

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Honorable George C. James, Circuit Court Judge

Vincent Missouri, #197996,

Petitioner,

V.

State of South Carolina,

Respondent.

APPELLATE CASE NO. 2016-002037

Petitioner's Pro-Se Petition for Writ of Certiorari

By: Vincent Missouri, #197996
BRCI-Wateree Unit
4460 Broad River Road
Columbia, S.C. 29210

RECEIVED

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STATEMENT OF THE CASE

Petitioner/Appellant in the captioned matter was charged and subsequently "allegedly indicted" on November 26, 2013, with Two Counts of bank robbery. The Appellate Defender, Mr. David Alexander represents this appeal as well as the "direct appeal" (2014-001176), involving the essential identical error. Of Judge Verdin, from the Thirteenth Judicial Circuit, arbitrarily depriving the Petitioner of his Sixth Amendment rights to (1) Choice of counsel, United States v. Gonzalez-Lopez, 547 U.S. ___, 126 S. Ct. 2557 (2006); and (2) Petitioner's right of the choice being "self-representation", Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975).

Equally important, this case stems from "both Pickens and Greenville Counties, that are both under the Thirteenth Judicial Circuit here in South Carolina". That once the Petitioner was arrested in Greenville County on January 16, 2013. All charges in both Pickens and Greenville were pending. Contrary to the false and misleading testimony of Defense Counsel Symms Culbertson, during the PCR hearing.¹

1. Tr. tr. R. 114, lines 23-25; R. p. 115, lines 1-11, is patently false. As the introduced letter from 'former Assistant Solicitor, Mr. George Campbell; prior To Symmes Culbertson being appointed clearly "intended to get ran together both the Pickens and Greenville County cases". For which Petitioner firmly in writing requested PCR attorney to file a 59(e) to correct the record prior to the case coming into appeal stages.

The June 15, 2016 PCR hearing exposed the following evidence within a "LETTER" dated February 19, 2013, from former Greenville County Solicitor, George Campbell, to Pickens Attorney Aaron Angell, which represented Appellant on the Pickens case, with the following information:

"Your client, Vincent Missouri, has pending charges on my docket in Greenville County. He has not retained or been appointed counsel. And when I met with him last Wednesday, Missouri 'advised he wished to represent himself on these charges'. Missouri also told me 'he wanted to resolve all his Pickens and Greenville charges at the same time; therefore, I consulted with Doug Richardson in our Pickens office to formulate the plea offer you will find enclosed, (Unquote). Tr. tr. R.p. 79, lines 10-22.

Several key issues are plainly carved out above. One of which specifically concerns Appellant's request to represent himself. According to the evidence (i.e. the "LETTER"). Second, the LETTER specifically undermines trial counsel's PCR testimony on June 15, 2016, in relation to the Due Process and Equal Protection claim the Applicant included within his PCR application, which focused on "a legitimate concern (which Applicant felt was based on race)" as a reason Pickens "backed out of the deal". As it was certainly not as trial counsel falsely asserted. (Tr. tr. R. 115, lines 1-11) Where such testimony reads as follows:

"Prior to my actual being appointed through the Public Defender's Office to represent him here in Greenville, the apparently had been some offer made by the Solicitor at the time for a five-year sentence. Mr. Missouri then got charges in Pickens County. I think another charge in Greenville County for bank robbery. That five-year plea quickly disappeared. And I was unable to get

them to rebring that offer or reoffer that sent--
that sentence range. Tr. tr. R. 115, lines 1-11.

In otherwords, "the Thirteenth Judicial Circuit Solicitor's Office was well informed concerning Appellant's pending criminal matters", "all of them". By the time trial attorney Symmes Culbertson was 'forced onto Appellant's case against his will'. The Thirteenth Judicial Circuit had issued a BOLO (Be on the lookout) for the Appellant soon after the robberies, and Appellant was apprehended in Camden, South Carolina, and brought back to the Greenville County Detention Center on January 16, 2013.

Moreover, irrefutable jail records will completely demonstrate Appellant "could not have committed any subsequent bank robberies after the February 13, 2013 offer". Because Appellant was never at large again in the community after his arrest. Rendering trial counsel's PCR testimony completely false and misleading, which deprived the Appellant "of a fair bite at the PCR Apple".

