

The Sup. Ct. of S.C.
Daniel E. Shearouse
P.O. BOX 11330
Columbia, SC 29211

Date

Re: 2017-002516
Pro-se brief

Dear Hon. Shearouse

Please find enclosed for filing my
pro-se brief in the above case.

Would you be so kind as to return
me back a filed copy.

Thanking you in advance, I am

Sincerely,
342601 JOSE LUIS CABARRIVEZ

cc: Personal file

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OCT 12 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County
Honorable Jocelyn J. Newman, Cir. Court Judge
#2017-002516

JOSE L. CABARRUVIAS

Petitioner

VS

STATE OF SOUTH CAROLINA

Respondent

PETITIONER'S BRIEF

Josel L. Cabarruvias
#342601 (Hy. R.C.I./U. 1.
200 Prison Rd.
Euree, SC 29335

David Alexander
Appellate Defender

ARGUMENT (1)

In this DUI case, trial counsel provided ineffectively assistance inconsistent with the requirements of the Sixth Amendment because of their failure to investigate witnesses who would have proved that petitioner was a passenger in the vehicle and not the driver.

Trial counsel performed deficiently by accepting the State's version of the events of the car accident which resulted in a fatality without fully investigating. Trial counsel's investigation was substantially limited to reviewing the state's discovery and interviewing the three witnesses App 161, 1.1 - 162 1.24 App. 191, 1-2 - 192, 1.19. On examination at the PCR hearing, trial counsel admitted she did not have specific information from the witnesses on their exact action after the accident App. 196, 1.16 - 198, 1.21. She admitted it was possible that the witnesses drove past the accident scene and returned, leaving a window when someone fled unseen from petitioner's van App 196, 1.16 - 198, 1.21.

Petitioner testified that the EMS paperwork

was not provided to him. And, that there was problem with the three witnesses, because none of them could identify who was in the van. And, that the witness statements did not mention who was driving or if anyone fled the scene.

And, that there was a time issues regarding when the statements were given - that the timing showed the statements were taken BEFORE the accident.

Petitioner testified that his attorneys did not pay attention to the time inconsistency on the statements.

Petitioner testified that his right shoulder was injured "BROKEN CLAVICLE" in the accident from the seatbelt because he was the passenger. Petitioner admitted evidence showing how his right shoulder was injured. Here, petitioner wanted testimony from a doctor about the injuries. But, Ms. Johnson testified that a doctor would not say a seatbelt caused this injury. Here, the petitioner produced favorable witnesses in accordance with the rules of evidence at his P.C.R hearing, showing that his injuries was from being a passenger in the vehicle and not

The driver.

Although, Petitioner did not introduce a reconstruction report or the testimony of a reconstructionist. But, did DULY subpoena his treating physician to testify regarding petitioner's injuries. And, Officer Adam Warren with S.C. Hwy Patrol, who investigated the accident. However, They failed to appear at petitioner's P.C.R hearing App. 361-372

This court must find that petitioner has adequately shown that counsel's performance was deficient and that the petitioner was prejudiced by counsel's alleged deficiency

SEE: McCann v Richardson 397 U.S. 759.

Strickland v Washington 466 U.S. 668. U.S. vs.

Cronic 466 U.S. 648.

ARGUMENT (2)

Trial counsel provided ineffective assistance inconsistent with the requirements of the sixth Amendment because of their failure to investigate caused Petitioner to plea

INVOLUNTARY GUILTY PLEA

Petitioner argues, for the above foregoing reasons. This court should find that the evidence in the record and presented through his witnesses at the hearing reflects that his plea was not voluntarily entered. And that Petitioner has also demonstrated that the facts and available evidence were misrepresented to him such that he was unable to make a fully informed decision with regard to his guilty plea SEE: Boykin vs. Ala 395

U.S. 238; Strickland vs Washington 466
U.S. 668. Which petitioner argues that
but for counsel's alleged errors, he
would not have pled guilty and would
have insisted on going to trial SEE:
Hill vs. Lockhart 474 U.S. 52;

Petitioner was PREJUDICED by his
attorney's failure to discover these
witnesses who could have proved that
the petitioner was not the driver of
the van. Also, petitioner had a Sixth
Amendment right to counsel, which also
extends to the plea bargaining process
SEE: Lafley v Cooper 566 U.S. 156;
Padilla vs Kentucky 559 U.S. 356. But,
in this case at bar, plea counsel's advice
to petitioner to plead guilty was based
solely upon the State's version of the
events and not on an independent. Also see:
Missouri vs Frye 132 S Ct. 1399; Promo v Moore 131 S Ct

investigation.

CONCLUSION

For the foregoing reasons, this court should grant certiorari and reverse petitioner's convictions.

Date: _____

Respectfully submitted

#2017-002516
POOF OF SERVICE

I JOSE LUIS CABRERIAS hereby certify that
I have served my brief upon the below
person. By placing the above said into the
Tyger R.C.I. mail room on this 10 day of
OCTOBER to be placed in the U.S. mail
w/ postage prepaid.

The Sup. Ct. of S.C.
Daniel E. Shearouse, Clerk of Ct.
P.O. BOX 11330
Columbia, SC 29211

SWORN to before me JOSE LUIS CABRERIAS
this 10 day of October, 2018

Reginald R. Ruckelshaus
Notary Public

My Commission Expires March 24, 2027

cc: Personal file

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S.C. SUPREME COURT

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Columbia, SC. 29211

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