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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO FLORENCE COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

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Appellate Case No. 2018-000849

Chazmonte Lewis Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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## RESPONDENT'S QUESTION PRESENTED

Did the post-conviction relief court correctly find the State did not violate its obligations under Brady where: (1) Epps and the State had not entered into a specific agreement at the time of Epps's testimony, and counsel for Petitioner and Graham knew the State had made a general offer to help Epps which they could have investigated further, so the State did not fail to disclose any information under Brady; and (2) even if there was a specific deal in place, the existence of such a deal between Epps and the State was not material because it is not reasonably likely to have caused Petitioner to proceed with trial rather than plead guilty?

## STATEMENT OF THE CASE

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2009 term of the Florence County Grand Jury in indictment 2009-GS-21-00994 for armed robbery (Count One) and possession of a weapon during the commission of a violent crime (Count Two). Applicant was represented on these charges by Karen Parrott, Esquire. While out on bond for the armed robbery charge, Applicant was arrested on warrants M280283 and M272743 for distribution of marijuana. On December 15, 2010, Applicant pleaded guilty to armed robbery and two counts of distribution of marijuana, first offense. The Honorable Michael G. Nettles imposed a negotiated sentence of fifteen years for the armed robbery charge, with a concurrent five years for each of the marijuana charges. Applicant did not appeal his plea or sentence.

Applicant filed his first post-conviction relief application on May 6, 2010. In his application, he alleged he was being held unlawfully because of "Fraudulant/Illegal Warrants & indictments[.]" Charles T. Brooks, III, Esquire, represented Applicant on his first PCR. The Honorable William H. Seals, Jr., convened a hearing on the matter on February 3, 2013. At the hearing, Applicant also raised allegations of ineffective assistance of counsel and that his plea was involuntary. Judge Seals denied post-conviction relief and dismissed Applicant's first PCR by written order dated June 18, 2012, and filed June 19, 2012.

Applicant appealed the denial of his first PCR. Robert M. Pachak, Esquire, of the Commission on Indigent Defense perfected Applicant's appeal with the filing of a Johnson[1] petition on November 14, 2012. On February 7, 2013, the South Carolina Supreme Court denied

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

Applicant's petition for a writ of certiorari. The remittitur was returned to the circuit court on February 25, 2013.

Applicant filed his second PCR action on April 8, 2013. In that application, Applicant alleged "newly discovered evidence" and "prosecutorial misconduct," arguing he did not find out his codefendant had received a plea deal from the State until November 2012 – after Applicant's first PCR had been heard. Respondent made its Return on August 14, 2013, asking the Court to dismiss this application as successive, beyond the statute of limitations, and for failure to state a claim of newly discovered evidence such that the procedural bar should be waived. On August 22, 2013, this Court issued a Conditional Order of Dismissal, giving Applicant twenty days to show why the application should not be summarily dismissed. Applicant filed a response to the Conditional Order of Dismissal dated September 18, 2013, alleging he first learned of the existence of his codefendant's agreement with the State in this case in November of 2012, after Applicant's first PCR was already on appeal. Applicant then retained Tristan Shaffer, Esquire, as PCR counsel. Respondent filed a Motion for Judgment on the Pleadings on July 11, 2014. Mr. Shaffer filed a Motion to Limit State's Argument Based on Collateral Estoppel on Applicant's behalf on May 23, 2016, to preclude Respondent from arguing Epps did not have an agreement with the State at the time of his testimony.

On June 2, 2016, this Court convened a hearing on Applicant's collateral estoppel motion and Respondent's Motion to Dismiss at the Florence County Courthouse before the Honorable Jocelyn Newman. Applicant was represented by Mr. Shaffer, and Respondent was represented by J. Croom Hunter, Esquire. At that time, Respondent did not oppose Applicant's collateral estoppel motion, and the motion was granted by Judge Newman on September 9, 2016. Judge Newman also granted Respondent's Motion to Dismiss and issued an Order to that effect dated December

28, 2016. Applicant subsequently filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, on January 20, 2017. Respondent filed a Return on February 8, 2017. Judge Newman granted Applicant's motion on April 24, 2017, and ordered Respondent to set this matter for an evidentiary hearing on Applicant's allegation of a Brady[2] violation.

An evidentiary hearing convened on the Brady issue on August 30, 2017, at the Florence County Courthouse before the Honorable Thomas A. Russo. Petitioner was represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Lindsey A. McCallister represented Respondent. By order filed December 18, 2017, Judge Russo denied relief and dismissed Petitioner's application. Petitioner, through counsel, filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. The PCR court issued an Amended Order of Dismissal filed April 5, 2018.

