

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

RECEIVED

JAN 21 2011

S.C. Supreme Court

DEMETRIO SEARS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

DEMETRIO LUIS SEARS

Petitioner pro se

ADDRESS:

4848 Goldmine Highway, KCI
Kershaw, SC 29069

HENRY DARGAN MCMASTER

Attorney General

JOHN W. MCINTOSH

Chief Deputy Attorney General

SALLEY W. ELLIOTT

Assistant Deputy Attorney General

BRIAN PETRANO

Assistant Attorney General

P. O. Box 11549

Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES PRESENTED

1. Did the PCR Court err in failing to find trial counsel's performance ineffective, in violation of Sears' Sixth and Fourteenth Amendment right to the US Constitution and State law, for completely failing to consult or communicate with Sears during the three month period between Sears' first and second trial.
2. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Fifth, Sixth and Fourteenth Amendment right to the US Constitution and State law, when trial counsel failed to object to the trial court's failure to fully investigate allegations of juror misconduct.
3. Did the PCR Court err in failing to find counsel's performance ineffective, in violation of the Sixth and Fourteenth Amendments to the US Constitution and State law, when trial counsel failed to impeach with or utilize an investigative report to contradict the key witnesses' testimony.
4. Did the PCR Court err in failing to find trial counsels performance ineffective, in violation of the Sixth, Fifth and Fourteenth Amendments to the US Constitution and State law, when trial counsel failed to impeach with numerous inconsistent and contradictory statements and make note of favorable evidence. Specifically involving: (a) bullet in parking lot; (b) going to bank; (c) conversation with alleged perpetrators; (d) skin complexion and gloves; (e) van pursuit; (f) facial description; and (g) allegations of involvement against innocent man by victim and investigators suspect investigation and identification tactics.
5. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, for failing to obtain a crime scene expert to challenge the allege victims version of events in regards to the manner in which the victim claimed to have shot Sears where the PCR Court neglected to recognize Sears' repeated requests for expert expenses to prove this claim.
6. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears Fifth, Sixth and Fourteenth Amendment rights to the US Constitution and State law, in failing to obtain an expert to examine the trajectory of the bullets fired and the wounds suffered by Sears, or in failing to adequately examine the State's expert re-

STATEMENT OF ISSUES PRESENTED (CONT.)

6. (Continued) . . . regarding Sears' wounds, where the PCR Court neglected to address Sears' repeated requests for expert expenses to fully develop this claim and his entitlement to a court-appointed expert.
7. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, for failing to properly research Sears' case and misstating a critical fact thereof.
8. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Fifth, Sixth and Fourteenth Amendment rights to the US Constitution and State law, for failing to present evidence that Sears had invoked his right to counsel and right to remain silent prior to questioning by the police.
9. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, in the cumulative effect of trial counsels errors and thier prejudicial impact.

STATEMENT OF THE CASE

Sears is presently confined in the South Carolina Department of Corrections pursuant to commitment orders of the Clerk of Court for Richland County. Sears was indicted at the December 2002 term of the Court of General Sessions for Richland County for attempted armed robbery (02-GS-40-10992). He was represented by Douglas Strickler, Esquire. The first trial occurred September 23, 2003, and resulted in a mistrial after a deadlocked jury. On January 5, 2004, Sears proceeded to trial for a second time after which he was found guilty of attempted armed robbery. He was sentenced by the Honorable G. Thomas Cooper, Jr., to confinement for a period of eighteen (18) years.

A timely Notice of Appeal was filed on Sears' behalf and an appeal was perfected by the South Carolina Office of Appellate defense. The South Carolina Court of Appeals dismissed Sears' appeal on February 24, 2006. State v. Sears, Op. No. 2006-UP-126. Thereafter, Sears filed the current application for post-conviction relief filed March 20, 2006.

Sears submitted eighteen (18) claims of ineffectiveness on trial counsel's through an original PCR application and subsequent amendments. (App. pg. 1, Spp) These amendments are all consolidated into Amendment 5 which was presented to the PCR Court at the hearing. (App. pg. 1220) Sears raised a wide variety of ineffective assistance of counsel claims based on counsel's failure to research and communicate, counsel's failure to impeach, failure to make use of favorable evidence, failure to introduce an investigative report showing Sears invoked his right to counsel prior to questioning by the police and in the cumulative effect of all of trial counsels errors. (See App. pg. supp. 22-49 for overview of claims and Exhibits) Sears additionally submitted several motions for expert expenses to fully develop and prove some of his claims. (App. pg. 75 and pg. 105 of supplemental appendix)

An evidentiary hearing into the matter was convened on February 20, 2008, at the Richland County Courthouse before the Honorable Judge Alison Renee lee. The Petitioner was present at the hearing and was represented by Charlie J. Johnson, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the State.

At the hearing, the Petitioner, Sears, testified on his own behalf. (App. pg. 1234) Sears' trial counsel, Douglas Strickler, also testified. (App. pg. 1299) On December 22, 2009, the PCR Court denied Sears' claims in a

written Order of Dismissal. (App. pg.1331) A timely Rule 59(e), SCRCP, motion was filed on Sears' behalf and ultimately denied as well. (App. pg. 93, ;supp) A timely Notice of Appeal was filed and the current petition for writ of certiorari now follows.

ARGUMENT

1. Did the PCR Court err in failing to find trial counsel's performance ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, for completely failing to consult or communicate with Sears during the three month period between Sears' first and second trial.

After a deadlocked jury requested a mistrial in September of 2003, Sears was again tried (and ultimately convicted) at a subsequent trial that took place three months later in January of 2004. At the September 2003 trial, Sears was the sole defendant. At the January 2004 trial, Sears was tried jointly with a co-defendant. Sears testified at his PCR hearing that counsel neglected to communicate with him in any way during the three month period between his two trials. (App. pg.1244) This was a point admitted by trial counsel at the PCR hearing (App. pg.1314) and recognized in the PCR Order of Dismissal. (App. pg.133,5)

In Strickland v. Washington, 104 S.Ct. 2052, 466 US 668, 80 LE2d 674 (1984), the United States Supreme Court recognized that "from counsel's function as an assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." At 2065. Recognizing that the "brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Harris v. State, 377 SC 66, 659 SE2d 140 (2008), the PCR Court declined to grant Sears relief on the grounds that he failed to "point to any specific matters counsel failed to discover aside from his other allegations of ineffective assistance of counsel." (App. pg.) The evidence and facts presented at the PCR hearing fail to support this conclusion.

