD

Pelzer S.C. 29669

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P.C.I. MAILROOM

State of South Carolina
In the Supreme Court

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JAN 19 2017

S.C. SUPREME COURT

Certiora to Charleston County
Honorable Deodre Jefferson
Circuit Court Judge

Gregory A. Gathers petitioner
-vs-
State of South Carolina Respondent

Appellate Case No 2016-000-993

Pro se Brief for Writ of Certiorari

Gregory Gathers
Pro Se petitioner
South Carolina Dept. of Correction
Perry Correctional Institution
430 Oaklawn Road
Pelzer S.C. 29669

(1)

Introduction

petitioner Gregory A. Gothers was convicted of murder, and sentence to life w/o parole, petitioner is currently serving his sentence at Perry Correctional Institution in Pelzer SC, petitioner submits pro se response.

Statement of Facts

on or about June 6 2010, the petitioner Gregory Gothers was on his way to a local corner store, to make a purchase then call a cab from the Liberty Hill Community of North Charleston SC. while enroute to the store, petitioner was approached by Renea Alvarez. (victim in the case) MS Alvarez ask the petitioner if he had any money and if he wanted to have a good time with her. Mr Gothers said yes to both questions. The victim told Mr Gothers to get some drugs and come to her apartment across the street, Mr Gothers agreed and did so. while at the apartment, Mr Gothers and the victim did drugs and has sex several
(2)

times during the course of the night Mr. Gathers blacked out during the night and was awakened by cell phone alarm about 4:30 AM and started getting dressed. While getting dressed Mr. Gathers noticed money missing from his pockets, and asked the victim about it. Ms. Alvarez stated I did not take your money. Ms Alvarez and Mr Gathers then started to argue over the money and a fight started. Mr Gathers punched Ms Alvarez in the nose and it started bleeding. Ms Alvarez then said okay I'll give you your money back it is in the living room. Once in the living room Ms Alvarez acted as if she was getting the money from out of the sofa cushion, but she did not. Then Ms Alvarez stated ok I got it stood up took a couple of steps into the kitchen. Ms Alvarez then grabbed a large knife from a butcher's block on the kitchen counter. Ms Alvarez came at Mr Gathers with the knife trying to stab him. Ms Alvarez and Mr Gathers struggled over the knife. Mr Gathers grabbed Ms Alvarez by the wrist and ⁽³⁾ was able to get a hold

of the knife handle. The knife then broke in two. Mr. Gathers had the handle of the knife and Ms Alvarez had the blade of the knife. Ms Alvarez then again tried to stab Mr Gathers with the blade of the knife. To avoid getting stabbed or getting seriously hurt. Mr Gathers punched Ms Alvarez, and she fell back hitting her head on the kitchen counter, she fell on the floor. Mr. Gathers then again asked Ms Alvarez for his money and she stated, I don't have it any more. Mr. Gathers then told Ms Alvarez. I'll be back to get my money and left her apartment. See T.R. p. 439- T.R. p. 444 line 12.

(4)

ISSUES Presented.

- 1) Did the p.c.R. Court erred in denying petitioner relief where trial Counsel failure to request the Charge of Involuntary manslaughter as a lesser included offense where evidence was presented violate petitioner Constitutional right? see T.R. p. 443, line 13 - T.R. p. 444, line 9.
- 2) Did the p.c.R. Court erred in denying petitioner relief where trial Counsel failure to object trial Court Jury Charge of malice, violate petitioner's Constitutional right? see T.R. p. 523, line 11 - T.R. p. 525, line 12.
- 3) Did appellate Counsel failure to argue on Appeals (Direct Appeals) whether trial Court erred in refusing to charge the Jury on the requested charge of Self Defense, violate petitioner's Constitutional right?
- 4) Did p.c.R. Court failure to allow petitioner the right to present his issues on the witness stand violate petitioner's Constitutional right? (5)

Issues presented

5) Did Law enforcement investigators, (North Charleston Police Department) Violate petitioner's Constitutional rights?

6) Did trial Counsel failure to file pretrial Motion Pursant to SC. Code 16-11-410-450 before requesting the Charge of Self Defense, Violate petitioner's the right to equal protection of the Law and immunities, and Violate petitioner's 6th and 14th amendments to the U.S. Constitution?
See T.R. p. 535, line 9 - T.R. p. 541, line 13.