Petitioner then filed a timely notice of appeal from the denial of his application for relief. Through appellate counsel, Petitioner filed a Petition for a Writ of Certiorari on January 16, 2019. This Return to the Petition for a Writ of Certiorari follows.

[2] Brady v. Maryland, 373 U.S. 83 (1963).

## STATEMENT OF THE FACTS

On November 15, 2008, Petitioner and four codefendants set out to rob William Hayes. App. p. 432. The female codefendant Latisha Cochran (Cochran) called Mr. Hayes and lured him out of the house by inviting him to go to a club. App. p. 432. Petitioner, along with Montarrio Graham (Graham) and Jerry Bush, got out of the car to confront Mr. Hayes as Mr. Hayes left his home. App. p. 433. Petitioner and Graham were both armed. App. p. 433. The three codefendants attacked Mr. Hayes and stole approximately five-hundred dollars and some credit cards. App. p. 4334. Graham hit Mr. Hayes over the head with his pistol, injuring him, and Petitioner fired several shots into the air. App. p. 433. A neighbor heard the shots and saw a car, later linked to the fifth codefendant, Quentin Epps, drive off from the scene. App. pp. 433-34. Epps later told his girlfriend what happened, and she reported the robbery to police. App. p. 434. The victim's credit cards were used at Wal-Mart and a fast food restaurant, and law enforcement was able to link those transactions to Epps and Cochran. App. p. 434-35. Cochran eventually gave a statement naming the remaining codefendants. App. p. 435.

On December 15, 2010, the State began the joint trial of Petitioner and Graham. App. pp. 228. After jury selection, Petitioner decided to enter a guilty plea. App. pp. 291, 430. However, Graham proceeded with trial later that same day. App. pp. 228-426. A third codefendant, Quentin Epps (Epps), testified at Graham's trial.[3] Epps testified during his direct examination as follows:

Q: Have you been offered any sort of special deal or promise –

A: No, sir.

Q: – in order to get you to testify here today?

[3] Epps gave similar testimony at Cochran's trial on October 18-19, 2010, denying the existence of a special deal, but conceding he expected to receive a better outcome on his charges in exchange for his testimony. App. pp. 118-19.

A: No, sir.

App. pp. 326. On cross-examination, Epps testified:

Q: Now earlier you said you had no offer for special treatment, is that right –

A: Right.

Q: – from the prosecutor's office?

A: Right.

Q: But you haven't been tried yet, have you?

A: No, sir.

...

Q: You haven't pled guilty to it?

A: No, sir.

Q: Okay. So there's certainly nothing to prevent you from receiving a better deal after this is over, is there?

...

A: No, sir.

Q: A specific deal?

A: No, sir.

Q: There's nothing to prevent that.

A: No.

Q: Okay. So you do have an interest sitting here and testifying today, right?

A: Right.

Q: You have a personal interest.

A: A personal interest?

Q: In testifying the way you are?

A: Right.

App. pp. 343-45.

Graham was convicted at trial and appealed his conviction. App. p. 485-86. Several weeks after Graham's trial, the State reduced Epps's armed robbery charge to accessory after the fact. App. p. 490. On January 24, 2011, Epps pleaded guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation. App. p. 490. During the course of his appeal, Graham discovered the information concerning Epps's ultimate plea agreement reducing his charges. Graham withdrew his appeal and filed an application for PCR on March 9, 2012. App. pp. 485-86, 490. In an order dated November 2, 2012, the PCR court granted Graham's PCR pursuant to Napue v. Illinios, 360 U.S. 264 (1959), and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). App. pp. 483-93.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839. (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

## ARGUMENT

**The PCR court correctly found no Brady violation because: (1) Epps and the State had not entered into a specific agreement at the time of Epps's testimony, and counsel for Petitioner and Graham knew the State had made a general offer to help Epps which they could have investigated further, so the State did not fail to disclose any information under Brady; and (2) even if there was a specific deal in place, the existence of such a deal between Epps and the State was not material because it is not reasonably likely to have caused Petitioner to proceed with trial rather than plead guilty.**

The PCR court correctly determined there was no Brady violation, and Respondent agrees with Petitioner and the PCR court a "deal" existed between Epps and the State, but only in the general sense that the State rewards cooperation in disposing of a defendant's charges. However, because the State had not entered into a specific deal with Epps as to what that reward would be at the time of Epps's testimony, Respondent disagrees with the PCR court's finding the State had any further obligation of disclosure; the information Petitioner claims was suppressed actually did not exist at the time of Epps's testimony. Regardless, Petitioner pleaded guilty before Epps testified, so any duty of disclosure under Brady as applied to Petitioner was extinguished by the guilty plea. This Court should therefore deny certiorari, and affirm the decision of the PCR court denying Petitioner relief.

