STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Frank R. Addy, Circuit Court Judge

HUBERT BROWN,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO 2016-001363

RETURN TO PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

INDEX

QUESTIONS PRESENTED

I. The PCR judge ruled properly that trial counsel was ineffective in failing to object to the trial judge's erroneous jury charge **and recharge** that attempted murder required a general intent finding when a specific intent to kill was the proper mens rea element for attempted murder, particularly where even **the solicitor noticed the incorrect charge and objected to it at trial,** and where the prejudice was obvious as the respondent was incapable of formulating any specific intent to kill as evidenced by his brain injury and hence his insanity defense raised at trial.

II. The PCR judge ruled properly in finding that trial counsel erred in failing to object to the admission of Dr. Shannon Hanson's report in to evidence at trial because she was not present at trial to testify as a witness about her conflicting report, which contradicted the respondent's insanity defense, and counsel erred further in failing to object to the testimony of Dr. Frierson, who bolstered Dr. Hanson's credibility as an expert witness, because all of this weakened and nullified the respondent's insanity defense.

III. The solicitor's reference to Dr. Carol Walser as a "lady doctor" during closing argument was a prejudicial comment that constituted reversible error.

STATEMENT OF THE CASE

Respondent Hubert Brown was convicted of first degree burglary and attempted murder per jury trial held during the July 2013 term of the York County General Sessions Court before Judge John C. Hayes, III. The respondent was sentenced to LWOP on both convictions. App. 1-384. David Cook represented the respondent at trial and Assistant Solicitor E.B. Springs appeared on behalf of the state. The respondent appealed, but after briefs were filed (App. 391-425), his convictions and sentences were affirmed by the South Carolina Court of Appeals. See State v. Brown, Unpublished Opinion. No. 2014-UP-425 (S.C. Ct. App. filed November 26, 2014). App. 426-427. Carmen V. Ganjehsani, Esquire, formerly of the South Carolina Office of Appellate Defense, represented the respondent on direct appeal, and Assistant Attorney General Jennifer Ellis Roberts represented the state on direct appeal.

On December 31, 2014, the respondent filed an application for post-conviction relief with the York County Office of the Clerk of Court. App. 430-436. On July 8, 2015, the respondent filed a return and motion for a more definite statement. App. 443-446.

A PCR hearing in the case was convened on April 19, 2016, at the York County Courthouse before Judge Frank R. Addy, Junior. App. 448-537. The respondent was present at the hearing and represented by Tommy Thomas, and Assistant Attorney General Justin Hunter appeared on behalf of the state.

On June 16, 2016, Judge Addy issued an Order granting post-conviction relief to the respondent. App. 541-549. The state appealed and filed a petition for writ of certiorari dated May 9, 2018. This return follows.

ARGUMENT I

The PCR judge properly ruled that trial counsel was ineffective in failing to object to the trial judge's erroneous jury charge **and recharge** that attempted murder required a general intent finding when a specific intent to kill was the proper mens rea element for attempted murder, and because counsel's failure to object to the erroneous charge was particularly egregious in that even the **solicitor noticed the incorrect charge and objected to it** at trial, and where the resulting prejudice was obvious as the respondent was incapable of formulating any specific intent to kill as evidenced by his brain injury and hence his insanity defense raised at trial.

At trial, eyewitnesses Michael Mahoney and Christopher Calvert both about what happened in this case. Mahoney testified that the respondent appeared at his residence while he and Calvert were both there on June 8, 2012, and that the respondent pointed a finger at him during a heated conversation. Mahoney stated that he responded by pushing the respondent. Mahoney stated that the respondent hit him, and that he and the respondent immediately began fighting each other on the ground. Shortly thereafter, the respondent stopped fighting after being hit on his (the respondent's) head. Minutes later, the respondent rose up and started chasing Calvert, but left and then returned holding a machete and cut Calvert's hand (thumb) after entering the house. App. 61, l. 10 – App. 86, l. 25.

