

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
Certiorari to Oconee County  
Honorable Edgar W. Dickson, Circuit Court Judge

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JAN 20 2017

S.C. SUPREME COURT

WILLIAM CANNON BRESHAM,

PETITIONER (Pro SE)

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000517

(Pro SE) BRIEF in RESPONSE to PETITION FOR  
WRIT OF CERTIORARI

January 17, 2017

S/ William Bresham  
William Cannon Bresham # 349177  
McCormick Correctional Inst.  
386 Redemption Way  
McCormick, S.C. 29899

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## ISSUE Presented

I. Did the PCR err in denying Petitioner relief where plea Counsel provided ineffective assistance by failing to provide physical copies of discovery materials to Mr. Gresham?

II. Under Rule 60(b) South Carolina Rules of Civil Procedure, will the Supreme Court Grant Petitioner an order to Remand case to PCR on grounds of Newly discovered evidence that will refute the Ruling that the State there is no evidence to indicate Petitioner was promised a 30 year Sentence?

## STATEMENT

On March 31, 2011, Petitioner pled guilty to burglary in the First degree, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, grand larceny over Five thousand dollars, two counts of kidnapping, and two counts of murder in front of Honorable R. Lawton McIntosh in Oconee County. On Jan. 6 2012 was sentenced in front of the Honorable Judge Welmaker. He was sentenced to the maximum on each term to run consecutive. App. 47 lines 7-9. W. Wilson Burt represented Petitioner, and Chrissy Adams represented the State.

The facts presented at the guilty plea by Adams are as follows: On April 19, 2010, Petitioner and Shawn Owens allegedly attacked Eloise Cortey at her home while she was working in the yard. App. 23 lines 14-20. She died from shock secondary to sharp force trauma App. 23 lines 19-20.

According to the prosecution, Petitioner and Owens then went into the Cortey home and began going through their belongings App 23 lines 21-22. Mrs. Cortey's husband, Jerry, arrived at the house along with Mrs. Cortey's sister, Audrey Scull. App. 23 lines 22-25. Petitioner and Owens allegedly held these two individuals against their will and at gunpoint for several hours. App 23 line 22 - App 24 line 5.

Mr. Cortey and Mrs. Scull were then taken to wooded area where Owens shot both of them App 24 lines 5-12. Mrs Scull passed away as a result to gunshot wounds to the head. App 24 lines 10-11.

Petitioner was indicted for the eight crimes to which he pled guilty by an Oconee County Grand Jury in August 2010. App. 92 - App. 107. Owens and Petitioner were codefendants. App. 3 Line 22. The State withdrew its intent to seek the death penalty in exchange for Petitioner's testimony against Owens. App. 4 lines 5-10.

Petitioner pled guilty to each charge. App. 19 line 6 - App. 20 line 5. Judge McIntosh accepted Petitioner's guilty plea App. 27 lines 10-16. Judge Welmaker sentence petitioner to the max eight months later App. 47 Lines 7-10.

Petitioner did not seek an appeal. According to his application for (PCR) filed on October 16, 2012, he was unable to comply with the ten day deadline regarding appeals. App. 31. Petitioner's application contained allegations of "ineffective assistance of Counsel, including a. failure to provide physical copies of discovery materials to Applicant", E. failure to object to the Solicitor's purported violation of the Plea agreement to make a recommendation to the mandating minimum term of imprisonment for murder." in which was raised at the PCR Hearing App. 83. The State made its Return on or about July 2, 2014. App. 38-42

An evidentiary hearing was conducted on July 28, 2014 before the Honorable Edgnar W. Dickson. App. 44 William Withmire, Jr. represented the State, and Jay Bagwell represented Petitioner. Petitioner and plea Counsel testified during the hearing.

On June 5, 2015, Judge Dickson issued his order denying Petitioner relief, finding that Petitioner had numerous instances to reasonably disengage from the murders. App. 82 - App. 91. The Order was filed on June 15, 2015.

On December 29, 2016 Petitioner received a letter from The South Carolina Supreme Court notice to file a (pro se) response within 45 days. This Pro SE Petition is as follows, with a motion for Newly Discovered evidence under South Carolina Rules Civ. Procedure Rule 60 (b).

I. THE PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance by failing to provide physical copies of discovery materials to Applicant.

