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DEC 27 2017

S.C. SUPREME COURT

TO: THE SUPREME COURT OF SOUTH CAROLINA

RE: KEITH LETMAN v STATE

Appellate Case No: 2017-000973

I am filing a petition for writ of certiorari, pro se. I hope that the court would show petitioner mercy and accept this petition. At PCR court my PCR counsel had me under the pretense that we were gonna go to ask for money and time for a private investigator to find alibi witnesses that petitioner has been asking about since pre-trial. Me nor PCR counsel was ready for the evidentiary hearing due to the fact that we discussed no case law only looking for the alibi witnesses. Petitioner states that he did not receive a full and fair evidentiary hearing due to the fact of what was stated in PCR hearing and what petitioner states now. So I hope the court would hear my case, petition.

Keith Letman

Keith Letman

STATE of South Carolina
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable Edward W. Miller

Keith Lemon,

PETITIONER

v.

STATE of South Carolina

RESPONDENT

APPELLATE CASE NO 2017-000973

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S.C. SUPREME COURT

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ISSUES PRESENTED

PCL Court ERRED in finding that Petitioner received EFFECTIVE ASSISTANCE of COUNSEL, where counsel failed to utilize discovery material in effect NO ADVERSIAL testing.

Did PCL Court ERRE in finding that Petitioner received EFFECTIVE ASSISTANCE of counsel, where counsel failed to function as the state's adversary?

THE PCL Court ERRED in finding that Petitioner received EFFECTIVE ASSISTANCE of counsel, where counsel failed to investigate ALL of the n.b. witnesses provided to him by the Petitioner prior to the Petitioner's trial on a murder charge.

STATEMENT

IN the early morning hours of July 25, 2011, A shooting occurred outside the home of Anthony Copeland. App 23 11. 22-24. Along with three other people, Copeland was in his front yard when Cedric Moss was shot. App 115.1.20- App 116.1.6. Two EYEWITNESSES SEEMINGLY IDENTIFIED PETITIONER AS THE SHOOTER, ALTHOUGH OTHERS WHO WERE PRESENT AT THE TIME OF THE SHOOTING WERE NOT ABLE TO IDENTIFY ANYONE. App 25 1. 23- App 13 1. 1; App 28 11. 8-22; App 46 1. 2-47 1. 11

PETITIONER WAS INDICTED BY A SPARTANBURG COUNTY GRAND JURY IN SEPTEMBER 2011 FOR MURDER. App 470-471. ON DECEMBER 10, 2012, PETITIONER PROCEEDED TO TRIAL BEFORE THE HONORABLE J. DERHAM COLE AND JURY. App 14. DERRICK B. BULON REPRESENTED THE STATE, AND MATTHEW W. STENZLY REPRESENTED PETITIONER. THE STATE CHOSE NOT TO MOVE FORWARD WITH TWO WEAPONS CHARGES. App 22 11. 19-24

DURING PETITIONER'S TRIAL, COUNSEL ALLUDED TO THE FAILURE TO INVESTIGATE ALLEGATION - NAMELY, THAT PETITIONER HAD PROVIDED COUNSEL WITH NAMES OF POTENTIAL WITNESSES WHO COUNSEL CHOSE NOT TO CALL RE TRIAL. App. 97 11. 8-16. AT THE PCR EVIDENTIARY HEARING, PETITIONER TESTIFIED THAT COUNSEL DID NOT ATTEMPT TO CONTACT THE WITNESSES UNTIL A WEEK BEFORE TRIAL. App. 427 11. 1-15.

THE JURY FOUND PETITIONER GUILTY AS INDICTED. App 402. 11. 7-16. JUDGE COLE SENTENCED PETITIONER TO LIFE IN PRISON. App 406 11. 20-24.

ON JUNE 29, 2015, PETITIONER FILED A TIMELY APPLICATION FOR POST-CONVICTION RELIEF. App 409, HE ALLEGED THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL. App. 411. THE STATE FILED ITS RETURN ON OR ABOUT FEBRUARY 16, 2016. App 415. PETITIONER SUBSEQUENTLY AMENDED HIS POST-CONVICTION RELIEF APPLICATION ON OCTOBER 14, 2016, ADDING THIRTY-ONE ADDITIONAL CLAIMS. App. 419-422

An Evidentiary Hearing was conducted before the Honorable Edward W. Miller on January 30, 2017. App 423. Rodney Richey represented Petitioner and Carlin B. Hastings represented the State. Petitioner and trial counsel testified at the hearing.