Sears testified at his PCR hearing that, had counsel consulted or communicated with him at any time prior to his second trial, the results of the proceeding would have been different. (App. pg.1248) At his PCR hearing, Sears mentioned several instances of ineffectiveness that could have been avoided had counsel not allowed the three month time period between Sears' trials to pass without consultation or communication. (App. pg.1249)

Specifically, Sears pointed to trial counsel misstating the number of times Sears was shot by the alleged victim (an important misstatement to make on trial counsel's part as the lack of blood evidence at the crime scene was a key issue), trial counsel failing to impeach with numerous inconsistent and contradictory statements, and trial counsel failing to impeach the key testimony presented by the prosecution with documented fabrications. (See App. pgs. 1252 - 1263) All of these instances could have been used to bolster the defense position that the victims story was fabricated and generated solely to cover up the fact that Sears was shot in a faulty drug deal. Tucker v. Ozmint, 350 F3d 433 (4th 2003) ("Reasonableness of defense counsels investigation of possible methods for impeaching a prosecution witness depends, in part, upon importance of witness to prosecution . . .")

These specific allegations are in addition to the testimony of Sears that he was unaware that he would be tried a second time, that additional witnesses were being called to testify for the State, or that he would be tried with his co-defendant, three undoubtedly "important developments" counsel failed to discuss with Sears. (App. pg. 1250) Strickland v. Washington, supra, 104 S.Ct at 2065. The PCR Court rejected the present claim in significant part because the "specific instances" cited by Sears to support this claim were mostly other claims he presented at his PCR hearing that the PCR Court alleged were without merit. (App. pg.1220) This conclusion was not supported by the record as several other claims raised by Sears and used in support of his PCR application were actually determined to have merit but were rejected on the ground that the Court viewed them as harmless error (a conclusion Sears herein contends). (App. pg.1342) Jackson v. State, 342 SC 95, 535 SE2d 926 (2000) (In reviewing a decision on a petition for PCR, the Supreme Court is concerned with only whether there is any evidence of probative value to support that decision.) Further, no reasons were given by trial counsel as to why he completely failed to consult with Sears during this three month time period at such a critical stage. Indeed, counsel admitted relying on the notes of past public defenders assigned to Sears' case more than six months before instead of taking anytime more than an hour to talk with Sears. (App. pg.314)

In light of the facts and evidence presented at the PCR hearing, the PCR Court erred in finding that trial counsel was effective when he failed to communicate the important developments of Sears' case with him in-between his two trials as many new issues were present. This error was not harmless as the specific instances advanced by Sears in this claim would have damaged the

credibility of the key witnesses in what counsel admitted was a circumstantial case. (App. pg. 1315) Dawkins v. State, 346 SC 151, 551 SE2d 260 (2001) (Counsel's ineffectiveness could not be excused were the central issue at trial was the witnesses credibility.); Strickland, supra.

2. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Fifth, Sixth, and Fourteenth Amendment rights to the US Constitution and State law, when trial counsel failed to object to the trial court's failure to fully investigate allegations of juror misconduct.

Sears' aunt, Rhoda Alexander, testified before the start of trial that she witnessed the main prosecution witness, Sterling Patterson, talking with one of the jurors outside of the courtroom. (App. pg.25,supp) Mr. Burr, co-defendant's counsel, informed the court that Mrs. Alexander "saw the Ms. Reese talking to one of the victims in this case after we recessed yesterday." (App. pg. 6) Mrs. Alexander testified that Juror Reese said either hi or hello to Patterson and then walked into the courtroom together. (App. pg.8-12) Mrs. Alexander testified four times that Juror Reese and Patterson were "talking" to each other and that she got the impression that they knew each other. (App. pg. 8 - 12) Juror Reese had already sent a note to the judge because she forgot to disclose that she had a family member in law enforcement during voir dire and she was brought before the Court for questioning. (App. pg.12-15) Juror Reese then answered all of the questions presented to her about her family in law enforcement but was never asked about the encounter with Patterson to determine whether it was harmful or not. Sears alleged trial counsel to be ineffective for failing to have the trial court fully question Juror Reese about her conversation with Patterson and make a sufficient record of this incident. (App. pg.1250) Statev. Kelly, 331 SC 132, 141, 502 SE2d 99, 104 (1998) (In all criminal prosecutions, the conduct of the jurors should be free from all extraneous or improper influences.); Remmer v. US, 347 US 227, 74 S.Ct. 450, 451 (1954) (Stating private communication presumptively prejudicial.)

In denying this claim, the PCR Court focused solely on the trial courts "proper instructions" to the jury to negate this matter and not on the trial courts duty to investigate allegations of juror misconduct. State v. Covington , 343 SC 157, 539 SE2d 67, 70 (App. 2000) (Initially, the trial judge must make a factual determination as to whether juror misconduct occurred.) Sears' right to a fair trial by impartial jurors was neglected in this instance as the court had a duty to investigate and question both Juror Reese and Patterson regarding the incident. The PCR Courts failure to recognize trial

counsel's obligation to protect Sears; right to a fair trial by having the trial court fully investigate this incident and make a sufficient record of the court's determination goes against clearly established federal and state law and is without any support in the record. US v. Schwarz, 283 F3d 76, 98-99 (2nd Cir. 2002) (Abuse of discretion to fail to hold hearing regarding allegations of juror contact.)

3. Did the PCR Court err in failing to find counsel's performance ineffective, in violation of the Sixth and Fourteenth Amendments to the US Constitution and State law, when trial counsel failed to impeach with or utilize an investigative report to contradict the key witnesses' testimony.