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503

S.E.2d 214, 220 (Ct. App. 1998). "A Brady violation is material when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial." Gibson v. State, 334 S.C. 515, 525, 514 S.E.2d 320, 325 (1999).

**A. Epps and the State had not entered into a specific agreement at the time of Epps's testimony, and counsel for Petitioner and Graham knew the State had made a general offer to help Epps which they could have investigated further, so the State did not fail to disclose any information under Brady.**

Petitioner alleges the State committed a Brady violation by failing to disclose the existence of a deal to reduce Epps's charge in exchange for his testimony against Petitioner and Graham. The PCR court correctly found there was no Brady violation, however. No specific deal existed at the time of Epps's testimony the State did not suppress any information, nor was the existence of a deal – general or specific – material because there were other factors which contributed to Petitioner's decision to plead guilty. Counsel knew of the existence of general agreement between Epps and the State, and Petitioner's decision to plead guilty rather than continue his trial was not based solely on Epps's testimony.

Petitioner likens his situation to that of the defendant in Napue v. Illinois, who was specifically promised a reduction in his one-hundred-ninety-nine-year sentence in exchange for his testimony. 360 U.S. 264, 269 (1959). There, the United States Supreme Court reversed the lower court's denial of habeas relief finding "a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." Id. at 269. Here, however, the State did not elicit or fail to correct false testimony. Epps denied the State had made any *specific* agreement to reduce his charge or sentence, but admitted he expected some benefit of that nature in exchange for his testimony. App. pp. 326, 343-45. This was truthful testimony, corroborated by other witnesses at the evidentiary hearing.

Counsel, Epps's counsel, and the prosecuting solicitor all testified there was no specific deal with Epps at the time of Graham's trial, although it was common knowledge Epps expected to receive some leniency in exchange for his cooperation. Thus, Petitioner's case is easily distinguishable from Napue.

In Petitioner's case, Counsel testified she was never specifically told Epps had a deal, and she did not confirm he received one until much later. App. pp. 721, 725, 730. However, Counsel also testified the standard practice in Florence County is for the solicitor to agree to "help" a testifying codefendant, but there is generally no specific deal made as to a sentence. App. pp. 724-25, 730-31. Counsel further testified she knew in advance Epps would testify, and she discussed it with Applicant the morning of trial. App. pp. 725-27. Importantly, Counsel testified *she assumed Epps had some kind of offer of help from the State*, and her standard conversation with Applicant would have included a discussion that Epps was likely receiving help on his charges in exchange for his testimony. App. pp. 727-28 (emphasis added). Additionally, Counsel testified even if she had known the specifics of the State's agreement with Epps, it would not have changed her advice to Applicant that he should accept the plea offer. App. p. 728.

Mr. Anderson, Epps's defense attorney, recalled meeting with the Solicitor's Office regarding his client's testimony for the State against Petitioner and Graham. App. p. 758. Mr. Anderson testified the State had already made an offer of ten years, *which was not conditioned on any testimony by Epps*. App. p. 760. Mr. Anderson further testified it was his belief after the meeting that the State would reduce Epps's charge to something other than armed robbery, so Epps could avoid the ten-year mandatory-minimum sentence, but the State did not make any promises

as to a specific sentence or reduced charge.[4] App. pp. 759-60.

Assistant Solicitor David Richardson, who helped prosecute the cases against Applicant and Graham, also testified at Petitioner's evidentiary hearing. Mr. Richardson attended the meeting about Epps's cooperation between himself, his co-counsel, Epps, and Mr. Anderson. App. pp. 743-44. Mr. Richardson testified both his personal standard practice and that of the Solicitor's Office is to make only a general offer of help in exchange for testimony. App. pp. 744, 746. Mr. Richardson testified he does not make a specific agreement to a certain sentence or a particular charge because it damages the witness's credibility. App. p. 744. Mr. Richardson further testified when a non-specific agreement like this is made, he does not think there is anything to disclose to the defense as *defense counsel would already be aware the witness is cooperating in order to receive help with his or her charges*. App. p. 749 (emphasis added). Finally, Mr. Richardson testified he remembered Epps being asked about a deal, and he felt Epps's testimony was accurate because nothing specific had been promised. App. p. 744.