(6)

Argument (I)

Did the p.c.R. Court erred in denying petitioner relief where trial Counsel failure to request the charge of Involuntary Manslaughter as a lesser included offense where evidence was presented violate petitioner's Constitutional rights?

Involuntary manslaughter is a lesser included offense of murder, only, if there is evidence the the death or the killing was unintentional. In State vs. Picken, 320 S.C. 528, 466 S.E. 2d. 364 (1996). Evidence of a struggle between the defendant and the victim supports submission of an involuntary manslaughter charge. In Casey vs. State 305, S.C. 445, 409 S.E. 2d. 391 (1991) Here there was a weapon (knife). In the petitioner's case, the fact that the victim's injury was consistent with the defendant testimony, while the victim had the blade of the knife in her hands, and the petitioner punched the victim to avoid getting stabbed is not over whelming evidence that the petitioner intentionally killed

(7)

Further evidence shows that the petitioner punched the victim while she still had the blade of the knife in her hands, during the struggle of the weapon, and the victim fell hitting her head on the kitchen counter may also support a charge of an accident where the petitioner punched the victim in self defense. IN the case Burris vs. State 334 S.C. 256, 513 S.E. 2d. 104 (1999) Here the evidence show the victim was the aggressor by grabbing the knife from the counter and trying to stab the petitioner. After the fussing and fighting had stopped, and the victim said she was going to give the money back. This evidence along with the evidence that had to defend himself from the victim in self defense and the victim fell hitting her head, supports both the charges of an accident and self defense. See Tr. p. 443, lines 13-25.

(8)

Conclusion

Petitioner clearly believes his rights have been violated, by p.c.r. Court failing to grant relief for ineffective assistance of counsel for failure to request the charge of Involuntary manslaughter as the lesser included offense, where evidence was presented to support the charge. Petitioner respectfully request that this Court grant petitioner relief in these matters. Petitioner prays for relief or reversal and further proceeding consistent with these opinion.

Gregory Mathers
Gregory Mathers
Petitioner
Ferry Correctional Institution
430 Oaklawn Road
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(9)

II

Did the PCR Court err in denying petitioner relief, where trial counsel failure to object to trial court jury charge of Malice violate petitioner Constitutional right? See T.R. p. 522
- T.R. p 525, line 12.

Petitioner states a 16th amendment violation, because, petitioner believes the charge to the jury was unconstitutional and deprived him of a fair trial. Petitioner believes it is an error by the trial court when the jury is asked to consider a lesser included charge of murder or a defense. Petitioner's assertion the permission inference charge violates our common law and our constitutional prohibition against charging the jury on the facts. IN the State vs. Belcher 385, S.C. 597, 602-08, 685 SE 2d 802, 804-08 (2009). However currently the use of a deadly weapon implied malice instruction has no place in a murder prosecution where evidence is presented that would reduce, mitigate, or excuse or justify the killing. Id. at 610, 685, SE. 2d. at 809. Noting this decision "represented a clear break from our modern precedent." The Belcher court held that

(10)

It would apply to all cases which are pending on direct review or not yet final where the issue is preserved. In the case State vs. Shawn Antonio Miller 725, S.E.2d. 724 The Court of appeals of this state reversed and remanded for a new trial, because the trial court erred in instructing the jury that it could infer malice from the use of a deadly weapon, despite the presentation of evidence that would lessen, mitigate, reduce or justify the offense.

Conclusion

In the petitioner case trial court committed the same err. petitioner believes his Constitutional rights have been violated and seek relief from this court, and further proceeding consistent with opinion.

~~Gregory Brothers~~

Gregory Brothers

petitioner

Perry Correctional Institution

430 oaklaw Road

Peizer S.C. 29669.

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Argument III

Did appellate Counsel failure to raise on Direct appeal. Whether trial Court erred in refusing to charge the Jury on the requested charge of self defense, violate petitioner's Constitutional right.