The second victim, Andrae Stokes, testified at trial that Sears was wearing blue and white tennis shoes during the commission of the crime. (App. pg. 40) An investigative report contradicted this assertion by identifying the shoes taken from Sears on the day of the incident as white and gray. (See Exhibit on App. pg. 40) Sears testified at his PCR hearing that this was important because credibility was a central issue in the prosecution of his case and also because showing this contradiction would have bolstered his defense position that the victims fabricated thier version of events to justify the shooting of Sears. (App. pg. 1252) Sears pursued a claim of ineffectiveness against his trial counsel for failing to utilize this invetigative report to impeach the victims testimony at trial. (App. pg.1252) However, the PCR Court rejected this claim apparently because it reasoned that the difference between Sears wearing blue and white shoes or white and gray shoes would not have had a significant impact on the jury's outcome. (App. pg.) The record developed at the PCR hearing does not support this conclusion. Edmond v. State, 341 SC 340, 534 SE2d 682 (2000) (Appellate court will not affirm the decision of the PCR Court when it is not supported by any probative evidence.)

First, the PCR Court incorrectly assumed that the color of the shoes was not significant because "a visual reference to the shoes" was not made available. (App. pg.1340) To the contrary, photographs of both pair of shoes were admitted into evidence and made available to the jury for viewing. (See App. pg. 308 and 309) The PCR attempts to dilute the stark distinction (and, therefore, the significance) of the two pair of shoes as if they could somehow be interchangeable or simply an understandable variation of one another. The fact is that the shoes Sears was wearing on the day of the incident were completely white save for a small gray Nike emblem. (See Photograph at App. pg.309) As such, it is not likely that a victim who repeatedly testified that he was certain Sears was wearing blue tennis shoes on the day of the incident (App. pg. 40,sp) would have survived cross-examination with much credibility intact had counsel exploited the investigative report showing

otherwise and further supported the investigative report with available photos. Failure of counsel here is especially unreasonable as Sears testified that he presented this issue to counsel because he recognized the contradiction at his first trial and urged counsel to impeach. (App. pg. 1253)

There is no probative evidence in the record to support the PCR Courts finding that trial counsels failure to pursue this line of questioning into how the witness could be mistaken after so positively demonstrating his assurance would not have had a significant impact on the outcome of the proceeding. Tucker v. Ozmint 350 F3d 422 (4th 2003) (Trial counsel have an obligation to investigate possible methods for impeaching a prosecution witness, and failure to do so may result in ineffective assistance of counsel. . . .) Trial counsel conceded that there was really no direct evidence against Sears and that the case was circumstantial and an issue of credibility. (App. pg. 1315) The closeness of the case was earlier demonstrated by the fact that Sears' previous trial ended in a deadlocked jury as they were unable to decide guilt or innocence. (App. pg. 1332) The PCR Courts findings and conclusions were error as trial counsels performance fell below constitutional guarantees and prejudiced Sears. Strickland v. Washington, supra, 104 S.Ct at 2065 ("Counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.")

4. Did the PCR Court err in failing to find trial counsels performance ineffective, in violation of the Fifth, Sixth and Fourteenth Amendment to the US Constitution and State Law, when trial counsel failed to impeach with numerous inconsistent and contradictory statements and make note of favorable evidence. Specifically involving: (a) bullet in parking lot; (b) going to bank; (c) conversation with alleged perpetrators; (d) skin complexion and gloves; (e) van pursuit; (f) facial description; and (g) allegations of involvement against innocent man by victim and investigators suspect identification tactics.

At his PCR hearing, Sears pointed to several specific instances where trial counsel failed to recognized highly damaging inconsistent and contradictory statements made by the victims and to make note of favorable evidence. (App. pg.1257 - 1267); Strickland v. Washington, supra (Requiring specific showing of trial counsels errors in order to prevail on a claim of ineffectiveness.) Overlooking the cumulative importance of these specific instances and a defense strategy that relied primarily on disproving the version of events reported by the victims, the PCRCourt declined to find error and classified the specific instances listed as either immaterial or without merit. (App. pg. 1344-42) The PCR Courts findings are without support as the PCR Court neglected to recognize how each of the enumerated instances makes the version of events advanced by the defense more probable and the prosecutions case less likely. Sears' whole defense relied on showing that the victims fabricated a story to justify shooting Sears numerous times. Obvious inconsistencies such as the victim falsely stating that Sears fired several rounds at him (See App. pg. 1218and pg. 1218) and the complete lack of blood evidence at the location the victim claimed to have shot Sears numerous times at had already cast a shadow of doubt on the victims testimony (As Sears put it, "testimony that is convicting me." App. pg.1262). Accordingly, the record is without probative evidence to support the PCR Courts findings that trial counsel provided effective performance despite shedding light on the following instances:

(a) bullet in parkin lot: The victim, Patterson, testified at trial that all the shooting took place inside the shop during the commission of an attempted armed robbery and that no shooting took place outside. (App. pg.) Sears, on the otherhand, testified that the shooting actually took place

outside in the parking lot over a dispute about drug money and that no shooting took place inside the shop. (App. pg. 985) Sears testified that he believed Patterson manipulated the crime scene so that it would appear Patterson justly shot Sears multiple times in self-defense. (App. pg.1291) The difference between Sears' testimony and Patterson's testimony was dispositive to the charged offense: if Sears could establish that the shooting took place outside then it would eliminate any possible attempted robbery and show that Patterson was lying. As such, the failure of trial counsel to recognize the importance of favorable physical evidence found in the parking lot that proves Sears' version of events was a critical error and unreasonable.

A bullet found in the parking lot of the incident location could have, but was not, been used to support Sears' version of events that a shooting took place in the parking lot as he claimed. (App. pg. 1258) The PCR Court mistakenly read the record to suggest that the bullet could have simply been a shell casing out of place and disregarded it. To the contrary, Investigator Russell testified that the bullet was an actual projectile fired into the ground from a firearm. (App. pg. 449) A crime scene diagram provided by Sears at his PCR hearing demonstrate that this bullet could not have somehow originated from inside the shop were Patterson claimed the shooting took place. (See Exhibit App. pg.61, s.) If Patterson was telling the truth that no shooting took place outside, how did this bullet get fired into the ground in the parking lot? What motives did Patterson have in denying the shooting took place outside? Trial counsel could have pursued these and numerous other devastating questions that would have damaged the key evidence against Sears: the victims testimony. State v. Page, 378 SC 476, 484, 663 SE2d 357 (App. 2008) (Factors in determining the harmlessness of not impeaching witness include: ". . . the importance of the witnesses testimony in the prosecution case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecutions case.") (quoting Delaware v. Van Arsdall, 475 US 673, 106 S.Ct. 1431 (1986)) This evidence contradicted Patterson on a material point and its oversight cannot be said to be harmless. The PCR Court erroneously minimized the impact of this testimony apparently

because evidence was found inside the shop as well. (App. pg.1341) This reasoning completely side-steps the claim advanced by Sears because Sears claimed the evidence of shooting inside the shop was a fabrication and was attempting to show that the shooting actually occurred outside. (App. pg.1291)