Christopher Calvert testified at trial and admitted that he used a gear shift to hit the respondent on his head to break up the fight between the respondent and Mahoney. Then, the respondent left and returned to the residence with a machete. Calvert stated that the respondent used it to cut his hand (thumb). App. 106, l. 16 – App. 121, l. 3.

The trial judge in the case gave the following jury charge regarding the element of intent as it pertained to the offense of attempted murder:

> A specific intent to kill is not an element of murder, but it must be a general intent to commit serious bodily injury. App. 350, l. 25 – App. 351, l. 2.

Then, in response to a jury note requesting a recharge on attempted murder (App. 366, l. 14-16), the trial judge's recharge follows:

> I received your note and I want to clarify...[and] go back through the charge of attempted murder. App. 367, lines 8-11. A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit the serious bodily injury. App. 368, lines 21-23.

With respect to this element of intent as it applied to the offense of attempted murder, the solicitor raised the follow objection:

> [Solicitor]: The first time you charged this morning I was daydreaming and I wasn't daydreaming this time and I heard you say that only a general and not a specific intent for attempted murder is required. I think all attempted require [] a specific intent and I don't think the legislature has given us any leeway on that.
>
> The Court: Well that's what I've got in my charge and – A specific intent to kill is not an element of attempted murder. There must be a general intent to commit serious bodily injury
>
> [Solicitor]: I know it was general when we had ABWIK but when we went to attempted –
>
> The Court: That's what I charged them earlier. If you find some law that says that that's not right, that's in my charge and it's in my charge under the heading of Attempted Murder under 16-3-29. I don't see a case cited. But you take exception to that part of the charge?
>
> [Solicitor]: I'm just concerned because the way I was taught all attempted are specific intent. And so when we went from ABWIK which is a general intent to attempted murder I'm afraid maybe we kicked in a specific intent.
>
> The Court: You mean if I have a general intent to harm you and I harm Chris instead, or have a general intent to hurt everybody in here and the only person except Chris and he's the one I hurt and –

[Solicitor]: Well that can be transferred intent.

The Court: Well you're on the record for that.

[Defense Counsel]: Nothing from the defense, Your Honor.
App. pp. 372-374

The PCR judge granted PCR relief to the respondent on the ground that trial counsel was ineffective in failing to object to the trial judge's explanation of general intent, rather than specific intent, as the mens rea element that should have been found before returning a verdict guilty on the offense of attempted murder. The PCR judge ruled as follows:

> [The respondent] maintains that trial counsel was ineffective for failing to object to the trial court's general intent instruction as it related to the attempted murder charge. Having reviewed the transcript, the Court finds that the capable trial judge did mistakenly instruct the jury that the State need only prove general intent as opposed to specific intent. See Trial Transcript, p. 350, line 25 – p. 351, line 4. The Assistant Solicitor did point this fact out to the trial court, but trial counsel did not join in the Assistant Solicitor's efforts to have the jury correctly charged on the law, and the trial court declined to alter the erroneous instruction.
>
> Significantly, the erroneous charge gave the jury the impression that they only had to find general intent to harm, as opposed to a specific intent to kill. See State v. King, 412 S.C. 403 (Ct. App. 2015). The fact that the jury may have struggled with this issue is evident in the jury's request for a recharge on the elements of attempted murder. Trial Transcript, p. 366, lines 14-19. In response to this request, the trial court again recharged general as opposed to specific intent. Therefore, twice the trial court mistakenly stated that specific intent to kill is not an element of attempted murder.
>
> Additionally, ...the Court finds that the [respondent's] mental state was the key issue in the case with regard to both the attempted murder charge and the burglary charge. With respect to the burglary charge, the state argued that the crime the [respondent] intended to commit once he entered the dwelling was the attempted murder. Trial Transcript p. 333, lines 25 – p. 335, line 3. Therefore, although the attempted murder charge is technically the only charge affected by the erroneous instruction, the issue of Applicants *mens rea* is clearly relevant to both charges, so the burglary charge was also likely tangentially affected by this erroneous instruction
>
> The Court finds that trial counsel should have joined in the State's objection to this incorrect instruction and that a reasonable attorney would have objected. Factually, the victim's injuries resulted from a single swipe of the knife, which is

> quite different from the [respondent] repeatedly attempting to stab the victim. Therefore, specific intent to kill, as opposed to general intent to harm, was a crucial issue in the case, and the jury likely struggles with the distinction in light of their request to be reinstructed on the attempted murder charge. Furthermore, the Court finds that [the respondent] has demonstrated sufficient prejudice in that, but for counsel's error, the outcome at trial would likely have been different. Accordingly, PCR is granted with respect to the attempted murder conviction on this ground. App. 545-546.