A defendant is Constitutionally entitled to effective assistance of Counsel IN *Evitt vs. Luce*. However Appellate Counsel is not required to raise every non-frivolous issue that is presented by the records IN *Thrift vs. State*. Appellate Counsel has a professional duty to choose among potential issues according to their merits. IN *Jones vs. Barnes*, where the strategic decision to exclude certain issues on appeals is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of Counsel. *Gray vs. Greer*. Generally the presumption of effective assistance of Counsel will be overcome only when the alleged ignored

(12)

Conclusion

An attorney has a duty to consult with the applicant on matters of prosecution, counsel should not have advised applicant of post trial, procedures that might be pursued before or concurrent with any appeals. Counsel should have done what was needed to inform and advise defendant to make the applicant's ultimate choice a meaningful one. Counsel's evaluation of the case must be communicated in a comprehensive manner, before relinquishing responsibility for the matter. And for foregoing reason petitioner respectfully request that this court grants the petitioner relief in this matter, and a further proceeding consistent with this opinion.

Gregory Gathers

Gregory Gathers

Petitioner

Perry Correctional Institution

430 Oaklawn Road

Pelzer S.C. 29669.

Argument IV

Did p.c.R. Court Failure to allow petitioner the right to present his issues on the witness stand, violate petitioner's Constitutional rights?

Petitioner Gregory Q. Gathers, who was represented by Attorney Christopher Murphy, went before Honorable Judge Debra Jefferson, on December 14, 2015, for a p.c.R. hearing in which all issues were denied. Petitioner then filed for a Motion of Reconsideration for a New p.c.R. Hearing on or about 1-16 which was denied.

1) Petitioner was not allowed to present any issues, or show errors or prejudices on the witness stand.

2) Petitioner believes attorney waiver was Constitutionally defective.

Petitioner believes he was deprived of a fair hearing and ⁽¹⁴⁾ Due Process of Law

entitled to Challenge whether the advice he received from his attorney in agreeing to the waiver was constitutionally defective by Due Process of Law. Right to effective assistance of Counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. TX Moore vs. State, 732 S.E. 2d 871, for the purpose of the waiver provision of the Post Conviction procedure Act, the question whether there were special circumstances excluding a failure to raise issues in a proceeding becomes pertinent, only when there was an intelligent and knowing failure of the applicant to raise the issue.

Where the record affirmatively shows that there was not an intelligent and knowing failure to raise an issue, there is nothing to excuse, and the presentation of special circumstances has no relevance.

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In Wilson vs. State, 559 SE 2d the applicant's allegation for a p.c.r. is premised on fundamental and statutory rights. The p.c.r. Court must assume facts presented by applicant are true and view those facts in the light most favorable to the applicant.

Petitioner's p.c.r. attorney failure to allow petitioner's testimony on the witness stand in his p.c.r. hearing denied him a "full bite of the apple." The fundamental defect alleged are standard that requires establishment of a complete miscarriage of Justice and an omission inconsistent with rudimentary demands of a fair p.c.r. hearing.

It would be a denial of Due process not to give the applicant reconsideration for a new p.c.r. hearing.

II

Petitioner believes waiver was constitutionally defective.

In Sanders vs. State, 773 SE 2d 580, although a defendant may waive his right to collateral review, it is never the less still
(16)

issue are clearly stronger than those actually raised on appeal where allegation of ineffective assistance are made the question becomes whether trial counsel conduct, or Appellate Counsel conduct so undermine the proper functioning of the court process, that the appeals can not say or be relied on as having produced a just result. Appellate Counsel was deficient in failing to raise the more viable issue rather than the less viable.

Conclusion

For the foregoing reasons, petitioner respectfully request that this Court grants petitioner relief in this matter, and seeks further proceeding consistent with this opinion.

Gregory Gathers
Gregory Gathers
pro se petitioner

(17)

V

Did Law enforcement investigators (North Charleston Police Department) violate petitioner constitutional right?