An order of dismissal was issued on March 29, 2017 and filed on April 6, 2017 App. 462. The PCL judge dismissed Petitioner's application based upon a finding that Petitioner "failed to show counsel was deficient or that [Petitioner] was prejudiced by any alleged deficiency." App. 466.

This Petition Follows:

Argument

PCR Court ERRED in finding that PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL, where COUNSEL FAILED to utilize discovery material in effect NO Adversarial Testing.

During the Evidentiary Hearing, Counsel testified Accordingly

Q.) Okay did you -- how would you describe the states evidence against him?

A.) Well, I mean it was based on misidentification, and in this particular case, they screwed up several of them. They lost some line-ups, I believe and it's in the Neil v Biggers Hearing.

There was most of them were drunk or other were intoxicated, and I believe I asked a question about all that. So I mean

it was based on -- and we also attempted to attack whether they could actually see him or not because of the way that -- when you go out there, it's a fairly small kind of duplex house, and it's on a side street, and it's not

particularly well populated and there aren't that many lights out there. So we made some hay about whether or not you could you could actually see him because again he's an

African American male. They said -- I believe they said that maybe had a porch light on, but it didn't go out into the yard. Again there were no -- so we made hay out of that and the fact that they just wouldn't be able to see him. So those were some of

the problems with their case. But anytime you have that many eyewitnesses, it's a difficult case to win.

PETITIONER INDICATES THAT COUNSEL SHOULD HAVE ASKED FOR
A EXPERT ON EYEWITNESS TESTIMONY. "SOUTH CAROLINA V WHALEY"
(AN EXPERT'S TESTIMONY IS ADMISSIBLE WHERE AS THE MAIN ISSUE
IS THE IDENTITY OF THE PERPETRATOR, THE SOLE EVIDENCE IS EYE-
WITNESS IDENTIFICATION AND THE IDENTIFICATION IS NOT SUBSTANTIALLY
CORROBORATED BY EVIDENCE GIVING IT INDEPENDANT RELIABILITY.)
LINDSTADT 239 F3D AT 203 (THE EXCEEDING IMPORTANCE IN A
CREDIBILITY CONTEST OF TESTIMONY OF NEUTRAL, DISINTERESTED WITNESSES.)
CRISP 473 F.2D AT 585 (NOTING THE IMPORTANCE OF HAVING INDEPENDANT
WITNESSES CORROBORATE A DEFENDANTS STORY. EXPERTS INTERPRETATION OF
RELEVANT PHYSICAL EVIDENCE (OR LACK OF IT) IS THE SORT OF NEUTRAL
DISINTERESTED TESTIMONY THAT MAY WELL TIP THE SCALES AND SWAY
THE FACT FINDER "JURY" OVER IN A CREDIBILITY CONTEST, THE
TESTIMONY OF NEUTRAL DISINTERESTED WITNESSES IS EXCEEDINGLY
IMPORTANT. SEE GENERALLY HOLLADAY V HALEY 209 F3D 1243,
1251-52 (11TH CIR 2009) (HOLDING THAT AN ATTORNEY'S INVESTIGATION
IS NOT REASONABLE WITHIN THE MEANING OF STRICKLAND WHEN THE
FACTS OF A CASE SUPPLY HIM WITH NOTICE, THAT A PARTICULAR LINE
OF PRE-TRIAL INVESTIGATION MAY SUBSTANTIALLY BENEFIT HIS CLIENT AND
DOES NOT PURSUE IT. PETITIONER STATES THAT THIS DEFICIENCY
DEPRIVED HIM EFFECTIVE ASSISTANCE OF COUNSEL. THE FACT FINDER
WOULD HAVE KNOWN TO APPRAISE THE CIRCUMSTANCES COMPLETELY
DIFFERENT. THAT PREJUDICED THE PETITIONER. COUNSEL KNEW AS
IN HIS OWN WORDS IN THE EVIDENTIARY HEARING THAT THIS WHOLE
CASE WAS BASED ON MISIDENTIFICATION AND THE CIRCUMSTANCES
SURROUNDING IT. WITNESSES DRUNK OR INTOXICATED IN SOME FORM
THE ONLY LIGHT WAS A TELEVISION ON INSIDE OF THE HOUSE App 165 1.
6-23. CRIME TOOK PLACE OUTSIDE 5:00 AM, STILL DARK OUTSIDE.
AN EXPERT WOULD HAVE BEEN EXCEEDINGLY IMPORTANT AS THE ~~STATE~~
CASES ABOVE STATE. COUNSEL ALSO STATES SO TO. App 206 1. 2-

Q.) SURE, SURE BUT THERE IS AN INHERENT CREDIBILITY PROBLEM WITH PEOPLE WHO HAVE BEEN DRINKING AND SMOKING MARIJUANA, IS WHAT YOU'RE SAYING.