Note that in the year 2000, our Court in held in State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), that although no attempted murder offense had been codified in our state at that time; nonetheless, if such an offense had existed, then attempted murder would have required a specific intent to kill under the rationale that specific intent is required for any attempt crime as the very definition an attempt crime means that the defendant consciously intended the completion of acts comprising the choate offense. Compare the case of State v. Reid, 393 S.C.3325, 713 S.E.2d 274 (2011), where the Court cited to Sutton and held that with respect to the offense of attempted criminal sexual conduct, specific intent, to the extent that the defendant intended to complete the acts comprising the underlying offense, was an element that must be proven in order to convict on the attempt crime.

Then, approximately a decade later after Sutton was decided, the legislature in 2010 codified attempted murder under S.C. Code. Ann. § 16-3-29 and defined it as the act of "a person who with intent to kill, attempts to kill another person with malice aforethought either expressed or implied." In State v. King, 412 S.C. 403, 772 S.E.2d 184 (S.C. Ct. App. 2015), the Court of Appeals concurred with the rationale in Sutton to the extent that attempted murder would require a specific intent to kill, and went on to hold also that prior rulings would dictate that specific intent must be found in order to convict on attempt crimes and that our state legislature intended to require the state to prove the specific intent to kill as an element of attempted murder. The South Carolina Supreme Court reviewed the Court of Appeals' holding in King and concurred

that attempted murder required proof that the defendant had the specific intent to kill and reiterated that specific intent means that the defendant consciously intended the completion of the acts conspiring the attempted offense (again citing to Sutton), and that specific intent was required because criminal intent focuses on the dangerousness of the actor, not the act; and moreover, that the failure to charge specific intent to kill in an attempted murder case cannot be considered harmless error. State v. King, Opinion No. 27744 (S.C. filed October 25, 2017).

In State v. Hartsfield, 300 S.C. 469, 383 S.E2d 802 (1990), the Court addressed the insanity defense and GBMI under S.C. Code. Ann. 17-24-10 & 20 below:

> It is a defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. This section codified the common-law defense of insanity. State v. Grimes, 292 S.C. 204, 355 S.E.2d 538 (1987).
>
> A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong as defined in Section 17-24-10 (A), but because of mental disease or defect he lacked sufficient to conform his conduct to the requirements of the law.

Here, the defense presented neuro-psychologist Dr. Carol Walser, who concluded that the respondent suffered from traumatic brain injury due to a blow to his head that caused a fractured skull, and that this traumatic brain injury rendered the respondent's behavior so altered that he was not criminally responsible for his actions on June 8, 2012, which meant that he was insane by our legal definition when he acted on that night and more importantly, could not have formed any specific intent to kill when the incidents in question occurred. Dr. Walser stated that the respondent's functioning on the date in question stemmed from a loss of consciousness, confusion, an altered mental state (dazed, disoriented), erratic behavior, and the inability to think

clearly. App. 281, lines 11-18; App. 282, l. 18 – 283, l.3; App. 249, l. 13 – p. 251, l. 8; App. 219, lines 12-14; App. 279, l. 21 – p. 280, l. 25. State's witnesses Mahoney and Calvert both stated that the respondent was "dazed" after he was hit on his head. App. 76, lines 2-4; App. 113, lines 1-11. Calvert admitted that he hit the respondent's head "hard." App. 113, l. 11. The respondent's wife testified that the respondent looked "crazy" with "crazy eyes" after he was hit in the head by Calvert. App. 196, l. 19 – p. 197, l. 16. The respondent's brain could not formulate any mind set of specific intent to kill during the events in question in the case.