### ARGUMENT

Petitioner alleges that through this whole ordeal he never received any Brady materials after requesting numerous times. Petitioner's ability to have this case file serves two purposes 1) It will assist him in making an intelligent decision to plead guilty or go to trial. 2) It is a fundamental right under the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution as well as Rule 5, Rule 6 S.C. Rules of Criminal Procedure. The failure of any party to disclose this information to the accused, violates the U.S. Constitution and prejudices the accused. Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1104, 10 L.Ed.2d 215 (1963). ("Its purpose is to ensure that a miscarriage of justice does not occur...")

Mr. Burr testifies at the PCR hearing, that "-- unless they really demand it, I'm reluctant to give volumes of information for them to take back to the cell block." App. 70 Line 10-12. Again he testifies "-- if they demand they want their own copy, obviously I give it to them." App. 70 Line 18-19. Obviously this is not what he does because (Applicant) Petitioner did not receive his Brady material (S.C.R. Crim. P. Rule 5.)

what's even more disturbing is that Petitioner's PCR Counsel also failed to provide him with discovery, and his transcript from the plea. Rule 71.1 (S.C.R. Civ. P.) (instruct parties to follow rules of Civil Procedure.) 17-27-150 S.C. Code 2008 (Rule for discovery process for PCR). Petitioner specifically requested for a continuance at the PCR, because he has yet been provided any transcripts. which was denied App 48 Lines 2-8, App 49 3-19, Ake v. Oklahoma 470 U.S. 68, 77 (1985) ("Fundament fairness entitles indigent defendants to an adequate opportunity to present their claims fairly within the adversary system.")

It is apparent by the record that Petitioner never recieved Discovery from Mr. Burr, nor recieved transcripts from Tjajay Bagwell. Both Counsel's prevented Petitioner from having sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the Petitioner is willing and able to do so. Therefore, the record supports that both counsels violated Petitioner's right to a fair trial, and effective assistance of counsel. The Fifth, Sixth, Fourteenth Amend. U.S.C.A. That along should be ground for a new Trial. Failure to Comply with Rule 407 Rules of Professional Conduct Rule 1.4 (Communication) (a)(B) violates the Sixth Amendment.

Supporting Petitioner's argument the Court Ruled in the "Order of dismissal" on June 5 2015 App. 82-91. In section A The Court preserved the issue and used case law to support that finding. In pertinent part:

"This Court finds counsel's rationale to safeguard Applicant's discovery materials from the prying eyes of opportunistic inmates in county detention to be a valid reason not to leave copies of the State's discovery with applicant." See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)

("where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of Counsel.")

That is not the situation in this case. Counsel never testified that it was a strategy. But did testify that, "if they demand they want their copy obviously I give it to them." So, Petitioner demand several times for a copy and he was not provided with one. The PCR courts Ruling is erroneous.

To sum it up, Petitioner has been denied his Procedural Due Process right to retain his copy of all evidence against him in the Rule 5 SCR Crim.P, SCRE. Petitioner has also been denied his Procedural Due Process right to retain his copy of both Transcripts prior to his PCR hearing. Petitioner was unable to full partecite in both proceedings as well having his Fifth & Fourteenth Americal rights violated by the State

Even until now the Sentencing Transcript that was convened on Jan. 6, 2012 in front of Judge Welmaker has yet been provided. It is not in the Appendix either. That is the most critical Transcript.

It is unable to say if Judge Welmaker determined that the Petitioner entered his plea and sentenced pursuant to Boyle v. Alabama. There is no record at this time.

In order for a defendant to enter a plea he must enter it knowingly, voluntarily, and intelligently, with the full understanding of the consequence of his plea. Boyle v. Alabama 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. (2d) 274 (1969). The record is incomplete.

Failure to provide Petitioner's request for his discovery prevented him from having made an intelligent decision to plead guilty. Rendering ineffective assistance of Counsel and prejudicing Petitioner.

Failure to provide Petitioner request for his plea transcripts and denying his request for a continuance at the PCR hearing prevented him from his "one bite of the apple" and rendered ineffective assistance of PCR Counsel. As it shows in the Record Tjay Bagwell has had no experience at Criminal law. App. 33 Line 25 - App. 34 Line 1-5. Petitioner was deprived of Due Process by both Counsels and therefore his Petition for writ of Certiorari should be granted.

II under Rule 60 (b) S.R.C.P., and 17-27-45(C) S.C. Code of laws.  
The Supreme should set aside judgement while the appeal is pending, allowing  
Petitioner to be remanded to PCR court on grounds of Newly Discovered  
evidence.