(b) going to bank: The victims testimonies did not match about what occurred prior to the shooting taking place. Specifically, Patterson testified that he met his co-worker, Andrae Stokes, at the shop the morning of the incident, they opened the store together, talked about what thier plans were for the day and then Patterson went to the bank and returned. (App pg. 213-214) Stokes, on the other hand, testified that he never opened the shop with Patterson and that when he got to the shop that morning Patterson had already been to the bank and back. (App. pg. 177) The fact that Patterson testified extensively about events and conversations that never occurred between him and Stokes directly re-enforces the defense position that the story they told was a fabrication and led Sears to raise the claim that counsel was ineffective for failing to point out this contradiction. (App. pg.1191) The PCR Court noted the contradiction but termed it "immaterial." There is no evidence to support this finding as both Sears and counsel agreed this case was about credibility and a defense that relied on showing that the victims were lying.

(c) conversation with alleged perpetrators: The victims testimonies contradicted each other about what occurred directly prior to their version of the shooting taking place. Patterson testified that he came from the back area of the shop, saw the would-be robbers and began shooting immediately. (App. pg.1213) Stokes, on the other hand, testified that Patterson came from the back area of the shop and had a heated conversation with the would-be robbers that he described as "arguing." (App. pg.196-197) The PCR Court noted the contradictory statements but erroneously viewed the contradiction as "miniscule" apparently because not all of their testimony was conflicting. (App. pg.1342) Demonstrating that the victims fabricated their version of events was the focus of the defense and counsels failure to bring this contradiction to light before the jury was ineffective were impeaching the witnesses testimonies was the central focus of the defense. This prejudiced Sears as credibilty was the major factor during trial.

(d) skin complexion and gloves: This allegation is withdrawn by the Petitioner.

(e) van pursuit: Pattersons testimony was inconsistent regarding what he observed as the alleged perpetrators fled the scene. Patterson testified at Sears' first trial that he witnessed the perpetrators leaving the parking lot as he exits the building. (App. pg. 1211) Later, at Sears' second trial, Patterson testifies that he never saw the vehicle leave and that it was already gone when he exited the building. (App. pg.266) This inconsistency demonstrates, once again, the unlikeliness that Patterson was telling the truth with so many faults in his story. The PCR Court noted the inconsistency, but erroneously viewed it not to be a "material inconsistency." (App. pg. 1342) This finding is without probative evidence to support it as proving the victims version of events as untruthful was the defense in this case and what ultimately proved to be fatal to Sears. Tucker v. Ozmint, 350 F3d 433 (4th Cir 2003) (Trial counsel has a duty to investigate possible methods for impeaching a prosecution witness. . .) The evidence against Sears was far from strong and the ineffectiveness here had the potential to change the outcome of the trial. Strickland v. Washington, supra.

(f) facial description: Pattersons testimony was inconsistent about how he was able to identify one of the perpetrators. At Sears' first trial, Patterson testified that he could not see Sears' face when he came to the incident location because Sears had on a mask that was covering his face. (App. pg. 44-45s) However, an investigative report shows that Patterson reported directly after the incident occurred that he was able to identify Sears by seeing his face before he supposedly put on a mask. (App. pg.47,sup) Sears challenged his counsels performance in this regard for failing to impeach with these inconsistent statements. The PCR Court rejected this claim and implied that Patterson could have been talking about a co-defendant as both co-defendants were also black males. (App. pg. 1342) This assumption does not align with the evidence presented at the PCR hearing or the evidence on record. Edmond v. State, supra (Appellate court will not affirm the decision of the PCR Court when it is not supported by any probative evidence.) In both the testimony of Patterson and the investigative report submitted, Patterson

squarely identifies the light-skinned individual involved in the incident as Sears. (See App. pg. 285 and pg. 293) Therefore, there is no ambiguity in who Patterson was referring to. The PCR Court erroneously interpreted the evidence and incorrectly ruled against Sears on this ground. This Court should reverse the PCR Courts decision.

(9) allegations of involvement against innocent man by victim and investigators suspect identification tactics: The alleged victim, Patterson, told investigators that both Sears and Kassim Hosendove, a known associate of Sears, came to the incident location the day before the incident to "case" the location. (App. pg. 1217) Patterson told investigators that Sears and Hosendove came to the location in a white pick up truck, looked over merchandise in the body shop, and talked to Patterson for some time before leaving. (App. pg. 1217) This was a blatant lie by Patterson as investigators soon learned that Hosendove was not in South Carolina at the time and Patterson himself later claimed not to have met Sears prior to the day of the incident. (App. pg. 265)

Sears alleged trial counsel to be ineffective for failing to impeach Patterson with this evidence. Why Patterson lied about Sears and Hosendove casing the location the day before, the blatant fabrication on Pattersons part to bolster his version of events and the fact that the evidence was so explosive were questioned by Sears. (App. pg. 1264) Roberts v. State, 361 SC 1, 602 SE2d 768 (2004) (Counsel found ineffective for failing to impeach key witness who made contradictory statements, one of which implicated a clearly innocent man.); Strickland v. Washington, supra. The PCR Court did not focus on why this evidence was not exploited and its details dissected and presented to the jury for the fabrication it was, but instead attempted to negate its potential impact and focus on trial counsels objection (on grounds not known) when co-counsel was questioning an investigator on this topic. (App. pg. 1343) Sears alleged trial counsel to be ineffective for failing to present and impeach with this evidence, a task counsel could have performed during both Patterson and the investigators testimony. Whatever reasons counsel objected to on does not negate the fact that he failed to present what is probably the most damning evidence against the prosecution and most favorable to the defense. The PCR Court is without support in finding counsel effective in this regard and should be reversed.