Appellant immediately "in writing" contacted PCR attorney Mr. Ariail, Jr., requesting a 59(e), based on trial counsel's PCR testimony. Where such "eliminated the PCR court's consideration of the plea to five (5) years and whether such was rejected by Pickens County on the bases of race". Which is a Equal Protection Violation as well as a Due Process Violation.

Or in the abstract, "whether trial counsel was so unfamiliar with Appellant's case at hand", he was completely unaware of the circumstances that had transpired. Thereby resulting in the false testimony given during the PCR hearing. In which case renders the

trial counsel's representation deficient under Strickland v. Washington.

ISSUES PRESENTED

1. Whether Appellant waived the Constitutional challenge under the Sixth Amendment to (1) Choice of counsel, and (2) self-representation; where the record before this Honorable Court clearly demonstrates "the plea of guilty was the actual result of the above two constitutional rights". Where criminal convictions are the result of a trial or plea. Yet those options were not open.
2. Whether under §18-1-100, (When a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through a mistake, to do any other act); should Appellant's 'immediate appeal' from the pre-trial order on September 5, 2014, divest the circuit court and supplant such jurisdiction to the court of appeals. When the Appellant filed such on the 9/5/2014 order immediately pursuant to §14-3-330(2).
3. Whether PCR counsel R. Mills Ariail, Jr., intentionally and failed to file a 59(e), based on Appellant's written request to file such motion, which would have been based on the PCR court's failure to "address the basis of the rejection of the plea offer". And make a determination "it wasn't premised on unconstitutional grounds such as race".
4. Whether PCR counsel was ineffective under the Martinez v. Ryan, standard. Where in the event this Honorable Court establishes any grounds herein not so raised. Such was based on PCR counsel's "conflicting loyalties".
5. Whether the State "knowingly" elicited "false and material testimony" or "allow such false testimony and failed to correct such". Where its witness falsely asserted "the basis of the plea to five (5) years rejection" was because the Appellant caught subsequent charges in Greenville and Pickens. Which prejudiced Applicant chance to "a fair bite at the apple", because such testimony eliminated consideration of the "real and perceived" reason for the rejection.

ARGUMENT SUPPORTING GROUND ONE

1. Here, the State seeks to "place the buggy before the horse and have this Court to overlook the errors" under United States v. Gonzalez-Lopez, 547 U.S. ___, 126 S. Ct. 2557 (2006)(the erroneous deprivation of the right to choice of counsel); and Faretta v. California 422 U.S. 806, 95 S. Ct. 2525 (1975)(the erroneous deprivation of the Sixth Amendment right to represent one-self) and focus on the 'waivers' of the October 31, 2014 guilty plea.

Whereas, such does not fit squarely with the fair administration of justice. When considering the testimony of the PCR hearing. Here, the Appellant was cloaked with the experience of going to trial (in Pickens County May 19-20, 2014), with an attorney in which the State "forced upon him". (2012-GS-23-2203; and 2242). By Judge Virdin's erroneous December 19, 2013 order (for which a immediate appeal under §14-3-330(2) was requested) denying the Appellant of (1) choice of counsel; and (2) self-representation. And secondly, "what fair-minded person would again, go to trial with a unwanted attorney"?

Again, this case in Greenville County began January 16, 2013 upon Appellant's arrest at the detention center in Greenville. Appellant was arraigned on the pending bank robberies. By February 13, 2013, Mr. George Campbell had Appellant transported to the Greenville County Courthouse, to speak with the Appellant. After the conversation, it was understood that; (1) Mr. Campbell had

done extensive research on Appellant. (2) Had determined Appellant had served several sentences as a result of drug use, and was recently released from federal prison. (3) But for the drugs, Appellant was not a violent offender with "no assaultive behavior in or out of prison. And (4) Felt the minimal prison time and treatment would best fit the situation and the offender.

