

IN THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

RECEIVED

JUN 14 2017

Appeal from Florence County
Hon. Donald B. Hocker, Circuit Court Judge

S.C. SUPREME COURT

Unpublished Opinion No: 2017-UP-064
Submitted November 01, 2016 – Filed February 01, 2017

Tamarquis Antwain Wingate,

Petitioner,

V.

The State of South Carolina,

Respondent.

Lower Court Case No:	2014GS2101378
SC Appellate Case No:	2014-002717
SC Supreme Court Case No:	2017-001211

**Petition For Rehearing
The Petition For
Writ Of Certiorari**

Mr. Tamarquis Antwain Wingate
SCDC #315016 (B.R.C.I)
4460 Broad River Road
Columbia, South Carolina 29210

Other Counsel of Record:

Robert M. Dudek, Appellate Counsel (former), for Petitioner, of Columbia...

Attorney General, Mr. Alan McCrory Wilson, Senior Asst. Deputy Attorney General, Mr. John Benjamin Aplin, Sally Elliott (former), all of Columbia for Respondent.

TW

RECEIVED

JUN 14 2017

S.C. SUPREME COURT

In the Supreme Court of
The State of South Carolina

Appeal From Florence County
Hon. Donald B. Hocker, Circuit Court Judge

Tamarquis Antwain Wingate,

Petitioner,

V

The State of South Carolina,

Respondent.

S.C. Supreme Court Case No: 2017-001211

**Petition For Rehearing
The Petition For
Writ of Certiorari**

The Petitioner comes before this Honorable Court to acknowledge the following information pertaining to the Case at hand. Petitioner, wants to assure that [His], Constitutional Rights (Mandated by the United States High Court), are not in any type of way in violation of any kind of Miscarriage of Justice, either by the Low or High Courts of The State of South Carolina. Petitioner believes that the proceeding of the *Anders* Process is in **DIRECT CONFLICT** with the Substantial Rights which governs Due Process of Law.

Petitioner asserts that system of fairness wasn't present during [His] Appeals process. The Court of Appeals use of the *Anders* procedure overruled the Petitioner's Pro Se Brief (s) and Supplemental Brief & Appendix. The Briefs were not entertained in Court, where the Petitioner was given the Right to contest anything of importance, and

1 

asked for a written Opinion, so that the Court could rule upon the errors that was Clearly Erroneous. The Petitioner wants the Court to understand that [He] will not give up any Rights because those very Rights are [His]. Its fair to say that the Court of Appeals Ruled on the *Anders* Brief of the Appellate Defense Counsel, And not the briefs or Supplemental Record that was submitted by the Petitioner. Also, the very fact that in Petitioner's Pro se Brief & Supplemental Brief, [His] Showing of Constitutional issues are so DIRECTLY involved. Petitioner's Pro se issues were not considered nor entertain and it was based on the Supplemental Record that was submitted and filed on December 09, 2016. Petitioner had supplemented the Record on Appeal well after the Court of Appeals Submitted the Case in November 01, 2016.

The Decision of the S.C. Supreme Court is in the Interest of Justice in Petitioner's Rehearing when a prior Ground-Breaking Decision **State v. Stukes**, 787 S.E.2d 480 (S.C. 2016), made clear that the Unconstitutional Jury Instruction issue can ONLY be used during the Direct Review Process, not later in Post-Conviction Proceedings. The Court stated:

“Therefore, our Ruling is effective in
This case and those which are pending on
Direct review or are not yet final,
But not in Post-Conviction Relief.”

In **Griffin v. Kentucky**, 479 U.S. 314 (1987), The Supreme Court agreed with Justice Harlan that “failure to apply a newly declared Constitutional rule to criminal cases pending on direct review violates “the basic norms of Constitutional Adjudication.”” 479 U.S. @ 322.

In a very similar case by this South Carolina Supreme Court (i.e. **State v Stukes**, 787 S.E.2d 480 (S.C. 2016). Stukes appealed his conviction for (CSC), based on the identical erroneous jury instruction;

“That the victim's testimony need not be corroborated
By additional evidence or testimony pursuant to section
16-3-657, of the South Carolina Code” (2003). This Court
Reversed Stukes conviction, holding; “We reverse and
Hold instructing the jury on this statute is an
Impermissible charge on the facts and therefore
Unconstitutional. We further “overrule

2


Our precedent condoning this instruction.”