The second part of this claim revolves around the suspect identification tactics involved in Pattersons identification of Hosendove as a participant in the incident that occurred. According to an investigative report written by investigator McDonald, McDonald contacted Sears' probation officer after Sears was taken into custody in an attempt to identify Sears' associates as possible participants in the incident alleged to be an attempted armed robbery. (App. pg.1217) Sears probation officer informed McDonald that Kassim Hosendove was an associate of Sears', an, in turn, prompted McDonald to put together a photo line-up of Hosendove and present it to Patterson. (App. pg. 1217) Patterson then identified Hosendove as a participant i =n the crime and included the story about Sears and Hosendove "casing" the location the day before. (App. pg. 1217) As the identification and story provided by Patterson were proved false, Sears alleged trial counsel to be ineffective for failing to attack McDonalds credibility concerning the suggestive nature of the identification of Hosendove by Patterson. (App. pg.1266) State v. Turner, 644 SE2d 693, 373 SC 121 (2007) (In determining the admissibility of an out of court identification, a court must ascertain whether the identification process was unduly suggestive.) Questions as to how Patterson was able to pick the only known associate of Sears out of a photo line-up, when this individual was clearly not present, raises valid concerns about suggestiveness on the investigators part that should have been explored. The PCR Court apparently denied this claim because an unknown objection was made off the record. (App. pg. 1343) This conclusion is unreasonable the case against Sears was a weak one and counsel gave no "strategic" reasons for his omission at the State PCR hearing. Strickland v. Washington, supra. The PCR Courts decision should be reversed and the Petitioners conviction and sentence should be overturned for the above stated violations of his federal and state constitutional rights.

5. Did the PCR Court in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, for failing to obtain a crime scene expert to challenge the alleged victims version of events in regards to the manner in which the victim claimed to have shot Sears where the PCR Court neglected to recognize Sears' repeated requests for expert expenses to prove this claim.

The alleged victim, Sterling Patterson, testified that he could only see down to Sears' "mid-chest" area during the shooting because Sears was supposedly standing behind a partition in the shop. (App. pg. 225) Patterson testified that he shot Sears attempting to prevent a robbery from taking place and in self-defense. (App. pg. 224) Sears testified that the shooting took place outside in the parking over a dispute about money and that Patterson was lying about the robbery attempt in order to justify shooting Sears. (App. pg. 1291) As Sears suffered a gunshot wound to his sub-pubic region directly below the beltline (App. pg. 43§.diagram of gunshot wounds), Sears questioned Patterson's testimony that he could only see down to his chest area and raised the claim that trial counsel was ineffective for failing to employ an expert to prove this contradiction or else adequately cross-examine the state's witnesses on this ground. (App. pg. 1270) To eliminate any possibility that a bullet could have passed through the partition and struck Sears, Sears pointed to the testimony of Inv. Russell of the Richland Co. Sheriff Dept. that he examined the partition and found no bullet holes in the partition. (App. pg. 1271) Sears claimed this error of trial counsel to be prejudicial because Sears' whole defense relied on showing that the victims were lying and this would have proven that the shooting could not have happened as the alleged victim testified. (App. pg. 1271)

The PCR Court denied this claim, in first part, because trial counsel claimed to have "talked" with an expert, Mr. Don Girndt, who concluded that the victims version of events could not be ruled out. (App. pg. 1344) Therefore, the PCR Court concluded that trial counsels failure to employ an expert or damage the credibility of Patterson with this evidence was not ineffective because the evidence could support either version of events advanced. (App. pg. 1344) This finding is unreasonable and without probative evidence to sup-

port it. Scott v. State, 334 SC 248, 513 SE2d 100, 102 (1999) (An appellate court will not affirm the decision of a PCR Court when it is not supported by any probative evidence.) Mr. Girndt, by trial counsels own admission, is not an expert in ballistics but specializes in fingerprint analysis. (App. pg. 130) Mr. Girndt was never hired by counsel, never visited the crime scene, never met with Mr. Sears and is never alleged to have even reviewed the investigative and forensic reports generated as a result of this incident. (App. pg.98, supp.) The extent of trial counsels investigation into the ballistics of this case consist of trial counsel asking Mr. Girndt a few hypothetical questions and then failing to do further investigations based on Mr. Girndt's unresearched opinions. (See App. pg. 1305- 1306(Trial counsel testifying that "I talked with Mr. Girndt about that. I said, you know, how does this happen? How does - - how does he manage to miss the other two people in the store. He said because he's shooting like they do on TV. Hand over and arm over his eyes, firing blindly away. That's how the gangsters of today play.")) It is clear that Mr. Girndt was giving no more than "curbside" advice as no one has ever alleged the shooting to take place in such a fashion. Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes resonable investigations unnecessary. Strickland v. Washington, supra, 104 S.Ct. 2066. Mr. Girndt was neither qualified or knew enough about Sears' case to advise on it. Further, the PCR Court erroneously overlooks the value this claim would have had to the defense. Sears alleged Patterson was lying about the shooting taking place in the shop and that Patterson manufactured the crime scene to fit his version of events. (App. pg.1291) Contrary to the PCR Courts findings, Pattersons version of events would have been able to have been "ruled out" had counsel made a reasonable investigation into the ballistics of this case. (App. pg. 1291); Strickland, supra. Even applying a heavy measure of deference to counsel's judgments, his decision not to investigate further here was not reasonable given the circumstances and facts presented. Simpson v. Moore, 367 SC 587, 627 SE2d 701, 706 (2006). This is especially true where, like here, the case is a close one and hinders on credibility. (App. pg. 1315- 1316(Counsel admitting case was about credibility))

The PCR Court denied this claim, in second part, because Sears did not provide expert testimony at his PCR hearing to substantiate this claim. (App. pg. 1344) This determination amounts to no less than a judicial "slap in the face" as Sears submitted numerous requests for expert expenses that were never adjudicated on by the PCR Court. (App. pg. supp. 75) Both before and after

Sears' evidentiary hearing, Sears took numerous steps in an attempt to obtain expert expense funding that include:

- Over twenty letters expressing concern and need for expert expenses. These letters are well documented and addressed to several offices including: Richland Co. Clerk's office, the chief administrative judge and presiding judge, the Attorney General's office and Sears' own attorney, Mr. Charlie J. Johnson. (App. pg.84-91-supp.)
- Sears submitted a "protective petition" with the Federal District Court of South Carolina to recognize his diligent efforts to obtain expert expenses from the State PCR Court to allow him a full and fair opportunity to litigate his claims.
- A hearing was held on or about February 21, 2009, in the Richland Co. Judicial Center before Judge Casey Manning where Sears' motion for expert expenses was addressed. However, Judge Manning declined to rule on the matter as Judge Alison Lee presided over Sears' PCR hearing. Judge Lee never addressed or ruled on the matter.