At Graham's trial, Richardson asked Epps whether he had a received a *special* deal in exchange for his testimony, and Epps truthfully answered he had not because, at that time, there was only a general offer of help which is made to all testifying codefendants or cooperating defendants. App. p. 326 (emphasis added). Graham's counsel asked further pointed questions, specifically inquiring whether Epps had been offered a specific deal, which Epps again truthfully denied. App. p. 345. However, Epps also admitted he had not yet been tried or pleaded guilty, and he expected to receive some benefit in resolving his case in exchange for his cooperation. App. pp.

[4] Similarly, in Cochran's PCR, Mr. Anderson testified he and Epps met with the solicitors, and they "expected" Epps's charges to be reduced in exchange for his continued cooperation, but there was no specific agreement as to what the reduction in charge or sentence would be. App. pp. 525-28.

344-45. Graham's counsel also pointed out the lowest amount of time Epps could get for his current charges of armed robbery was ten years. App. p. 343.

This exchange, when combined with the testimony from Counsel, Anderson, and Richardson as to the parties' knowledge of the State's usual practice of helping testifying codefendants, clearly refutes Petitioner's claim the State suppressed the existence of a specific deal with Epps.[5] Counsel for Petitioner and Graham were aware of the State's practice to offer to help codefendants who cooperated with the State, Graham's counsel cross-examined Epps about that arrangement and pointed out his current charge carried a mandatory minimum sentence, and Epps testified truthfully that no specific agreement had been made but he expected some consideration for his testimony. Epps was present on the morning of trial, and counsel for Petitioner could have spoken to Epps' attorney to obtain more detail about the agreement, as she knew some general deal existed. See United States v. Frank, 11 F.Supp.2d 322, 327 (S.D.N.Y. 1988) ("Evidence, even if exculpatory and material, is not required to be disclosed, however, if the defendant knows or should have known of 'the essential facts permitting him to take advantage of any exculpatory evidence. . . .' The Government is required, however, to disclose sufficient information to the defendant to insure that the defendant will not be denied access to exculpatory evidence *known only to the Government.*") (quoting United States v. Zackson, 6 F.3d 911, 918 (2d Cir. 1993)) (emphasis added). However, her testimony makes clear such detail was irrelevant to the advice she gave Petitioner to accept the plea instead of continuing with trial, and Petitioner knew Epps had a deal of some sort at the time he made his decision. App. pp. 726-28.

[5] Counsel for Petitioner conceded as much at the PCR hearing, arguing, "Although it's not specific, I believe... the State will still be obligated to disclose that evidence to the defense. . . ." App. pp. 763-64.

Additionally, even if the State was under some obligation of further disclosure, it was under no obligation to do so until Epps actually testified. See Frank, 11 F.Supp.2d at 325 ("Provided the defendant has sufficient time after receipt of [impeachment] material to use it effectively at trial, there is no violation of the defendant's rights from deferring production of this material until closer to the time of the witnesses' testimony."). Crucially, Petitioner chose to plead guilty prior to Epps's testimony, distinguishing his case from his codefendant Graham. The Constitution does not require the government to disclose *impeachment* information prior to entering a plea agreement with a defendant because impeachment information is related to the right to a fair trial, which a defendant waives upon entering a plea agreement, rather than the voluntariness of the plea. United States v. Ruiz, 536 U.S. 622, 628-29 (2002) (emphasis added).

Thus, Petitioner failed to offer any evidence of a Brady violation. While Epps clearly expected some benefit in exchange for his testimony, that information was known by counsel for Petitioner and discussed by her and Petitioner prior to Petitioner's decision to stop his trial and plead guilty. Furthermore, Epps was cross-examined on the issue during Graham's trial and testified truthfully there was no specific deal in place, although he expected to receive a benefit in exchange for his cooperation. This is the same information Petitioner already had. Because the State did not suppress information regarding a deal with Epps, and in any event, Petitioner pleaded guilty before further disclosure was arguably required, the PCR court therefore correctly found the State did not violate its obligations under Brady and denied relief. App. p. 826. In turn, this Court should deny certiorari and affirm the decision of the PCR court.