### Argument

On July 28, 2014 an evidentiary hearing was conducted before the  
Honorable Edgar W. Dickson. On June 5, 2015 Judge Dickson issued his order  
denying Petitioner relief finding that ("Applicant has failed to meet his burden  
to prove his guilty plea was rendered involuntary by counsel's performance on  
failing to ensure the Solicitor honored a purported promise to recommend the  
mandatory minimum on the murder charges.") App. 90

Petitioner's family hired The National Legal Professional Associates  
to research his case. On Jan. 28, 2016 Research Attorney Glenda Ferguson-  
Curry with the NLPA discovered critical evidence that will meet Petitioner's  
burden to prove he was promised the mandatory minimum. NLPA  
spoke with the lead investigator Captain Reid and he testified that  
Cnsy Adams did in fact promise Petitioner the minimum. See Att. 1  
(Newly discovered evidence-) This could not have been introduced at  
the PCR hearing. Petitioner recieved it after the PCR.

Petitioner alleges that this new evidence will refute the PCR courts finding (App. 90) showing the State breached the plea agreement, and Counsel was ineffective for failing to make sure the State honored that agreement. It is prejudicial to the Petitioner.

Petitioner asks the Supreme Court to allow him his "ONE-Full bite of the apple" SCRCiv.P. Rule 76.1. Petitioner request that the Court will set aside judgement, Stay the Appeal, and allow his case to be remanded to PCR to fully exhaust his issue.

Rule 60 (b) SCRCiv.P will allow petitioner to go back to PCR and have a chance to submit his newly discovered evidence and put Captin Reid on the stand to testify. Under Due Process of the Fourteenth Amend will allow Petition a fair trial.

Petitioner proof (newly discovered evidence) shows that he is entitled to a new trial or at the least a new PCR.

## Conclusion

For the foregoing reasons, Petitioner request that the Court grant his petition for writ of certiorari to allow full briefing on the issues, remand case for a new trial, or set aside and grant Petitioners Rule 60 (b) newly discovered evidence, remanding case to PCR.

January 17., 2017

s/ William Cresham  
William Cannon Cresham #349177  
(Pro SE) Petitioner

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v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO: 2016-000517

Designation of Matter to Be Included  
In the Record on Appeal (Writ of Certiorari) Pro SE

Petitioner proposes the following be included in the Record

1. Petition to grant Rule 60(b)2 NEWLY DISCOVERED EVIDENCE p.9-10
2. Memorandum From NLPA (newly discovered evidence) p.12
3. (Pro SE) Brief p.1-13

I certify that this designation contains no matter which is irrelevant to this Appeal.

January 17, 2017

S/ William Gresham  
William Gresham #34177  
McCormick Correctional

# NATIONAL LEGAL PROFESSIONAL ASSOCIATES

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## MEMORANDUM

TO: Research Attorney  
FR: HWR  
DT: 1/28/16  
RE: **William Gresham**

When preparing case evaluation one of the issues is that the defendant was promised a 20-25 year sentence but received a lot longer. He was told that if he would cooperate that the prosecutor would make certain that his sentence did not exceed 25 yrs. He agreed to cooperate but got hammered.

This can be verified by a statement from Greg Reed, who was the arresting officer. Reed can be reached at 864-638-4125, email [greed@oconeelaw.com](mailto:greed@oconeelaw.com).

Officer Reed spoke w/HWR on 1/14. He advised HWR as follows:

He was the officer who arrested the defendant and others who was participates in the incident. He was involved with the prosecution all the way thru the case. He was involved in the meeting between the defendant, his public defender and the prosecutor in which the prosecutor advised him that since he was not the number one guy and did not commit the murders that if he would agree to cooperate against the shooter that he would receive a sentence between 20-25 years. The defendant agreed upon this. Unfortunately nothing was put into writing by his public defender. But there was a clear understanding that if he agreed to testify he would have a recommended sentence of 20-25 years.

According to Officer Reed when the shooter heard about the fact that the defendant was willing to cooperate against him, he cut a deal and pled guilty. The prosecutor then had no use for the defendant and refused to honor the commitment that was made to the defendant.

We want to use this as an issue to try to get his sentenced reduced.

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Respondant

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a copy of the Petitioner's (Pro SE) Brief upon request of one copy by the Supreme Court has in fact been served to the Supreme, by depositing in the United States Postal Service, Postage Prepaid, (on January, 2017) and addressed to:

The Supreme Court of South Carolina  
Daniel E. Shearouse / Clerk of Court  
Post Office Box 11330  
Columbia S.C. 29201

Sworn and Subscribed Before me  
on this 17 day of January 2017

JC Franklin  
Notary Public for South Carolina  
My Commission Expires 12-16-2019

s/ William Cannon Gresham  
William Cannon Gresham # 349177  
(PRO SE) Petitioner

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