Sears was entitled to a hearing to determine whether a court-appointed expert should be provided to and was entitled to demonstrate his need for such.

Thames v. State, 325 SC 9, 478 SE2d 682 (1996) (Allowing hearing to determine need for expert expenses in PCR cases.); Campbell v. Polk, 447 F3d 270, 284-286 (4th 2006) (Stating defendant must make "threshold showing" in demonstrating need for expert.); Aice v. State, 305 SC 448, 409 SE2d 392 (1991) (PCR rules contemplate "a full bite at the apple" in litigating claims.) As the PCR Court neglected to hold a hearing allowing Sears to demonstrate his need for expert expenses, thus acting as an impediment to the full development of Sears' claims, the PCR Court cannot now fairly deny Sears' claim for failing to present the expert testimony he so diligently pursued. (App. pg. 75 supp.) Williams v. Taylor, 529 US 420, 120 S.Ct. 1479 (2000) (Diligence requires in the usual case that the prisoner, at a minimum, seek an evidentiary hearing in the state court in the manner prescribed by law.)

Sears was prejudiced by this error as showing that Sears could not have been shot as the State claimed would have likely changed the outcome of the trial. Strickland v. Washington, supra; See also Jackson v. State, 355 SC 568, 586 SE2d 562, 564 (2003) (Recognizing angles of gunshot wounds used to contradict testimony.) In light of the fact that trial counsel himself stated that, in relation to hiring an independent expert, it is possible "I just didn't think about doing it, I mean, in which case I didn't think about doing it and should have," the PCR Court was without probative evidence to support the denial of this claim. Cherry v. State, 300 SC 115, 386 SE2d 624 (1989)

6. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, in failing to obtain an expert to examine the trajectory of the bullets fired and the wounds suffered by Sears, or in failing to adequately examine the State's expert regarding the wounds, where the PCR Court neglected to recognize Sears' repeated requests for expert expenses to fully develop this claim and his entitlement to a court-appointed expert.

This argument focuses on the gunshot wound to Sears' upper left shoulder. Although the physician who treated Sears for his wounds, Dr. Raymond Bynoe, testified that this wound corresponded to the wound to Sears' lower back, he could not state which one was the exit wound and which one was the entry wound. (App. pg. 579; for diagram of wounds see App. pg.43sp) The victim, Patterson, testified that Sears was facing him the whole time during the shooting. (App. pg. 225) Sears testified that he was shot in the back while leaning into the vehicle while leaving the scene. (APP pg.980) Thus, Patterson's version of events require that Sears' shoulder wound be the entry wound and Sears' version of events makes the lower back wound be the entry wound. Sears argued at his PCR hearing that the sharp upward angle angle of the bullet from his lower back to his upper shoulder is an angle consistent with his testimony and not consistent with Patterson's testimony that Sears was standing in an upright position and fell backwards during the shooting. (App. pg.1278) Sears alleged trial counsel to be ineffective for failing to employ an expert to examine this bullets trajectory or else adequately cross-examine the states expert in this regards. (App. pg.1279); Jackson v. State, 355 SC 568, 586 SE2d 562, 564 (2003) (Recognizing use of bullet angles to contradict statement.)

In denying this claim, the PCR Court primarily relied on the testimony of trial counsel that he choose not to pursue any trajectory issues because a crime scene expert, Don Girndt, informed him that Patterson's testimony could not be disproved. (App. pg.1347) Sears maintains it was not reasonable for trial counsel to rely on Mr. Girndt's opinions to abandon his obligation to investigate the forensic aspect of this case. Strickland v. Washington,

466 US 668, 691, 104 S.Ct. 2052, 80 LE2d 674 (1984) (Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.) It was not a reasonable decision to rely on Mr. Girndt's opinion for two reasons. First, since counsel failed to employ an expert to examine the forensics of the case, Dr. Bynoe's testimony constituted the first time corresponding bullet wounds were identified. As such, Mr. Girndt simply could not have given an opinion on bullet angles because angles were not known prior to Dr. Bynoe testifying at Sears second trial. It was further unreasonable for counsel to rely on Mr. Girndt's opinion because, by counsel's own admission, Mr. Girndt does not claim to be a forensic or ballistics expert but instead specializes in fingerprint analysis. (App. pg.130) This is in addition to the fact that Mr. Girndt never interviewed Sears, visited the crime scene, examined the records and documents in Sears' case or done anything more than answer a few hypothetical questions posed by trial counsel. (App. pg.130) For extent of dialouge between counsel and Mr. Girndt) A thorough investigation into Sears' case by a trained expert in ballistics would have revealed this inconsistency and discredited Patterson's testimony while adding credence to Sears' testimony at the same time. The PCR Court claims the added benefit an expert would have netted to the defense is mere speculation because Sears failed to present expert testimony showing otherwise at his PCR hearing. Dempsey v. State, 363 SC 365, 369, 610 SE2d 812 (2005); Porter v. State, 368 SC 378, 629 SE2d 353 (2006) (Mere speculation of what a witness testimony may be is insufficient to satisfy the burden of showing prejudice.) Aside from the PCR Court failing to consider the fact that Sears alternatively allege deficient performance on trial counsels part for failing to cross-examine the state's expert on this point, the PCR Court is without standing to deny this claim for failure to present expert testimony when Sears attempted to obtain a hearing for expert expenses numerous times during the pendency of his PCR disposition. (App. pg. supp. 78)

As the record demonstrates, Sears pursued his entitlement to have a hearing to determine his need for expert expenses numerous times and by numerous avenues in addition to submitting records and motions. (App. pg.78sup); Thames v. State, 325 SC 9, 478 SE2d 682 (1996) (Allowing hearing to determine need for expert expenses in PCR cases.) By neglecting to address Sears' properly filed motions for expert expenses, The PCR Court effectively acted

as a bar to the full and fair litigation of Sears' claim and cannot now fairly deny Sears on this ground.