Therefore, in the case at bar, the trial judge's erroneous charge that instructed the jury to find general intent with respect to the offense of attempted murder as opposed to the correct requirement of a finding of specific intent as an element of attempted murder should have been objected to by trial counsel, especially since the respondent's defense was that he had no specific intent to kill because he pleaded insanity, which the judge charged (insanity) along with GBMI. The respondent was incapable of formulating a specific intent to kill in this case. Hence, the prejudice that resulted from the trial judge's error and counsel's failure to object to the trial judge's error was obvious.

Clearly, if the jury had been charged with finding a specific intent to kill, then a reasonable probability existed that in light of the respondent's insanity defense (which was proved) due to the brain injury he suffered, it would have would been impossible for the element of specific intent to kill to have been found and the outcome of his trial would have been different. See State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997), where the judge instructed the jury that under insanity, a defendant does not have criminal intent and should be acquitted. Also, a judge must charge the correct law to the jury. State v. Marin, 404 S.C. 615, 745 S.E.2d148 (2013).

Thus, the respondent's proved his insanity case by a preponderance of the evidence. As a result, trial counsel's error in failing to object to an erroneous general intent jury instruction with respect to the proper level of mens rea required for the offense of attempted murder, (that brings a specific intent to kill rather than general intent), constituted deficient legal representation in violation of the Sixth Amendment, especially where the respondent's insanity defense or GBMI had been established at trial, and **particularly where even the solicitor noted error with the judge's general intent charge**. See Strickland v. Washington, 466, U.S. 668, 104 S. Ct. 2052 (1984). Furthermore, but for counsel's error in this regard, a reasonable probability exists that the outcome of the respondent's trial would have been different.

QUESTION II

The PCR judge ruled properly in finding that trial counsel erred in failing to object to the admission of Dr. Shannon Hanson's report into evidence at trial because she was not present at trial to testify as a witness about her conflicting report, which contradicted the respondent's insanity defense, and counsel erred further in failing to object to the testimony of Dr. Frierson, who bolstered Dr. Shannon Hanson's credibility as an expert witness and her report as well, because all of this weakened and nullified the respondent's insanity defense.

The respondent's defense was insanity or at the very least GBMI. Defense witness and neuro-psychologist Dr. Carol Walser testified that she interviewed the respondent on three occasions and reviewed his medical records, and then concluded that on the date in question, the respondent suffered from a deep cut from a blow on the head, which caused him (the respondent) to have traumatic brain injury. Dr. Walser explained that the respondent's brain injury caused the resulting erratic behavior that led to the incidents that occurred on the date in question. Dr. Walker added that she diagnosed the respondent with mild neuro-cognitive disorder and

depressive disorder, both of which stemmed from his brain injury via his fractured skull. Moreover, Dr. Walser stated that the respondent's functioning on the date in question stemmed from a loss of consciousness, confusion, an altered mental state (dazed, disoriented), erratic behavior, and the inability to think clearly. App. 249, l. 13- p.251, l. 8, App. 219, l. 12-14, App 279, l. 21- p.280, l. 25. According to Dr. Walser, after the blow to the head, the respondent's brain in effect could not have processed normally, which in turn meant that he was operating during the events at issue in actions with a brain that was not criminally liable, i.e. insane. App. 281, lines 11-18; App. 282, l.18 - p. 283, l. 3.

Dr. Walser was asked about reports from Dr. Shannon Hanson, who also interviewed the respondent. Dr. Shannon Hanson was not present at trial to testify as a witness. Dr. Hanson issued a report that contained her finding that the respondent was legally sane (App. 259, l. 9 – p. 260, l. 15), but Dr. Walser did not agree with Dr. Hanson's assessment because of his (the respondent's) traumatic brain injury as said injury rendered him confused, incoherent (with language) and agitated at the scene and thus not criminally responsible. App. 226, l. 13 - p. 230, l. 17. App. 252, lines 6-11. Dr. Walser was very clear in her report that the respondent was insane and could not distinguish legal and moral right and wrong on the date the incidents occurred. App. 255, l. 11-p. 257, l. 3.