A.) uh-huh

Q.) FAIR ENOUGH. THAT'S A GOOD POINT. SO YOU DID NOT THINK ANYBODY WOULD BELIEVE YOU?

THAT WAS COUNSEL QUESTIONING A STATES WITNESS. HE, COUNSEL KNEW FROM DISCOVERY MATERIAL THAT THIS LINE OF INVESTIGATION WOULD HAVE HELPED HIS CLIENT THE PETITIONER. THE CREDIBILITY CONTEST CRISP 473 F.2d AT 585 SPOKE ABOUT. HAVING AN INDEPENDANT WITNESS IS VERY IMPORTANT.

PETITIONER ALSO SAYS COUNSEL WAS INEFFECTIVE FOR NOT ASKING FOR A SPECIAL JURY INSTRUCTION, APP 367 1. 15-17. TRIAL JUDGE ASKS FOR ANY REQUESTS FOR INSTRUCTIONS. COUNSEL STATES. "I DO NOT." APP 367 1.17. PETITIONER STATES THAT COUNSEL SHOULD HAVE ASKED FOR A MISIDENTIFICATION INSTRUCTION. "HOLLEY-TELFIRE" IS AN INSTRUCTION WHICH IS GIVEN IN CASES WHERE THERE IS NO EVIDENCE OF IDENTIFICATION EXCEPT EYEWITNESS TESTIMONY, ADVISES THE JURY ON HOW TO APPRAISE A WITNESSES IDENTIFICATION TESTIMONY, EMPHASIZING WHETHER THE WITNESS HAD ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER, HOW FAR THE WITNESS WAS FROM THE OFFENDER, HOW GOOD WAS THE LIGHT, THE LENGTH OF TIME BETWEEN THE OFFENSE AND IDENTIFICATION. THIS COULD HAVE SWAYED THE FACT FINDER TO SEE DIFFERENT THAT WOULD HAVE BROUGHT ABOUT A DIFFERENT OUTCOME.

6)

ARQUEMENT

Did PCR Court err in finding that petitioner received EFFECTIVE ASSISTANCE of counsel, where counsel failed to function as the state's Adversary?

Petitioner says counsel failed to act as an adversary to the state, App 32.1.12- App 35.1.2. Counsel brings into question was detectives' interviews with witnesses were recorded. App 32.1.17-18 Counsel stated he doesn't see portions detectives put into his supplemental reports. App 39.1.19- App 33.1.2.

A.) Petitioner states counsel should have demanded the full video of interviews because one witness may have picked out someone else. "Stondrell Holmes" the other "slow". App 34.1.21- App 35.1.2. STATE V CABRERA - PENA (SC App 2002) 350 S.C. 517, 567 SE2d 472 Rehearing denied, certiorari granted, affirmed in part remanded in part 361 SC 372, 605 SE2d 522 (Rules of Evidence 106, Although the rule of completeness provides that when written or recorded statements are introduced in part, an adverse party may require the admission of the other portions of the partial statements are not taken out of context, only that portion of the remainder of any statement or clarifies ~~the~~ the previously admitted portion should be ~~introduced~~ introduced. Lost of exculpatory evidence. Due Process violation, 14th Amendment.

B.) Counsel failed to demand the other photo arrays "line-ups" detectives say they showed witnesses App 36.1.16 - App 37.1.25. STATE V CABRERA, JONES V BARNES 4163 US 745, 758, 103 S.Ct 3308, 77 LE 2d 887 (1985)

(Stating that in order to satisfy the constitution
COUNSEL must function as AN ADVOCATE for the
DEFENDANT, AS OPPOSED to A FRIEND of the court.)

C.) COUNSEL did not demand A RULING on his objections.
App 339 1. - 343:1.4 AND App 263 1.14 - App 265 1.14.
JONES v BARNES, COUNSEL acting AS A FRIEND AND
NOT AN ADVERSARY to the court.

D.) TRIAL COUNSEL failed to impeach ALL STATE'S WITNESSES
EVEN THOUGH SOME had BEEN CONVICTED of CRIMES of dishonesty.
Anthony Copeland had FALSE INFORMATION AND THREATENING
A WITNESS. Crystal Ross had Shop Lifting in SEVERAL
STATES including South Carolina. Could have painted
A PICTURE to the fact finders what type of people
the STATE'S WITNESSES were their CHARACTER.
STATE v ALEKSEY, STATE v SHAW HUNTER v STAPLES

(SC App 1999) 335 S.C. 93, 515 SE 2d 261

E.) TRIAL COUNSEL ineffective for NOT asking for AN
CONTINUENCE knowing that he was sick, BEEN sick
AND could NOT prepare well, function well, not meet
App. 110 1. 16-17. Counsel states. "I've got a little bit
of a cold, I've had a cold for about a week and a
half."

