

Date: July 17, 2018

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
Post office Box 11330  
Columbia, South Carolina 29211

Re: Javan F. Mays v. State  
Appellate Case No. 2017-000891

Dear Hon. Shearouse:

Enclosed please find my Pro Se Response to Johnson  
Petition for Writ of Certiorari and Proof of Service for Same  
for filing with your office.

Very truly yours

By Javan F. Mays  
Javan Fredrick Mays  
SCDC No. 250287  
Perry Correctional Inst. Q2B/  
Pelzer, S.C. 29669  
Pro Se

cc: file

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
Honorable Frank R. Addy, Circuit Court Judge

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JAVAN FREDERICK MAYS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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PRO SE RESPONSE TO JOHNSON PETITION  
FOR WRIT OF CERTIORARI

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Javan Fredrick Mays  
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S.C. SUPREME COURT

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The PCR Judge erred in denying petitioner's claim that he was denied the right to effective assistance of appellate counsel's failure to raise his preserved issue of the state's violation of his discovery request for the robbery victims' medical records to disprove the state's "attempted murder" charges against him in PCR action 2015-CR-42-01784. . . . . 3

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## ISSUE PRESENTED

The PCR Judge erred in denying petitioner's claim that he was denied the right to effective assistance of appellate counsel by counsel's failure to raise his preserved issue of the state's violation of his discovery request for the robbery victims' medical records to disprove the state's attempted murder charges against him in his PCR action 2015-LP-42-01784<sup>1</sup>.

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1. 2015-LP-42-01784 addressed petitioner's trial by jury conviction of armed robbery, possession of a weapon during the commission of a violent crime and two counts of attempted murder.

## STATEMENT

Petitioner Javan Frederick Mays was convicted of armed robbery, possession of a firearm during the Commission of a violent crime and two counts of attempted murder per jury trial held during the November 2013 term of the Spartanburg County General Sessions Court before Judge Alexander S. McCaulay. The petitioner appeared pro se at trial along with J. Roger Poole Esquire, as standby counsel. Assistant Solicitor Derrick Bulsa appeared on behalf of the State at trial. Petitioner was sentenced to imprisonment for an aggregated twenty-year term.

The petitioner appealed, but his appeal was dismissed by the S.C. Court of Appeals. See State v. Mays, 2015-UP-179 (S.C. App. filed April 8, 2015). App. 279-280. Susan B. Hackett of the S.C. Office of Appellate Defense represented petitioner on appeal and filed an Anders Brief of Appellate on November 12, 2014. App. 261-278. The South Carolina Court of Appeals dismissed petitioner's appeal in an unpublished opinion. State v. Mays, 2015-UP-179 (S.C. App. filed April 8, 2015). The Remittitur was returned on April 28, 2015.

The petitioner subsequently filed a PCR application on April 28, 2015, with the Spartanburg County Clerk's office in action 2015-CP-42-01784 (App-281-301) attacking his trial Court conviction.

A Post-Conviction Relief (PCR) hearing was convened on November 9, 2016, at the Spartanburg County Courthouse before Judge Frank R. Addy. Petitioner was present at the hearing and was represented by Rodney Riche, Esquire, and Assistant Attorney General Alicia Olive

appeared on behalf of the State. App. 307-327. On March 24, 2017, Judge Addy issued an order in his case. App. 329-387.

The petitioner appealed Judge Addy's Order of Dismissal. This Pro Se Petition for Writ of Certiorari follows.

### ARGUMENT

The PCR Judge erred in denying petitioner's claim that he was denied the right to effective assistance of appellate Counsel's failure to raise his preserved issue of the State's violation of his discovery request for the robbery victims' medical records to disprove the State's "attempted murder" charges against him.

On November 9, 2016, a PCR hearing was held on the petitioner's claim that he was denied the right to effective assistance of appellate Counsel by Counsel's failure to raise and argue his preserved issue of the State's failure to provide him discovery of the robbery victims' medical records to dispute the State's "attempted murder" charges against him.

In support of his claim, he submits that during his PCR hearing his appellate Counsel, Susan Hackett, testified as follows regarding the State's failure to provide the applicant discovery of the robbery victims' medical records during direct examination by his PCR Counsel, Rodney Riche, as follows:

Q: Did you happen to write a brief in this case?

A: I did sir.

Q: And do you recall the issue that you raise in that brief?

A: Yes, I do.

Q: And what was it?

A: The issue I raised is that the Judge should have charged the Jury that for the crime of attempted

murder specific intent is required. Instead, the Judge then charged the Jury that general intent was only required.

Q: Was this issue preserved on appeal?

A: It was not preserved.

Q: Do you believe that the "discovery issue" was an appealable issue?

A: I did not find it to be one.

Tr. p. 314, L. 13-315, L. 5 (Per Tr. p. 8-10)

Accordingly, Contrary to petitioner's appellate Counsel's testimony that she did not find the petitioner's "discovery issue" to be an appellate issue, the trial Judge rendered the following ruling concerning the State's failure to provide the petitioner discovery of the robbery victim's medical records:

Court: All right, we're back on the record. I have received a question in State v. Mays. I have received a question from the jury. Was Antron Oalesby's (robbery victim) head grazed by a bullet?

Def. Mays: I aint seen nothing in my motion that a bullet hit his head. That's why we needed records that would determine all this.

Court: Well, we don't have any. So we can't do that.

"I note your objection for (State's) failure to have medical records".

Def. Mays: And it was in my motion (for discovery), Your Honor. . .

Tr. p. 241-244.

As the above excerpts from the trial transcript unquestionably shows that the State's failure to provide the petitioner discovery of the robbery victim(s)' medical records was preserved for appellate review by petitioner's objection to this violation by the State, it cannot be seriously argued that he

was not denied effective assistance of appellate Counsel by Counsel's failure to raise and argue the state's discovery violation which could have entitled him to reversal of his attempted murder conviction.

Finally, as a threshold matter in Brady v. Maryland, 373 U.S. 83 (1963), the U.S. Supreme Court held that due process requires the prosecution to disclose evidence favorable to an accused when evidence is material to guilt or punishment. See also, Rule 5, S.C.R. Crim. P.

In conjunction, the U.S. Supreme Court has further held that an indigent defendant has a right to appointed Counsel on appeal if the appeal is granted as of right, and that Due Process requires effective assistance of Counsel during first appeal as of right Evitt v. Lucey, 469 U.S. 387, 396 (1985).

Here, as the record shows that the State violated petitioner's discovery motion, and that he was denied effective assistance of appellate Counsel's failure to raise and argue the State's discovery violation, it cannot be seriously argued by the State that the petitioner is not entitled to reversal of his conviction.

### CONCLUSION

WHEREFORE, for the foregoing reasons, the Honorable Court should reverse the petitioner's conviction for a new trial.

Respectfully Submitted

/s/ Jovan F. Mays  
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This 17<sup>th</sup> day of July, 2018  
J  
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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Spartanburg County  
Honorable Frank R. Addy, Circuit Court Judge

Javan Fredrick Mays,

PETITIONER,

vs

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2017-000891

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of his Pro Se Petition for Writ of Certiorari has been served upon Valerie Garcia Giovanoli, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201 and a copy of the Pro Se Response to Johnson Petition have been served upon Wanda H. Carter, Deputy Chief Appellate Defender, SC Commission on Indigent Defense, P.O. Box 11589, Columbia, SC. 29211-1589.

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This 17th day  
of July 2018

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S.C. SUPREME COURT

Jovan Mays-250287-2B-224

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Pelzer, SC. 29669

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PC.I. MAILROOM

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