THE RIGHT TO COUNSEL

A. As brief as possible. Appellant begins where the Constitution begins to protect the accused. And "the right to counsel here, attaches in a criminal prosecution after the initiation of the adversarial judicial process". See Kirby v. Illinois, 406 U.S. 682 (1972)(plurality opinion)("The initiation of the judicial proceeding marks the commencement of the criminal prosecution, "to which alone the explicit guarantees of the Sixth Amendment are applicable") See State v. Council, 515 S.E.2d 508, 335 S.C. 1 (SC 1999). (Sixth Amendment right to counsel attached on October 14, 1992, when Council was arraigned)

Prior to trial in Pickens, "at least on February 19, 2013", the State (through Solicitor George Campbell) was well informed); (1) Appellant requested self-representation; (2) such was Appellant's Sixth Amendment choice; and (3) Appellant was not into complicating things and "wanted to resolve all outstanding Pickens

B. The State in response to the request "still appointed counsel". And Applicant over the course of approximately nineteen months, "repeatedly requested appointed counsel's removal and to represent himself".

While those nineteen months persisted, "as testified to during the PCR hearing". Mr. Culbertson (1) never investigated Appellant's defense; (2) and never called or deposed any of the witness list Appellant had given counsel.

By September 5, 2014. The circuit court thought it to be timely to hold a hearing to determine whether to allow Appellant to represent himself. This Court's Barnes v. State, 407 S.C. 27, 753 S.E.2d 545 (2014), suggests the September 5, 2014 circuit court judge shall follow the "traditional Faretta concerns". 422 U.S. 806 Id.

The September 5, 2014 court "failed entirely" to administer the Faretta concerns. Therefore, the erroneous deprivation of a defendant's Sixth Amendment rights to (1) choice of counsel and (2) self-representation are both deemed "structural errors". Not amenable to any harmless error analysis, and are "automatically reversible". U.S. v. Gonzalez-Lopez, 548 U.S. 140 (2006)(deprivation of defendant's right to choice of counsel was structural error not subject to harmless error review; see also Ariz. v. Fulminate, 499 U.S. 279, 309-10 (1991)).

In addition, "where it is demonstrated by clear and convincing evidence, the erroneous denial of a defendant's Sixth Amendment right to choice of counsel or self representation". The U.S. Supreme Court deems "the error is complete, and not additional prejudiced showing is required from the defendant".

Thus, logic dictates "the error" which occurred on September 5, 2014, actually could not be waived by the guilty plea unless its terms was accorded during the plea colloquy. See Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) Let the record remain silent when there "was no discussion concerning Appellant's right to the choice of counsel and self-representation being mentioned or waived during the October 31, 2014 guilty plea". Thus, the error is not waived. See also State v. Ray, 427 S.E.2d 171 (S.C. 1993).

In other words, "after the trial in Pickens with an unwanted attorney". Logic dictates Appellant would not go to trial yet again, "with a unwanted attorney in Greenville". But made to do exactly that "if Appellant elected trial". Thus, "we have a valid reason for pleading guilty". However, and fortunate for the Appellant, the State cannot be "accused" of depriving the important Sixth Amendment rights involved here". Then afterwards, call the convictions valid. Especially where here; "it wasn't too much to ask to resolve all the pending charges of both Pickens and Greenville in a single proceeding". As Solicitor George Campbell suggested. Exposing a Due Process violation "by maliciously seperating the

case (where they were of the exact same common scheme and plan), to purposely expose the accused to life imprisonment". For these reasons, the guilty plea should be reversed.

B. Next, once the court on September 5, 2014, denied Appellant the right to choice of counsel and self-representation. Appellant "did ask counsel to file an immediate appeal". With the prior experience (as well as confirming testimony during the PCR hearing) of counsel not filing any other motions on behalf of Appellant. Appellant filed an immediate appeal (1) to the Greenville Clerk of Court; (2) to the Thirteenth Judicial Circuit; (3) to the court of Appeals; and a copy to trial counsel; (4) as well as a letter informing this Court's Clerk of counsel's deficiencies with regards to Mr. Culbertson failure to file motions. See §14-3-330(2). See Haygood v. Summerville, 607 S.E.2d 707 (2005); and Flagstar Corp. v. Royal Surplus Enterprise, 341 S.C. 68, 72, 553 S.E.2d 331, 333 (2000).