This deficiency prejudiced PETITIONER because Counsel
was ill had been ill, which could be the REASON Counsel
MADE SO MANY UNPROFESSIONAL MISTAKES AND CAUSED
PETITIONER to receive A life sentence due to that
deficiency. who knows of Counsel about all the outcome
of this proceeding. PETITIONER lacked his 6th Amendment
Right under the U.S. Constitution of EFFECTIVE ASSISTANCE
of Counsel.

PETITIONER STATES THAT COUNSEL DID NOT FULLY UNDERSTAND
NOR DID HE RESEARCH NEIL V BIGGERS, App 59 1. - App 60 1.24.
TRIAL JUDGE ASKS COUNSEL "THREE" TIMES HOW DO YOU DO
A PHOTO ARRAY LINE-UP. App 59 1. 15-16, 22; App 60 1. 1.
THE STATE'S ATTORNEY HAD TO TELL COUNSEL THE STANDARD OF
NEIL V BIGGERS, App 60 1. 19-21. SEE VINYARD V US 804
F3d, 1218 (A strategic choice based on a misunderstanding
of LAW OR FACT, HOWEVER CAN AMOUNT TO EFFECTIVE
ASSISTANCE OF COUNSEL.) ("AN ATTORNEY'S IGNORANCE
OF A POINT OF LAW THAT IS FUNDAMENTAL TO HIS CASE
COMBINED WITH HIS FAILURE TO PERFORM BASIC RESEARCH
ON THAT POINT IS A QUINTESSENTIAL EXAMPLE OF
UNREASONABLE PERFORMANCE UNDER STRICKLAND.) COUNSEL
NOT REASONABLE RESEARCH CAUSED A GRAVE HARM
TO PETITIONER, THIS WAS A POSSIBLE LIFE SENTENCE TRIAL
AND COUNSEL FAILED TO MAKE THE ADVERSARIAL
TESTING PROCESS WORK.

ARGUMENT

THE PCR COURT ERRED IN FINDING THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL, WHERE TRIAL COUNSEL FAILED TO INVESTIGATE ALL OF THE ALIBI WITNESSES PROVIDED TO HIM BY THE PETITIONER PRIOR TO PETITIONER'S TRIAL ON A CHARGE OF MURDER.

PRIOR TO THE EVIDENTIARY HEARING IN HIS CASE, PETITIONER SOUGHT TIME AND FUNDING TO HIRE AN INVESTIGATOR IN ORDER TO LOCATE ALIBI WITNESSES. APP 425 119-4261.11. ALTHOUGH PETITIONER OFFERED NAMES OF TEN WITNESSES WHO WOULD TESTIFY IN HIS DEFENSE, TRIAL COUNSEL NEVER FULLY INVESTIGATED THOSE INDIVIDUALS AND WHAT THEIR TESTIMONY WOULD ENTAIL. APP 426 11.14-25. PETITIONER TESTIFIED ACCORDINGLY AT THE EVIDENTIARY HEARING:

DURING THE COURSE OF ME BEING INCARCERATED IN SPARTANBURG COUNTY, I DIDNOT HAVE THE PROPER MEANS TO BE ABLE TO FIND THESE PEOPLE, AND COUNSEL DIDNOT TRY TO FIND-- DIDNOT TRY TO CONTACT THESE PEOPLE UNTIL A WEEK PRIOR TO ME GOING TO TRIAL. SO THINGS OF SIGNIFICANCE TO ME WERE OF NO SIGNIFICANCE TO THEM BECAUSE COUNSEL, HE DIDNOT TRY TO GET IN TOUCH WITH THESE PEOPLE UNTIL A WEEK BEFORE TRIAL. SO THAT'S 18 MONTHS AFTER THE ALLEGED CRIME HAPPENED. SO THEY DONT REMEMBER EXACTLY.

APP 427 11.1-11

ADDITIONALLY, PETITIONER INDICATED THAT PCR COUNSEL NEITHER CONTACTED THESE WITNESSES NOR CALLED THEM TO TESTIFY AT THE EVIDENTIARY HEARING. App 431 1. 13-432 1. 3. PCR COUNSEL NOTED THAT HE MET ~~ME~~ WITH PETITIONER ON OCTOBER 16, 2016 AT THE DEPARTMENT OF CORRECTIONS. App 429 1. 3-4. ELEVEN DAYS PRIOR TO THAT MEETING, PCR COUNSEL CLAIMED TO HAVE WRITTEN PETITIONER A LETTER MEMORIALIZING A CONVERSATION THEY HAD ABOUT WITNESSES App 432 1. 6-21.