Dr. Richard Frierson, a forensic psychologist, testified that he reviewed Dr. Hanson's report (State's exhibit #29) wherein Dr. Hanson found the respondent criminally responsible and stated that Dr. Hanson was a board-certified psychiatrist, and that she was a fellow in forensic psychiatry, and that he supervised her (Dr. Hanson's) evaluation of the respondent, which in effect meant he was in agreement with Dr. Hanson's findings that the respondent was criminally responsible and not insane at the time of the events transpired. App. 287, l. 21-p. 296, l. 7.

Dr. Hanson's reports were filed on May 6, 2013. App. 7, l. 9-p. 8, l. 2. Dr. Hanson was no longer employed at DMH as of June 30, 2013. App. 301, l. 8-16; App 462, l. 18 – p. 463, l. 12. Note that Dr. Hanson was presumably terminated from DMH and did not testify at trial. The respondent's trial commenced on July 9, 2013.

During the PCR hearing, trial counsel testified that he must have agreed to the admission of Dr. Hanson's report in to evidence at App. 6, l. 17 – p. 8, l. 2 and App. 288, l. 17 – p. 290, l. 18, but that he should not have done so, and that he should have objected to Dr. Hanson's report, and that he should have objected also to Dr. Frierson's testimony as well. App. 463, l. 3- p. 469, l. 6. Counsel admitted that insanity was the only defense available to the respondent, and that Dr. Hanson's report and Dr. Frierson's testimony, which bolstered Dr. Hanson's credibility and expertise and that Dr. Hanson's report and Dr. Frierson's testimony negatively impacted his insanity defense. App. 465, l. 3-12; App. 481, l. 20- p. 483, l. 4. App. 490-491.

The PCR judge ruled that trial counsel erred in agreeing to the admission of the respondent's mental evaluation by Dr. Hanson into evidence because Dr. Hanson was not a witness at trial, and also because Dr. Hanson's report was damaging in that she found the respondent to be criminally responsible, i.e., sane where to the contrary, the respondent's defense was insanity due to his skull fracture (head injury). In addition, the PCR judge found further that counsel undercut the respondent's insanity defense and lessened the impact of the defense's expert's witness' testimony in support of the insanity defense by not objecting Dr. Hanson's report, which was contrary to the insanity defense and prejudicial as Dr. Hanson was not present at trial to be challenged regarding her report. App. 546-549.

Insanity, which was codified by the defense and charged by the judge, is proved by a preponderance of the evidence. State v. Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985).

The insanity defense is coded at S.C. Code Ann. § 17-24-10(A) (Cum. Supp. 1988):

> It is a defense to a prosecution for a crime, that at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

Undoubtedly, it was error for counsel to fail to object to the admission of Dr. Hansen's report into evidence as an exhibit when she was not a witness at trial to testify because her report contradicted the respondent's insanity defense in that Dr. Hanson found the respondent criminally responsible, i.e. sane, which reduced the strength of the respondent's insanity defense and his proof that he was insane on the date in question.

Hearsay is a statement, which maybe written, other than are made by the declarant while testifying at trial that is offered in evidence to prove the truth of the matter asserted. Rule 801, SCRE. See In Re Care and Treatment of Harvey, 355 S.C 53, 584 S.E. 2d 893 (2003), where the admission of a log containing incidents deemed to be hearsay from a report by a supervisor constituted subjective reports that did not fall under the business records exception. See also State v. Blackwell, 420 S.C. 127, 801 S.E. 2d 713 (2018), where the Court held that the chaplain's notes regarding the death row inmate's remorse comments were excludable as inadmissible hearsay and did not fall under the business records exception.

