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JUN 15 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Benjamin H. Colbertson, Circuit Court Judge

DEQUAN SHAMAR ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA

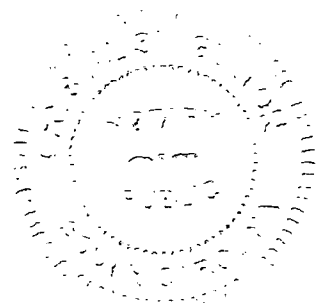
RESPONDENT

APPELLATE CASE NO. 2016-002460

PRO SE PETITION FOR WRIT OF CERTIORARI

DEQUAN SHAMAR ANDERSON

PRO SE PETITIONER



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ISSUE PRESENTED

Did the PCR court err in failing to find plea counsel ineffective for not insuring guilty plea was entered voluntarily and knowingly during the Alford plea?

Did the PCR court err in failing to find plea counsel ineffective for failing to pursue defense available to defendant?

Did the PCR court err in failing to find plea counsel ineffective for erroneous legal advice for claiming state had enough evidence to convict the defendant?

The trial court lack subject matter Jurisdiction to accept defendant's guilty plea on Attempted murder

Did the PCR Court err in failing to find plea counsel ineffective for denying the defendant Due process of the U.S.C. Amend 14 because there was no specific intent in Attempted murder 16-3-29.

STATEMENT

On February 15, 2013, Jonathan West was working in his Barber Shop in Santee when he received a call that the security alarm at his home was sounding. He immediately went to his home which was only about seven minutes away. His friend, Otarius Pelzer, went with him. When they arrived at the house, West went next door briefly to talk to his father to see if he saw anything. Then, the friend Pelzer saw the front door of West's house open, and Petitioner Anderson ran from the home into the woods App. 8, 11. - App. 9, 11, 9.

West and his friend began chasing Petitioner and claimed that Petitioner Anderson had a handgun and began firing warning shots. The men stopped the chase but later saw a woman driving a green Cadillac stop and Petitioner Anderson came from the woods and got into the Cadillac. It was later learned that the female driver was Monique Brightman, the girlfriend of Petitioner Anderson App. 9, 11. 10 - App. 10, 11, 6. A few months later, the investigator, Lakeisha Gillard, learned that this incident was similar to another one earlier that involved Monique Brightman who was on probation. When Brightman reported to the Department of Probation for her regular appointment, Petitioner Anderson was with her. Both Anderson and Brightman were arrested after both gave statements implicating themselves in this incident.

On October 21, 2013, the Orangeburg County Grand Jury indicted Anderson on the charge of burglary first degree. App. 103 - App. 104. On March 10, 2014, the grand jury indicted Anderson on the charge

Of attempted murder App. 101-App. 102

On April 17, 2014, Anderson appeared before the Honorable Clifton B. Newman for a guilty plea. Anderson was represented by Peggy Hinds and Doug Mellard. The state was represented by Tommy Scott. App. 1. Anderson entered a guilty plea to the lesser charges of burglary second degree non-violent, and to assault and battery of a high and aggravated nature (ABHAN) for a negotiated sentence range of ten to twelve years concurrent App. 311.1-App. 4, 11.4. Anderson pled guilty to the ABHAN under North Carolina v. Alford.

ARGUMENT

The PCR Court erred in failing to find plea Counsel ineffective for not insuring guilty plea was entered voluntarily and knowingly during the Alford plea.

When you pled pursuant to North Carolina vs. Alford, what was your understanding of a plea entered pursuant to that? What did that mean to you. My understanding that was explained to me before I signed the plea papers was I'm pleading guilty, but I'm not really guilty, but I feel like if I go to trial, then they got enough evidence for the ADHAN to convict me. A plea of guilt is more than a confession which admits that the accused did various acts, it's itself a conviction nothing remains but to give judgment and determine punishment Berchval V. United States, 274 U.S. 220, 223, 47 S.Ct. 582, 583, 71 L.Ed. 1009. Admissibility of a confession must be based on a reliable determination on the voluntariness issues which satisfies the constitutional right of the defendant. JACKSON V. DENNO, 378 U.S. 368, 387, 84 S.Ct. 1774, 1786 12 L.Ed 908. What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. Transcript p. 73 Line 13-19

The PCR Court erred in failing to find plea Counsel ineffective for failing to pursue a defense available to defendant.