THE PCR JUDGE DENIED PETITIONER'S REQUEST AND ALLOWED THE HEARING TO PROCEED. App 433 1. 9-12. PETITIONER OBJECTED:

ME--ME AND PCR COUNSEL HAVE NO LEGAL--NO LEGAL-- NOTHING, NOTHING. WE HAVEN'T HAD A TEN MINUTE CONVERSATION THE TWO OR THREE TIMES THAT WE'VE TALKED, SO HOW IS HE GOING TO PROPERLY REPRESENT ME WHEN WE HAVEN'T WENT OVER NOTHING, NO STRATEGY, NO NOTHING? WE HAVEN'T WENT OVER NOTHING, NOTHING. THIS IS--THIS IS A SERIOUS MATTER. WE HAVEN'T GONE OVER NOTHING, NOTHING.

App. 433 1. 15-21.

ONE OF PETITIONER'S MAJOR CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, FAILED TO INTERVIEW POTENTIAL ALIBI WITNESSES. App 435 1. 2-6; App 436 1. 11-18. PCR COUNSEL WAS UNABLE TO LOCATE THOSE WITNESSES. PETITIONER SUGGESTED THAT HE WOULD NOT HAVE BEEN CONVICTED OR RECEIVED A LIFE SENTENCE HAD COUNSEL FULLY INVESTIGATED THE ALIBI WITNESSES. App 437 1. 18-438. 1. 7.

¹ PCR COUNSEL HAD BEEN REPRESENTING PETITIONER SINCE AT LEAST OCT. OF '16 App. 429. 1. 2

PETITIONER CORRECTLY ASSERTED THAT TRIAL COUNSEL WAS INEFFECTIVE, BECAUSE HE NEITHER FULLY INVESTIGATED NOR CALLED THE ALIBI WITNESSES TO TESTIFY AT PETITIONER'S TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES A DEFENDANT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. U.S. CONST. AMEND. VI; STRICKLAND V WASHINGTON 466 U.S. 668 (1984). THE UNITED STATES SUPREME COURT HAS A TWO-PRONGED TEST TO ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL BY WHICH A PCR APPLICANT MUST SHOW (1) COUNSEL'S PERFORMANCE WAS DEFICIENT AND (2) THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT, ID. AT 687. "THE COURT SHOULD KEEP IN MIND THAT COUNSEL'S FUNCTION, AS ELABORATED IN PREVAILING PROFESSIONAL NORMS, IS TO MAKE THE ADVERSARIAL TESTING PROCESS WORK IN THE PARTICULAR CASE." ARD V CATOE 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting STRICKLAND AT 690).

FIRST, TO BE ENTITLED TO PCR, THE APPLICANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT, PAYNE V STATE 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing STRICKLAND V WASHINGTON, SUPRA). IN THIS REGARD, TRIAL COUNSEL FAILED TO SPEAK WITH EACH ALIBI WITNESS OFFERED BY PETITIONER. PETITIONER'S TESTIMONY, AS OUTLINED ABOVE, INDICATED THAT THE WITNESSES WOULD HAVE PROVEN HIS INNOCENCE. SUCH CONDUCT FAILS WITHIN THE GAMUT OF DEFICIENCY; THE WITNESSES WERE NOT CALLED AT TRIAL OR AT THE PCR HEARING.

"THE SECOND PRONG OF THE STRICKLAND TEST REQUIRES A SHOWING THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT TO THE EXTENT THAT THERE IS A REASONABLE PROBABILITY THAT, BUT

for counsel's unprofessional errors, the result of the proceeding would have been different." CHERRY V STATE 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." SIMMONS V STATE 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

In this capacity, there is a strong likelihood that the witnesses would have placed Petitioner at a location other than Copeland's home, had trial counsel called them at his trial. This testimony would have countered the state's identification witnesses and led the jury to believe in Petitioner's innocence.

CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER REQUESTS THAT THE COURT GRANT HIS APPLICATION FOR POST-CONVICTION RELIEF, REVERSE THE CHARGES AGAINST HIM, AND REMAND THE CASE FOR A NEW TRIAL.

Keith Letman

KEITH LETMAN
PETITIONER

THIS 26th DAY OF DECEMBER, 2017

HERN Letter # 21137

F-3-A-287

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