Petitioner came through legally permissible channels under Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), to mandate the concern by the U.S. Supreme Court. “With the extent of the duty of a court-appointed appellate counsel to prosecute a first appeal from a criminal conviction, after that attorney has conscientiously determined that there is no merit to the indigent’s appeal.

For a decade or more, a continuing line of cases has reached this United States Supreme Court concerning discrimination against the indigent defendant on his first appeal. Beginning with Griffin v. Illinois, 351 U.S. 12 (1956), where it was held that “equal justice was not afforded an indigent appellant where the nature of the review ‘depends on the amount of money’ he has” at 19, and continuing through Douglas v. California, 372 U.S. 353 (1963). The United States Supreme Court therefore held consistently; “those procedures to be invalid where the rich man, who appeals as of right, enjoys the benefit of counsel’s examination into the record, research of law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself.” @ 358.

Based on Anders v. California, 386 U.S. 738 (1967); South Carolina’s application of its rule barring Certiorari review by the Supreme Court (State v. Lyles), where the Court of Appeals failed to acknowledge a “clearly reversible error with the jury instructions” pursuant to its High Court decision in Stukes, fails to comport with fair procedure and lacks that equality that is required by the Fourteenth (14th) Amendment. Id. Griffin v. California, 380 U.S. 609 (1965). Not even having to qualify the rule applied in dismissing Certiorari Review “lands this South Carolina Supreme Court in DIRECT CONFLICT with the fundamental reasoning why Anders v. California, and pro-se briefs are an important and essential part of the appeals process.”


In other words, “If *Anders* grant an appellant the right to file a pro-se brief on appeal”, and the Court of Appeals totally fails to review or mention the “reversible, meritorious claims”, and based on the “error committed by the Court of Appeals”. The Supreme Court relies on the determination at appeals court level, which “omitted the central focus of the appeal”. Then for all apparent reasons; “Anders v. California, and

Griffin v. Illinois, has no Supreme Court value in the State of South Carolina. And State v. Lyles, reversed decades of Rights protected by the Anders Court.

CONCLUSION

Therefore, now this Petitioner makes more than appropriate showing, that grave and substantial matters are presented on this Petition for Rehearing the Petition for a Writ of Certiorari. The Petitioner is not asking the Court to set him free, but the Petitioner is asking the Court to Reversed and Remand so that the Petitioner can get a new and fair trial in the Interest of Justice.

Sign this 13th day of June, 2017



Mr. Tamarquis Antwain Wingate
SCDC #315016 (B.R.C.I)
4460 Broad River Road
Columbia, South Carolina 29210

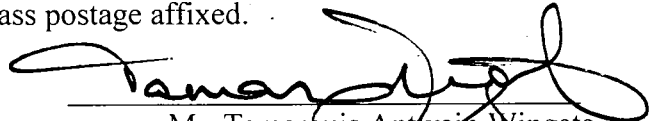
Certificate of Service

The Petitioner hereby declares under the penalty of perjury, that on this date, a TRUE copy of: **"Petition for Rehearing the Petition for Writ of Certiorari"** in the above referenced case have been served and addressed as follows:

- 1.) SC Supreme Court (Clerk Shearouse) PO Box 11330, Cola, SC 29211
- 2.) SC Court of Appeals (Clerk Kitchings) PO Box 11629, Cola SC 29211
- 3.) Attny Gen Office (Aplin) PO Box 11549, Cola SC 29211

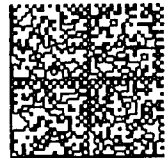
Sending the Original Signature to the Supreme Court and by placing a copy of same, in prison mailroom officers hands @ the location of Broad River Correctional Institution for depositing in the United States mail, first class postage affixed.

Sign this 13th day of June, 2017



Mr. Tamarquis Antwain Wingate
SCDC #315016 (B.R.C.I)
4460 Broad River Road
Columbia, South Carolina 29210

SCDC # 315016 (B.R.C.I.)
4460 BROAD RIVER RD.
COLUMBIA, SOUTH CAROLINA
29210



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 000.670
0000879467 JUN 13 2017
MAILED FROM ZIP CODE 29210

SCDC SCDC
LEGAL
JUN 1 12 00 PM JUN 13 2017

MAIL ROOM Mr. ...

THE SUPREME COURT
of
SOUTH CAROLINA
c/o Hon. DANIEL E. SHEAROUSE
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211