Petitioner believes his 5th amendment to the United State Constitution has been violated, because his statement he gave to investigators can not said to be given of his freewill or self control. On about June 7, 2010, Gregory Gathers was arrested by North Charleston Police Department. When officer picked Mr. Gathers up from his residence, He was high on Cocaine, Alcohol and Marijuana. The arresting officers after arriving at Mr Gathers residence 2010 Gumwood Blvd, Saw Mr Gathers still drinking a beer. ONCE OFFICERS put Mr Gathers into the patrol Car en route to be questioned, the order of alcohol was so strong until officer had to put the windows down and comment on how much Mr Gathers had to drink. ONCE at the police station, just a few minutes later, Investigator (18) started questioning Mr.

Gathers right away, without a chance to sober up, or gain self control.

IN 1897 the court in Brown vs. United States said that the statement must be free and voluntary, not extracted by any sort of threat, violence, or promise however slight. A confession obtained from an accused who has been threatened can not be admissible. IN Hopt vs. UTAH ruled that a confession is not admissible if it is obtained by operation of hope or fear of the accused and in doing so deprives him of self control necessary to make it a voluntary statement. Being that petitioner was intoxicated and afraid the statement given to the North Charleston police investigators can not be said to have been given freely and voluntarily, or with self control.

Conclusion

petitioner clearly believes his 5th amendment to the United States Constitution has been violated, and respectfully request
(18)

that this Court grants petitioner relief in
this matter. Petitioner prays for relief, and
proceeding consistent with this opinion.

~~Gregory Gathers~~
Gregory Gathers
Pro Se Petitioner
Perry Correctional Institution
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29669

(20)

VI

Did trial Counsel failure to file pretrial Motion Pursuant to S.C. Code §§ 16-11-410-450, deprived petitioner of equal protection of the Law and immunities, violate petitioner's 6th and 14th Amendment to the U.S. Constitution? see T.R. p. 535, line 9 - T.R. p. 541, line 13.

Petitioner Claims that trial Counsel did not file pretrial motion, before requesting the Charge of Self defense was deficient. Even before petitioner testimony on the witness stand trial Counsel knew that petitioner would satisfy all 4 prongs of Self Defense.

- (1) The victim took from the petitioner person \$400 while petitioner was sleeping is what started the altercation.
- (2) After the altercation, and the victim said she was going to give the petitioner his money back, but did not instead. The victim grabbed a large butcher knife, from the kitchen counter trying to stab the petitioner, putting him in immediate danger of losing his life.

or sustaining serious bodily injury.

(3) Petitioner claims any one in the same circumstances would have given the same fatal blow to save himself from such bodily harm or losing his own life.

(4) The petitioner had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular case.

The petitioner also states, by him being an invited guest to this residence. The General Assembly intended to codify the Common Law Castle Doctrine in enacting the act, pursuant to § 16-11-420 Section (e) of S.C. Code of Law. The General Assembly finds that no person or victim shall be required to surrender his safety to a criminal, nor should a person or a victim be required to needlessly retreat in the face of intrusion or attack.

Conclusion

Petitioner believes his rights have been violated, because of Counsel's failure to file pre Trial motion pursuant to S.C. Code § 16-11-410-450. Petitioner respectfully request that this Court grants petitioner relief and prays for relief in this matter. Petitioner also seeks further proceeding consistent with this opinion.

Gregory Gathers
Gregory Gathers
pro se petitioner
Perry Correctional Institution
430 Oaklawn Road
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29669.

(23)

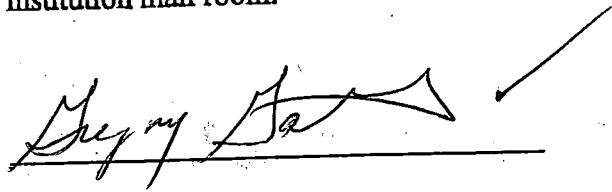
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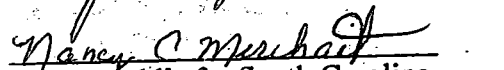
CERTIFICATE OF SERVICE

S.C. SUPREME COURT

I, Gregory A. Gathers, do certify that a copy of this enclosed document was mailed first class, postage prepaid, to the party named therein, on this date of to Clerk of Court P.O. Box 1130
Columbia S.C. 29301
It was mailed from the Correctional Institution mail room.



Sworn to before me this 13th
day of January, 2017


Notary Public for South Carolina
My Commission expires: 1-23-2023

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RC.I. MAILROOM