**B. Even if there was a specific deal in place, the existence of such a deal between Epps and the State was not material because it is not reasonably likely to have caused Petitioner to proceed with trial rather than plead guilty.**

Petitioner testified if he had known the specifics of Epps's deal at the time his trial began, he would have continued with the trial so Counsel could cross-examine Epps on the issue. App. pp. 740-41. However, Petitioner also tellingly explained he decided to plead guilty when he found out Epps *and another inmate* would testify against him because he was afraid they would fabricate their testimony. App. pp. 738 (emphasis added). At Petitioner's first PCR hearing, he testified he pleaded guilty because he was concerned what the inmate would say. App. pp. 499-500. Counsel explained in addition to Epps, the State also listed Epps's girlfriend, law enforcement, and several other people as potential witnesses. App. p. 717. Indeed, the transcript of Graham's trial reflects the victim, the neighbor, and law enforcement testified in addition to Epps.[6] Counsel further testified Petitioner was being tried on multiple drug charges in addition to the armed robbery, and the State agreed to negotiated, concurrent sentences on the possession charges and dismissed the more serious distribution charges, which also influenced Petitioner's decision to plead guilty. App. pp. 721, 728-29.

This candid testimony from Petitioner – that it was the prospect of multiple witnesses testifying against him which prompted him to negotiate a plea agreement – defeats his self-serving contention he would have continued with his trial had he known about a deal with Epps. Petitioner knew Epps would testify in exchange for some kind of reduction in his charge and/or sentence, and it was not just Epps's testimony which concerned Petitioner. See, e.g., State v. Von Dohlen,

[6] The State did not call an inmate to testify during the trial, and the record does not reflect why. App. pp. 228-427. However, Petitioner's own undisputed testimony at both of his PCR hearings was that he expected another witness in addition to Epps. App. pp. 499-500, 738. It was the prospect of *both* witnesses testifying against him that caused him to rethink his decision to proceed with trial. App. pp. 738 (emphasis added).

322 S.C. 234, 471 S.E.2d 689 (1996) (finding no Brady violation where the impeachment evidence the State allegedly failed to disclose was cumulative to other testimony and therefore not reasonably likely to change the outcome of the proceeding). Similarly, during Graham's trial, Epps was thoroughly cross-examined as to the benefit he could receive from testifying for the State and was impeached on his potential bias. It strains credulity to believe Petitioner would have changed his mind about proceeding with trial simply because he knew the exact terms of Epps's agreement with the State because such evidence was of limited impeachment value when Epps had already been impeached on his motivation for testifying. See, e.g., State v. Cheeseboro, 346 S.C. 526, 553-554, 552 S.E.2d 300, 314-315 (2001) (finding the nondisclosure of evidence did not deprive Cheeseboro of a fair trial where the evidence had limited impeachment value and the witness was thoroughly impeached with other evidence); Duncan v. State, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) (finding a failure by the solicitor to disclose impeachment evidence was not a material Brady violation and did not require reversal where the witness had nonetheless been impeached through prior convictions).

Epps was merely one factor in Petitioner's decision to plead guilty rather than continue with his trial. Even if the State withheld information about the extent of its promises to Epps, such information was not material under the standard articulated in Gibson[7] because that information alone was not reasonably likely to cause Petitioner to decline to plead guilty, so the PCR court correctly found the State did not violate Brady by failing to disclose it. Accordingly, this Court should deny certiorari and affirm the decision of the PCR court denying relief.

[7] Petitioner asserts the Gibson standard should not apply in his case because it is of a different class of Brady violation than the violation in that case. As discussed above, however, because the State did not elicit or fail to correct false testimony, the PCR court correctly applied Gibson to the facts of Petitioner's case.

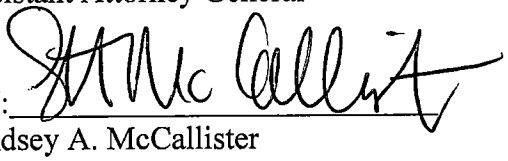
## CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR court's finding the State did not violate its obligations under Brady. Should this Court grant certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

BY: 
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CHAZMONTE LEWIS BROWN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Dayne C. Phillips, Esquire**
**Price Benowitz LLP**
**1614 Taylor Street, Suite D**
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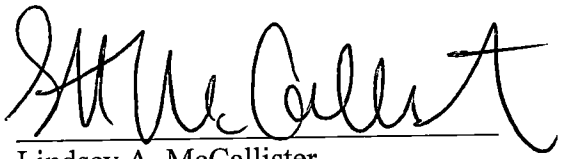
This 17th day of May, 2019



Lindsey A. McCallister
Attorney for Petitioner

ALAN WILSON
ATTORNEY GENERAL



May 17, 2019

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

***Re:*** **Chazmonte Lewis Brown v. State of South Carolina**
**Appellate Case No. 2018-00849**
**Lower Court Case No. 2013-CP-21-925**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/can
Enclosures

cc: Dayne C. Phillips, Esquire (2 copies)