

Dear Supreme Court,

6-19-17

RE: 2008-CP-26-0489 (ORDER OF DISMISSAL
WITH PREJUDICE)

RECEIVED

JUN 13 2017

S.C. APP. CT. R. 243 (A)

I'm hereby requesting review of the final order of dismissal with prejudice (2008-CP-26-0489) in which is reviewable within the Supreme Court of South Carolina pursuant to rule 203, 206, and 227 of the South Carolina Appellate Court Rules and are the appropriate procedures to follow after the notice of appeal has been timely filed. SEE S.C. APP. CT. R. 243 (A)

The following above order was dismissed with prejudice and entitles the defendant the right to secure appellate review and also to have the assistance of counsel provided by the states (S.C. Rule Civ. Proc. 71.1(d)(2011)); in which it is likely that most of the attorneys appointed by the courts are qualified to perform, and do perform, according to prevailing professional norms; and where that is so, the states may enforce a procedural default in federal habeas proceedings in which has occurred within this case.

I raised 3 substantial ineffective-assistance of counsel claims during the initial review collateral proceeding where I received ineffective assistance of counsel by her failure to file a rule 59(e), SCRPC, regarding the filing of a motion to Alter or Amend should counsel believe the order failed to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003), SEE Marlak v. State, 375 S.C. 407, 653 S.E.2d 266 (2007); Rule 52(a), SCRPC.

It is my contention that a rule 59(e) motion should have been filed where the claims/issues were not adequately addressed in order to preserve the claims/issues for appellate review. SEE Marlak, 653 S.E.2d at 267; McCullough v. State, 464 S.E.2d 340, 341 (S.C. 1995); Pruitt v. State, 423 S.E.2d 127, 128 (S.C. 1992); McCray v. State, 408 S.E.2d 241, 241 (S.C. 1991).

Appellate Counsel (M. Cecelia Robinson) from the denial of petitioner's post-conviction action (2008-CP-26-0489) was also ineffective for failing to raise all 3 ineffective assistance of counsel claims to the Supreme Court for appellate review, but instead she advised petitioner that she didn't have to raise all the issues except for the ones that she wanted to raise; in which has caused a procedural bar within the federal courts, but also shows that her performance has prejudice the petitioner, where he has been denied fair process and the opportunity to comply with the states procedures and obtain an adjudication on the merits of

his claims. SEE 501 U.S. at 154, 111 S. Ct. 2546; EVITT'S V. LUCEY, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); Douglas, Supra, at 357-358, 83 S. Ct. 814.

where, as here, the initial - REVIEW collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective - assistance claim. This is because the state habeas court "looks to the merits of the claim[s]" of ineffective assistance, no other court has addressed the claim, and "defendants pursuing first-tier review... are generally ill equipped to represent themselves" because they do not have a brief from counsel or an opinion of the court addressing their claim of error. SEE Halbert v. Michigan, 545 U.S. 605, 617, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005); Douglas, 372 U.S. at 357-358, 83 S. Ct. 814.

The 3 substantial ineffective - assistance of trial counsel claims presented to the state habeas court in the initial collateral proceeding was to show the courts that trial counsel's performance fell below the Strickland standard where he failed to satisfy professional standards of care by not testing the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged. SEE Powell v. Alabama, 287 U.S. 45, 68-69, 53 S. Ct. 55, 77 L. Ed. 158 (1932) ("[The defendant] requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence").

Trial counsel has violated Fed. Rule Crim. Proc. 52(b) by failing to properly preserve claims to be considered on appeal. Petitioners' main question to the Supreme Court is how was direct appeal appellate counsel suppose to perfect an appeal if trial counsel's performance fell below the Strickland standard ??? SEE Cronin, 466 U.S. at 6:

CONCLUSION

The petitioner is hereby requesting any and all proper redress where the initial PCR order that was dismissed with prejudice included specific finding of fact and conclusions of law relating to each issue raised and constitutes a final order or judgement and therefore is reviewable by writ of certiorari. If the court's refusal to hear the claims that were not reviewed in the initial PCR order that was dismissed with prejudice it will constitute a "gross miscarriage of justice," as the petitioner is entitled to one fair bite at the apple. SEE Rice v. State, 409 S.E. 2d 392, 394 (S.C. 1991).

Respectfully Submitted,
by: / Michel A. Dukes, #311176
MICHEL A. DUKES, #311176
ECT - A2 - A - 167
610 Hwy 9 West
Bennettsville, SC 29512

DATE: 6-12-17

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Michêl A. DUKES, ^{SR.} #311176
Petitioner,

CERTIFICATE OF SERVICE
BY MAIL

CASE No.: 2008-CP-26-0489

V.
State of South
Carolina, Et. Al.,
RESPONDENT(S).

- 1.) I am an inmate incarcerated at Evans Correctional Institution, and the petitioner in the above-captioned action.
- 2.) Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
- 3.) I have this day served a copy of the Request for Review of the denial of the (2008-CP-26-0489) PCR Order of Dismissal with prejudice within the South Carolina Supreme Court pursuant to S.C. App. Ct. R. 243 (E) in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
POST Office Box 11330
Columbia, S.C. 29211

Dated this 12th day of JUNE, 2017.

/s/ Michêl A. Dukes, ^{SR.} #311176
MICHÊL A. DUKES, ^{SR.} #311176
ECI-F2-A-167
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Bennettsville, S.C. 29512

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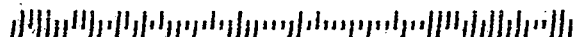


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FOR ITS CONTENTS.

EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