What did you and Mr Mellard discuss in regards to going to trial, getting ready for trial?

He would, he would ask me continuously what would be my defense and, you know, like I say, he was saying that was enough evidence to convict me. So outside of, you know, investigating the attempted murder charge that was on the table at the time and the burglary first, it was never, it was never an investigation. It was just more so my statement was enough and that was that, Transcript 72-Line 7-17 In reaching prompt disposition of criminal cases, defendants charged with serious crime, must not be stripped of right to have sufficient time to advise with counsel and prepare his defense Powell v. STATE ALABAMA 287 U.S. 45 535, et. 55

The PCR Court erred in failing to find plea counsel ineffective for erroneous legal advise for claiming state had enough evidence to convict the defendant.

Okay. Did you and Mr. Mellard discuss trying to suppress your statement?

A. Yes, sir we did. Continuously.

Q. Okay. What, what did he tell you?

A. If I was to go to pretrial, then my -- at my pretrial hearing the judge would hear the investigators and they, would, they would listen to the investigators and, and they would get on the stand and lie and say that that's enough evidence. That my statement wasn't wasn't coerced and that would have been

enough evidence to convict me on a burglary first Transcript p 72-7B
Line 19-25 Line 1-4 p 73 Counsel rendered ineffective assistance in
telling defendant to take the plea because had no defense at
trial, there is a reasonable probability that for counsel's error, he would
not have pleaded guilty and would have insisted on going to trial. Hill v.
Lockhart 474 U.S. 52 106 S.Ct. 366.

The trial court lack subject matter jurisdiction to accept defendant's guilty
plea on attempted murder. Except for certain minor offenses, circuit court
does not have jurisdiction to hear guilty plea unless there has been
indictment, waiver of indictment or charge is lesser included offense
of crime charge in indictment. Issues related to subject matter jurisdiction
may be raised at anytime. Indictment is sufficient if offense is stated
with sufficient certainty and particularity to enable court to know
what judgement to pronounce, and defendant to know what he or she
is called to answer and whether he or she may plead acquittal or
conviction thereon Code 1976B 17-19-20. True test of sufficiency of
indictment is not whether it could be made more definite and certain
but whether it contains necessary elements of offense intended to
be charged and sufficiently apprise a defendant of what he or she
must be prepared to meet. Indictments fail to contain necessary
elements of attempted murder, and circuit court thus lacked
jurisdiction to accept defendant's guilty plea of Assault and
Battery of a High and Aggravated Nature 16-3-600 (B)(1). The
element in the indictment either expressed or implied is missing.
Brown v. STATE 320 S.C. 366, 465 S.E.2d 358

The PCR Court erred in failing to find plea counsel ineffective for denying the defendant Due process of the U.S.C. Amend 14, because there was no specific intent in Attempt murder 16-3-29? THE COURT
Mr. Anderson: yes, sir, All right. Understanding everything you've said to this point, how do you plead?

Mr. Anderson: To burglary?

The Court: Yes.

Mr. Anderson: I plead guilty.

The Court: Now, the assault and battery, is it a new -- you dispute what the state said you did but you want to plead guilty to it without admitting that you are guilty of what?

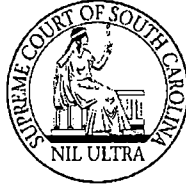
Mr. Anderson: Well, actually, Your Honor, I really don't want to plead guilty to it. It's like I'm kind of forced into pleading guilty to it in order to take the plea off the non-violent burglary. I have admitted to that and I feel like I'm wrong for that, but as far as the ARBHAM, I don't because I didn't intend nor hurt anyone. Because the crime of attempted murder was defined by statute, appellate court would first look to the language of the statute to determine what the Legislature intended the elements of the crime to be, including the level of intent require Code 1976 16-3-29, specific intent to commit murder is an element of attempted murder. The lesser included offenses of attempted murder should have been 16-3-600 (C)(1) refers to burglary robbery, or kidnapping STATE V. KING 412 S.C. 403, 772 S.E.2d 189.