In addition, §18-1-100, stands for the premise; "when a party shall give in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal or stay proceedings, the court may permit an amendment on such terms as may be just". Wardlaw v. Erskine, 20 S. C. 583. Wherein, Appellant "made the best and only 'good faith attempt' to immediately appeal the 9/5/2014 ruling. Thus, for these reasons, the circuit court lacked jurisdiction to accept the plea

when the "same judge", (Judge Barber) presided over the Pickens trial, and was aware of Appellant's competence in the proceedings and was told "Appellant immediately appealed the ruling by Judge verdin's October 19, 2013 ruling denying the Sixth Amendment rights. For these reasons, Appellant's guilty plea should be reversed.

C. Here, this issue is easy enough to explain. R. Mills Ariail, Jr., intentionally "deprived this Appellant of "a fair bite at the apple", when Appellant requested counsel after the PCR hearing ("in writing") to file a 59(e) to preserve and address the court's failure to consider "the reason for the rejection of the plea offer". As well as the failure "to re-cross examine Culbertson's false testimony". When the Applicant had given PCR counsel irrefutable proof; "that he did not catch subsequent charges subsequent to his January 16, 2013 arrest", at the Greenville County Detention Center.

Again, even if the Applicant had elected jury trials on all the pending charges from Greenville and Pickens. They were so similar in character and time, where they should have been tried together. Especially considering "both areas prosecute their crimes from the Thirteenth Judicial Circuit".

Moreover, it may be seen as "vindictive prosecution", which is a Due Process violation. Where the State abused its powers in order to place the defendant in jeopardy of receiving a potential life sentence, by separating similar conduct and trying them

separately. When the Appellant informed Solicitor George Campbell, he would be willing to have entered a guilty plea "to all pending matters in both Greenville and Pickens" in one proceeding. See February 19, 2013 Letter By Solicitor George Campbell). For these reasons, Appellant's convictions and sentences should be reversed for perceived "vindictive prosecution", and ineffective assistance of "initial PCR Counsel", under Martinez v. Ryan, and Marlar v. State, 653 S.E.2d 266 (S.C. 2007).


D. Finally, there must be a possibility the State "elicited false and material statements from its witness Symmes Culbertson"; or at minimum, "allow the falsities to go uncorrected". When the testimony bore heavily on a claim of "why was the plea rejected". The false testimony "because the court determined Appellant was not credible", whereas, Mr. Culbertson was. Is a clear case "of not judging a book by the cover". Where the truth of the matter is; "trial counsel Culbertson after swearing under oath to tell the truth". Told bold faced untruths. For which deprived Appellant of a fair hearing. Where "no such subsequent charges could have been committed by Appellant". And by retracting the plea offer; "that forced the Applicant to trial in Pickens", in which I might add, "with a unwanted attorney".

In Conclusion, from the onset of this case, "appellant never once denied committing the crimes as charged". But felt there was

valuable information to support a defense "if presented by expert testimony in the field of drug abuse". In which would have been a novel question for South Carolina Courts. This Court's Clerk is also asked to address an answer "and to provide the request for disciplinary action against both, Mr. Aaron Angell of Pickens and Mr. Culbertson of Greenville, in how they had sabotaged Appellant changes in obtaining any semblance of a fair trial.

In otherwords, "Appellant had exhaustingly told this Court in various letters and motions of his troubles involving both attorneys repeatedly". But was blocked by hybrid representation. Whereas, Mr. Culbertson testifies during the PCR hearing that; "he actually didn't do any investigation, interviewed witnesses, or took Appellant's defense seriously. That is the record before this COURT in the lower PCR matter. And based on the reasons above, Appellant respectfully moves to have the PCR hearing guaranteed under the protections of Due Process and Equal Protection. And for any further relief as deemed just and proper.

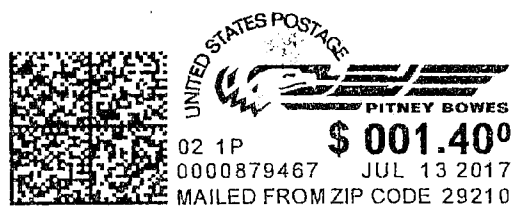
Respectfully Submitted,

/s/ 
Vincent Missouri #197996
BRCI-Wateree Unit
4460 Broad River Road
Columbia, S.C. 29210

cc: filed
7/12/2017

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ional Institution
Road
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South Carolina Supreme Court
1231 Gervais Street, Clerk's Office
Columbia, S.C. 29201