

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Pickens County  
Hon. R. Knox McMahon, Circuit Judge

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Trenton J. Black -- Petitioner,

-vs-

State of South Carolina -- Respondent,

Appellate Case No. 2016-001724

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PETITIONER'S PRO-SE JOHNSON  
PETITION FOR WRIT OF CERTIOARI

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Trenton J. Black  
SCDC# 282569  
Perry Corr. Inst.  
430 Oaklawn Rd.  
Pelzer, SC. 29669

Petitioner, pro-se

**RECEIVED**

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S.C. SUPREME COURT

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QUESTION PRESENTED

DID THE PCR COURT ERR IN NOT FINDING PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO OBJECT WHEN THE SOLICITOR MADE DELIBERATE FALSE FACTUAL STATEMENTS TO THE PLEA COURT THAT WAS "HIGHLY PREJUDICIAL" AND CLEARLY HAD THE IMPACT OF A HARsher SENTENCE BEING HANDED DOWN BY THE PLEA COURT?

STATEMENT  
OF THE  
CASE

Procedural History

Petitioner, Trenton J. Black was indicted in June of 2013 by the Pickens County Grand Jury for resisting arrest, resisting arrest with a deadly weapon; possession of a weapon during the commission of a violent crime; unlawful carrying of a pistol; and attempted murder, App.107; App.117-p.134.

On May 22, 2014 Petitioner entered a plea of guilty before the Honorable Edward W. Miller to all the charges indicted based on counsel's advice. Petitioner was represented by Steven Alexander and the State was represented by Samuel Tooker, App.1.

During the plea the solicitor made the following statement to Judge Miller. [Solicitor]: With regards to the facts, on September 10th, 2012 Deputy Scott Ticknor, who is here with us in court, was in plain clothes and executing warrants. And he noticed the Defendant, Mr. Black, at a gas station in Pickens County South Carolina.

Mr. Black was on a motorcycle that Deputy Ticknor [had heard] had been reported stolen, saw Mr. Ticknor [sic] on the motorcycle and then also had pending warrants that needed to be served on Mr. Black. Deputy Ticknor was inside the store, saw him through the window, told the store owner operator to contact law enforcement, put his badge outside his shirt, ran outside and told Trent to stop and that he was under arrest.

He approached the Defendant. As he approached the Defendant, knocked the bike over because the Defendant attempted to get on the bike and flee. When he knocked the bike over the Defendant then "struck Deputy Ticknor in the head with his motorcycle helmet." They ended up on the ground, and the Defendant pulled out a

gun trying to force the Deputy to let him go. The gun ultimately discharged hitting no one. Petitioner fired the gun again but it did not hit the deputy. Deputy Ticknor finally gained control of the weapon and a bystander assisted by putting Petitioner in a choke hold as other law enforcement came and detained Petitioner. App.9, 1.5-App.10-, L.21.

The solicitor further told Judge Miller that the State was "requesting forty years." The solicitor said that was twenty years for each time Petitioner fired the gun. The solicitor also told Judge Miller that this would have been a murder and death penalty case if the deputy had not put up a fight. Counsel sat mute during the solicitor's deliberate mischaracterization of the facts to Judge Miller. App.12, 1.17-App.13, L.12.

Deputy Ticknor told the court that Petitioner had sent him a few letters asking the deputy to forgive him, App.13, L.13-25. Counsel in mitigation told the court that Petitioner was high on drugs at the time and that Petitioner had psychological problems "for w while" but the mental evaluation showed that Petitioner was competent and responsible. Petitioner in mitigation told counsel he was trying to kill himself when he fired the gun during the incident. Counsel then asked the court for a sentence in the range of 10 to 20 years. App.5, L.19-24; App.15, L.22-p.16, L.19.

Petitioner openly apologized in court to deputy Ticknor, App. 17, L.15-25. After that Judge Miller sentenced Petitioner to 30-years for attempted murder; 10-years each on the two resisting arrest charges; 5-years on the weapons offense and 5-years on the receiving stolen goods and time served on the unlawful carrying charge. Sentences were ordered concurrent. App.21, L.4-p.22, L.16

Petitioner filed an application for post conviction relief on January 27, 2015 and the State subsequently filed their Return.