It was error for the PCR Court to find counsel effective in this regard as the reasoning of the PCR Court is not supported by the record. Scott v. State, 334 SC 248, 513 SE2d 100, 101 (1999) (An appellate court will not uphold a PCR courts decision where it is not supported by any probative evidence.) Trial counsel wrongly assumed Patterson's version of events could not be disproved when an examination of the bullet trajectory would have done just that. Even if it did not completely disprove Patterson's version of events (a highly unlikely scenario), it would have lent credence to Sears' version of events and at least cast doubt on Patterson's version. Dove v. State, 337 SC 298, 523 SE2d 459 (1999) (Finding counsel ineffective in failing to use evidence that was just as consistent with defense case as it was the state case.) It was error for the PCR Court to have found no deficiency in counsel's performance here, and no resulting prejudice to Sears, and the Petitioner respectfully requests that this Court reverse and grant this writ of certiorari.

7. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, for failing to properly research Sears' case a misstating a critical fact thereof.

Trial counsel wrongly remarked in his opening statement that Sears suffered from a total of eight gunshot wounds as a result of the altercation involved in this case. (App. pg. 57 - 61) The true number of times Sears was shot, as testified to by Dr. Bynoe, Sears' treating physician, was a total of four times. (App. pg. 276) The number of times Sears was shot played a critical role to the defense because it directly related to a major aspect of Sears' case: the lack of blood at the crime scene. Therefore, as no blood was found at the crime scene where Sears was supposedly shot (inside the shop), the greater number of times Sears was shot decreases the likelihood of this happening. This played into the dispositive issue in Sears' case: whether Sears was shot inside the shop during an attempted robbery as the victim claimed or whether Sears was shot in the parking lot over a dispute about money as Sears claimed. (See App. pg. 977 for victims version of events and App. pg. 977 for Sears' version of events.) The claim that Sears was shot eight times was viewed by counsel as a strong point that he hammered into the trial and attempted to cast doubt on unfavorable testimony with. (See App. pg 58 and pg. 59 for examples) When Dr. Bynoe testified that the true number of times Sears was shot was four, it significantly weakened the credibility of the defense in the eyes of the jury. As Sears stated:

"You could have felt it in the courtroom, you know - - they just made it look like we was - - they made it look like we was being dishonest with the jury because they just felt like we was misstating - - we was misstating the facts to them . ." (App. pg. 1281)

This error on trial counsels part was devastating to the defense. Accordingly, Sears alleged trial counsel to be ineffective on the grounds of his failure to research such a critical fact prior to relying so heavily on it. (App. pg. 1279) Strickland v. Washington, supra: McKnight v. State, 661 SE2d 354 (2008) (Finding counsel to be ineffective for failing to investigate medical records)

The PCR Court concluded that this error by counsel was "harmless" and denied Sears relief. (App. pg. 1349) There is no evidence in the record

to support this conclusion as the case against Sears was a weak one and the misstatement by trial counsel numerous times was a misstatement on an integral aspect of the defense that should have been noticed or researched by any competent attorney. See Nance v. Ozmint 367 SC 547, 626 SE2d 878 (2006) (Counsel found ineffective where he "abandoned his role as defense counsel and in fact helped bolster the case against his client. . .")

8. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Fifth, Sixth, and Fourteenth Amendment rights to the US Constitution and State law, for failing to present evidence that Sears had invoked his right to counsel and right to remain silent prior to questioning by the police.

The critical facts that make up this claim, as found by the PCR Court, are that Sears informed officers within minutes of being placed in custody on October 8, 2002, that he wished to remain silent and wanted an attorney, that Sears remained in a coma in the hospital until October 23, 2002, due to injuries resulting from the incident-shooting, that the police, without providing Sears counsel and without any effort on Sears' part to contact them, confronted Sears on November 4, 2002, and secured incriminating statements as a result. (App. pg 1349- 50 ; See also Exhibit on pg.49 showing (supp) investigative report where Sears invoked right to counsel) At the Jackson v. Denno hearing before trial, the investigating officer in the case was asked, "Prior to interrogating him also, this defendant had never invoked any of his rights prior to you coming into contact with him on that date, right?" The response by the officer was "No, he had not." (App. pg. 1349) At his PCR hearing, Sears alleged trial counsel to be ineffective for failing to present evidence (Inv. Haldroff report showing Sears had invoked his right to counsel on the very day of the incident, App. pg.1281) that would have allowed his incriminating statement to be suppressed. (App. pg. 1281) The PCR Court erroneously denied this claim on unreasonable grounds.

In Edwards v. Arizona, 451 US 477, 68 LE2d 378, 101 S.Ct. 1880 (1981), the United States Supreme Court dealt with similar facts. After being arrested on state criminal charges and being informed of his Miranda rights, Edwards requested the presence of an attorney and was taken to the county jail. *Id.*, 101 S.Ct. at 1882. The next day, two different police officers came to the jail and was able to obtain an incriminating statement from Edwards. *Id.*, 101 S.Ct. at 1882. Although Edwards was read his Miranda rights prior to questioning and waived his right to counsel and his right to remain silent (just as Sears did), the United States Supreme Court held that Edwards did not validly waive his rights in giving the statement because "a waiver of the right to counsel, once invoked, not only must be voluntary, but also must constitute a knowing and intelligent relinquishment of a known right

or privileged." Edwards, id., 101 S.Ct. at 1881. The court noted that a defendant, such as Sears, is not subject to further interrogation until counsel has been made available to him. Edwards, 101 S.Ct. at 1881; State v. Owens, 552 SE2d 745, 346 SC 637 (2001) (After suspect has requested counsel, if the police reinitiate questioning in the absence of counsel, the suspects statements are presumed involuntary and, therefore, inadmissible.) The court in the present case denied Sears relief based on an unreasonable determination of the law in light of the facts presented.