Also, the business records exception under Rule 803(6), SCRE, was not available for Dr. Hansen because Dr. Hanson was not qualified at trial as an expert as she did not testify at trial and it was therefore impossible to delve into and challenge her alleged expertise. Thus, her opinions were inadmissible. In other words, because Dr. Hanson lacked credible credentials, her report could not have come in under the business records exception. For example, Dr. Hanson was a forensic psychiatry fellow, meaning she was still in training at the time she interviewed the

respondent, and she only spent one hour with the respondent. App. 216, l. 24- p. 217, l. 1; App. 226, l. 13- p. 227, l. 13. Note further that the presumed termination of Dr. Hanson from DMH also bore on her credibility and the credibility of her report on the respondent. Tr. 301, l. 8-16.

Finally, if a defendant is prejudiced by the erroneous admission of hearsay evidence, then a reversal is required. In Re Care and Treatment of Harvey, supra. In the instant case before us, counsel erred in failing to object to the admission of the report in question (Dr. Hanson's report) into evidence, because it was hearsay and Dr. Hanson was not a witness at trial to be confronted and challenged. See. State v. Alexander, 303 S.C 408, 401 S.E. 2d 167 (1991). The respondent was prejudiced because Hanson's report weakened his insanity defense and the defense could not challenge her report.

In addition, it was also error for trial counsel to fail to object to the testimony of Dr. Richard Frierson, whose testimony was used to bolster Dr. Hanson's credibility as an expert. Dr. Frierson stated that he supervised Dr. Hanson's evaluation of the respondent, which in effect placed his endorsement on her credibility, and the credibility of her findings in her report. App. 288, l. 3- p. 291, l. 8. It is imperative to note that Dr. Frierson did not sign off on Dr. Hanson's report. Another doctor, who also did not testify at trial, signed off on Dr. Hanson's report. App. 298, l. 13-17. It was error to allow Dr. Frierson to bolster Dr. Hanson's veracity and it was error for trial counsel to fail to object to Dr. Frierson's testimony in this respect. See State v. Jennings, 394 S.C. 473, 716 S.E. 2d 91 (2011), where the Court reversed and held that the trial court erred in allowing the state to introduce the forensic interviewer's written report (particularly where the mother told the interviewer what the children told her) because it contained inadmissible hearsay that bolstered the children's testimony and allowed the interviewer to vouch for the children's testimony. Compare Briggs v. State, 421 S.C. 316, 806 S.E. 2d 713 (2017), State v. Kromah, 401

S.C. 340, 737 S.E. 2d 490 (2013). Also, Dr. Hanson's report was not cumulative because it contradicted Dr. Hanson's testimony regarding sanity versus insanity. Trial counsel's error regarding the failure to object to Dr. Hanson's report as evidence and Dr. Frierson's testimony violated the respondent's Sixth Amendment right to competent counsel at trial, and but for the errors made by counsel here via these omissions, a reasonable probability exists that the outcome of petitioner's trial would have been different. See Strickland v. Washington, supra.

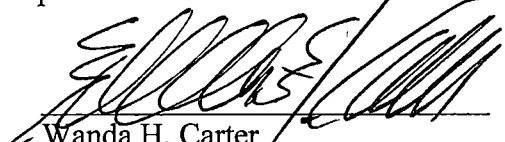
QUESTION III

The solicitor's reference to Dr. Walser as a "lady doctor" during closing argument was a prejudicial comment that constituted reversible error.

The solicitor's reference to the defense's expert witness Dr. Walser as a "lady doctor" was a gender reference that was tantamount to the type of a mockery against her credibility as a women that infected the trial with sufficient unfairness as to deprive the respondent of a fair trial. See Donnelly v. DeChristoforo, 416 U.S.637 (1974). The PCR judge properly ruled that the "lady doctor" comment was "inappropriate" and "objectionable." App. 549.

CONCLUSION

Due to the holding in Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984), which outlined the standard of the existence of "any evidence of probative value" in determining whether to uphold the PCR judge's ruling as the scope of review in PCR cases, counsel would request that this Court uphold the grant of PCR relief to the respondent in the case based on the above raised arguments.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of September, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Frank R. Addy, Circuit Court Judge

HUBERT BROWN,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Hubert Brown, #161888, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 28th day of September, 2018.

Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me this 28th day of September, 2018.

ATTORNEY FOR RESPONDENT

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.