On April 18, 2016 an evidentiary hearing was convened before the Honorable R. KNox McMahon. Petitioner was present and was represented by R. Mills Arial. App.79.

Relevant Facts from PCR

During the PCR hearing Petitioner testified that the plea was set up as open pleas, 0 to 30; 0-10; 0-10; 2 to 10 and 0 to 5 and a 5. Petitioner testified that it was supposed to be [no] sentence recommendation and [ he would not hammer the facts] but the solicitor did and asked for 40-years, 20 for each time the gun went off.

Petitioner testified that the solicitor during the plea told the court that "Petitioner struck the officer with his helmet during the incident", but when you read the officer's incident report it clearly says "that he got his arm under my chin and pushed which caused him to come up fall off, fall away --, App.87, 4-17.

Petitioner further testified that counsel said the solicitor wouldn't hammer on the facts, but my thing is he stated everything as it was written in the police report, incident report, but he also stated that I struck the officer with my motorcycle helmet, that I hit the officer with my helmet, but the officer says in the incident report that we were tusslin and he pushed causin' the helmet to come up and fall away, App.89, L.9-16.

PCR counsel asked Petitioner "so you're saying the one major issue was that you struck the Officer, is that right? Petitioner

answered: "He's saying I hit him with the helmet, but I know I didn't, it's a false statement. PCR counsel asked "so that's what you're saying your attorney should have objected?" Petitioner replied, Yea, App.89, L.18-24.

PCR counsel asked did counsel speak anything to that or make any statements about that being in correct and Petitioner testified "no", App.90, L.1-6. also see Petitioner's exhibit 1, (Officer Ticknor's police/incident report)[App.51].

Counsel took the stand during PCR and PCR counsel asked "what about the statement that was made by the solicitor that "he struck the officer of Deputy Ticknor with his helmet, but it was not in the report, you remember anything about that? Counsel testified that he didn't remember whether it was in the report or not, App.100, L.25-p.101, L.4.

Counsel testified that Petitioner was onmethamphetamine at the time, but that from what we know that's what occurred so I didn't , I did not object to anything about the helmet. I frankly thought that was, even if it's not what occurred, I thought it was better just to ignore it and focus on the other matters, App.101, L 5-16.

PCR counsel again asked counsel: "I guess that my question and remember I was gettin', you kinda answered it, so you don't believe it woulda been helpful to object to that based on the other circumstances." Counsel replied: Correct, yes. App.101, L.19-24.

PCR COURT'S ORDER

The PCR Court in denying relief found: This Court finds Applicant has failed to meet his burden. First, counsel credibly testified that he told Applicant the solicitor could states his version of the facts at the hearing. He further testified that he did not object because of the serious of the other offenses. This Court finds both explanations are objectively reasonable. Regardless, Applicant has failed to show that but for counsel's alleged deficiencies, he would have refused to plead guilty and proceeded to trial. Specifically, even if both factual allegations are true Applicant admitted to these facts as recited by the solicitor at plea hearing and pled guilty anyway. As a result, his **contrary testimony at the evidentiary hearing is not credible**. This allegation is therefore denied and dismissed. App.112-113.

The order as seen above provided that regardless Applicant has failed to show that but for counsel's alleged deficiencies, he would have refused to plead guilty and proceeded to trial, and as a result of Petitioner not being credible at the PCR hearing.

This finding is in error and the Order was appealed.

Petitioner is represented by LaNelle Cantey DuRant of the South Carolina Indigent Defense. DuRant raised one issue in a Johnson petition for writ of certiorari. Petitioner's pro-se Johnson petition is as follows:

## ARGUMENT

DID THE PCR COURT ERR IN NOT FINDING PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO OBJECT WHEN THE SOLICITOR MADE DELIBERATE FALSE FACTUAL STATEMENTS TO THE PLEA COURT THAT WAS "HIGHLY PREJUDICIAL" AND CLEARLY HAD THE IMPACT OF A HARsher SENTENCE BEING HANDED DOWN BY THE PLEA COURT?

In a post conviction relief action the applicant bears the burden of proving the allegation in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); also see Rule 71.1(e) SCRPC, (Post Conviction Relief Actions).