Further, the investigators testimony before the court that Sears had never invoked his right to counsel prior to giving a statement was untrue and the investigators credibility should have been attacked by trial counsel. In support of the position that Inv. McDonald knew Sears had invoked his right to counsel before denying the fact before the trial court, Sears points the investigative report showing that Sears invoked his right to counsel on the same day of the incident, October 8, 2002, and that the deputy he invoked his right to had advised the other investigating officers of this fact. (App. pg.49sp) Investigator McDonald was the chief investigating officer over the entire investigation in this matter. (App. pg.49sp)

Lastly, and contrary to the PCR Court's findings, trial counsel made no objection to the admissibility of Sears' statement on either the grounds that he invoked his right to counsel or any other grounds. In fact, trial counsel told the trial court "I have no questions or no argument as to the voluntariness. . . " when asked if he agreed that Sears' statement was freely given. (App. pg.416) Sears' statement was prejudicial to him as it put him at the crime scene, admitted his possession and shooting of a pistol and had incriminating remarks used by the solicitor to damage Sears' credibility. (See App. pg. 1016-18) Failure of trial counsel to use the readily available investigative report to have Sears' statement excluded on the ground that he had invoked his constitutional right to counsel prior to questioning amounted to ineffective assistance of counsel. Strickland v. Washington, supra. This error is magnified by the fact that Sears' case was not one with overwhelming guilt as Sears had already had a previous trial that resulted in a hung jury and where trial counsel admitted that the case against Sears was circumstantial. (App. pg1315) As to the PCR Court attempting to frame the question asked to Inv. McDonald as one asking if Sears invoked his right to counsel directly prior to giving the statement on that date, no evidence exists to support the PCR Courts findings that the question asked meant any-

thing other than the the question posed. It is undisputed that Sears invoked his right to counsel and, as Sears testified to at his PCR hearing, that he never initiate contact with the police after invoking his right to counsel. (App. pg. 1284) As such, the PCR Courts denial of this claim should be reversed and his conviction overturned. Talley v. State, 371 SC 535, 640 SE2d 878, 880 (2007) (An appellate court will reverse the decision of the post-conviction judge's decision when it is controlled by an error of law or where there is no evidence of probative value to support it.)

9. Did the PCR Court err in failing to find trial counsel ineffective, in violation of Sears' Sixth and Fourteenth Amendment rights to the US Constitution and State law, in the cumulative effect of trial counsels errors and their prejudicial impact.

Sears alleged trial counsel to be ineffective for the cumulative effect that trial counsels errors had on the overall case against Sears. (App. pg. 1288) Sears' basic contention was that the overall impact of trial counsels errors was prejudicial enough to require reversal, even if the Court found that each claim individually was harmless.

In denying this claim, the PCR Court termed this allegation as "vague." (App. pg. 1352) Apparently, the PCR Court would have Sears re-argue all of previous nclaims instead of making a clear reference to them as he did at his PCR hearing and in his PCR application. (App. pg. 1220 and 222) In any event, the PCR Court did not deny Sears relief for lack of being specific but instead noted that no South Carolina precedent allowed for cumulative-error claims. (App. pg. 1352) Acknowledging this, Sears recognizes and points out that no South Carolin precedent forbids such claims either. Green v. State, 351 SC 184, 569 SE2d 318, 324-25 (2002) (Whether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina.) In the published cases addressing cumulative-error arguments, our Supreme Court has declined to resolve this question as no case before it possessed enough claims for review under the cumulative-error analysis. Simpson v. Moore, 367 SC 587, 627 SE2d 701, 710 (2006) Unlike those cases, the present cumulative-error claim is ripe for review as numerous legitimate claims have been presented by Sears to constitute an adequate showing.

Lastly, the PCR Court attempts to require Sears to make a showing that he is "actually innocent" in order to allow the consideration of this claim. (App pg. 1353) The PCR Court was in error in using such an exceptionally high legal test as the Supreme Court has yet to determine what, if any, test should be employed. Bullis v. State, 382 SC 192, 675 SE2d 734, 735 (SC 2009) (An appellate court will reverse the post-conviction court's decision when it is controlled by an error of law.)

As to the PCR Court's consideration of Sears' failure to introduce any expert testimony to support this claim, Sears maintains that such consideration is improper as the PCR Court failed to address and rule upon Sears' numerous requests for expert expense funds and effectively acted as a bar to the full development of this claim. See Aice v. State, 409 SE2d 392 (1991) (Stating that PCR rules contemplate an applicante obtaining "a full bite at the apple.") The PCR Court here did not give Sears "a full bite at the apple" as Sears' expert expense motions were never heard by the Court despite being presented several times. No probative evidence exists to support the denial of this claim, on either the facts or the law, as the PCR Court actually found several of Sears' claims to be true but wrongly denied for lack of sufficient prejudice. US v. Basham, 561 F3d 302, 330 (4th 2009) (Cumulative-error doctrine recognized as viable claim.)

CONCLUSION

For the above-stated violations of Sears' Fifth, Sixth and Fourteenth Amendment rights to the US Constitution and State law, the Petitioner respectfully requests this Court grant this Writ of Certiorari.

Respectfully submitted,



Demetrio L. Sears #271284
4848 Goldmine Hwy, KCI
Kershaw, SC 29069

Petitioner pro se

Dated January 17, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Alison Renee Lee, Circuit Court Judge

ORIGINAL

RECEIVED

JAN 25 2011

S.C. Supreme Court

DEMETRIO SEARS,

PETITIONER,

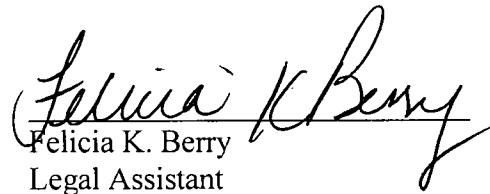
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

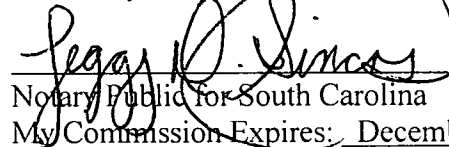
CERTIFICATE OF SERVICE

I certify that a true copy of the pro se petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire this 21st day of January, 2011.



Felicia K. Berry
Legal Assistant

SWORN TO BEFORE ME this 25th day
of January, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017.