CONCLUSION

Based on the Above, certiorari should be granted, petitioner's conviction and sentence reversed, and the case remanded

DEQUAN SHAMARANDEK

Pro se petitioner



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

May 25, 2017

Mr. Dequan Shamar Anderson, #264678
Livesay Pre-Release
P O Box 580
Una SC 29378

Re: Dequan S. Anderson v. State
Appellate Case No. 2016-002400


Dear Petitioner:

Your counsel has submitted a petition for writ of certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* response to the petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a *pro se* response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy **should not be stapled or bound in any manner.**

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc:

Ruston Wesley Neely, Esquire

Robert Michael Dudek, Esquire

WITNESSES

Lakesha Gillard

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2014ORB9

Arrested: July 10, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: March 5, 2014

VERDICT

TRUE BILL

Winniford B. Clark
Date **MAR 05 2014**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0410

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

March 10, 2014 TERM

THE STATE
vs.

Dequan Shamar Anderson

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY

Winniford B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED 509 RECORD
WINNIFORD B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

2014 MAR -5 PM 11:25

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0410

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Dequan Shamar Anderson, did in Orangeburg on or about February 15, 2013, did with the intent to kill, attempt to kill one Johnathan West and/or Otarius Pelzer with malice aforethought by means of shooting a firearm at the victim(s), this offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

↑
Element not included on my indictment;
either expressed or implied. Raise anytime
do to subject matter of jurisdiction

Raise issue subject matter
jurisdiction

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Th 3. Scott, III

Thomas B Scott, III, Solicitor

COUNTY OF Orangeburg
STATE VS.

Dequan Shamar Anderson

AKA:

Race: BLACK Sex: M Age: 34

DOB: 12-21-1979 SS#: 65-64-4929

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Assault and Battery of a High and Aggravated Nature

INDICTMENT/CASE#: 2014GS38-0410

A/W#: 2014ORB9

Date of Offense: 2/15/2013

S.C. Code § : 16-3-29

CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NGN-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Scott, III, Thomas B SC Bar# 15881 Defendant Attorney for Defendant SC Bar# 13521

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (282 days credit)

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$133.90

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk V. Glem

Court Reporter: J. Jordan

Presiding Judge

Judge Code: 2129

Sentence Date: April 17 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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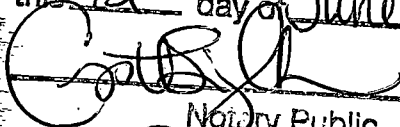
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Pro se
Petition for Writ of Certiorari on Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina, Post Office Box 11330 Columbia,
South Carolina 29211

Subscribed and sworn before me

this 12 day of June, 2017

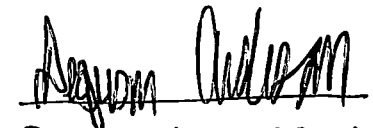


Notary Public

County of Spokaneburg
State of South Carolina

My commission Expires 8/2/2026

MAY 2017



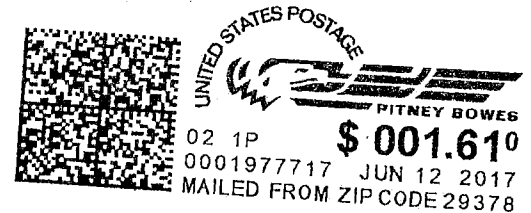
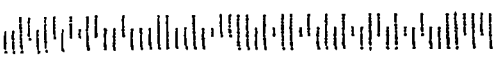
DEQUAN ANDERSON

LIVESAY B. CORR. JUST.

P.O. BOX 580

CANA, S.C. 29378

en # 264678



Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, SC. 29211