The proper standard of review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the PCR judge's findings. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690, 104 S.Ct 2052, 2066. Applicant must overcome this presumption in order to receive relief. See Cherry, supra at 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by it's "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 683, 104 S.Ct. at 2065).

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

In the instant matter the PCR court's finding that Petitioner did not carry his burden on this ground is not supported by probative evidence. To the contrary Petitioner bears the burden at PCR of demonstrating his entitlement to relief. See Rule 71.1(e), SCRCiv.P. [Post Conviction Relief Actions].

A State Prosecutor denies a defendant due process by knowingly offering or failing to correct false testimony." Basden v. Lee, 290 F.3d 602, 614 (4th Cir.2002)(citing Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173 (1959)).

A prosecutor's deliberate deception of a court by the presentation of known false evidence is incompatible with rudimentary demands of justice," Giglio v. United States, 405 U.S. 150, 153 (1972)(quoted in Riddle v. Ozmint, 369 U.S. S.C. 39, 631 S.E.2d 70 (2006)).

A claim along these lines requires a showing of the falsity and materiality of testimony and the prosecutor's knowledge of it's falsity. See also Basden, surpa 290 F.3d at 614. Id.

Petitioner submits that through his testimony during the PCR hearing and Petitioner's exhibit 1, App.61 [Deputy Ticknor's incident report] Petitioner carried his burden. Surely the Solicitor had Deputy Ticknor's incident report in his possession prior to releasing discovery to plea counsel. It is noteworthy, that counsel and the solicitor were aware or should have been aware of

the nature and details of Deputy Ticknor's incident report. The Petitioner submits that a stringent review of the factual plea recitation by the solicitor clearly reveals the solicitor deliberately made a false statement to the court when he told the plea judge that "Petitioner struck the deputy with his motorcycle helmet. App.9, L.25-p.10, L.2, thus, knowingly presenting a false statement to the court.

During the PCR hearing counsel first said he thought it was better just to ignore the false statement and focus on other matters, but finally agreed that it would have been helpful to Petitioner if he had objected, App.101, L.15-24. Surely counsel's "I don't remember whether it was in the report or not" App.101, L.3, is not strategic, nor was it objectively reasonable not to lodge an objection and correct the false statement before the judge.

This false statement compounded with the solicitor's already breached plea agreement not to make any recommendations allotted the solicitor additional aggravating circumstances in order to entice the Plea Court to hand down a harsher sentence as asked for by the Solicitor.

Had counsel of objected and corrected the highly prejudicial false statment before the plea court there is a reasonable probability that the Plea Court would not have sentenced Petitioner to 30-years, but would have considered counsel's request for a sentence of 10 to 20 years.

The PCR court's findings that counsel did not object because of the serious nature of the other crimes and therefore the Court found both explanations are objectively reasonable, App.113, is not supported by the record. First counsel considering the seriousness nature of the other offenses, is not strategic. Especially

, when considering Petitioner was sentenced to the maximum sentence of 30-years for the attempted murder charge which was the most serious offense Petitioner was facing and secondly counsel candidly admitted that it would have been "more helpful" had he objected. App.101, L.20-24.

The PCR Court erred in not granting relief on this claim as there is a reasonable probability that had counsel objected and corrected the false statement it would have lessened the aggravating circumstances urged by the solicitor to obtain a higher/stiffer sentence sought by the State. Had counsel objected there is more than a reasonable probability the Court would have handed down a more lenient sentence, thus a reasonable probability the results of the proceeding would have been different.

CONCLUSION

Based on the foregoing, certiorari should issue and the PCR Court's decision reversed and remanded for either a new sentencing hearing to conform to the 30-years or in the alternative a new trial.

Respectfully Submitted,

/s/ Trenton J. Black

Trenton J. Black

Petitioner, pro-se

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies he has served a true and correct copy of the enclosed Pro-Se Johnson Petition for Writ of Certiorari on attorney for Respondents, Justin Hunter, P.O. Box 11549, Columbia, SC. 29211. This being done by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 20<sup>th</sup> day of March, 2017.

Sworn to and Subscribed Before Me

this 20<sup>th</sup> day of March, 2017

Dane C. Merchant  
NOTARY PUBLIC

My Comm. Expires 1-23-2023

Respectfully Submitted,

/s/ Trenton J. Black  
Trenton J. Black

Petitioner, pro-se