

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENWOOD COUNTY

J. Mark Hayes, II, Circuit Court Judge

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JUN 14 2019

S.C. SUPREME COURT

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Jamal Hakeem .....Petitioner,

vs.

State of South Carolina .....Respondent

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APPELLATE CASE NO. 2018-001116

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PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI

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Jamal Hakeem  
Pro Se, Appellant

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The PCR court failed to properly consider the newly-discovered evidence of Officer Strickland’s multiple instances of misconduct and ethical malfeasance during the time of Petitioner’s arrest as further supporting the trial argument that Strickland in fact used *threat* and *coercion*, as testified to by Petitioner’s wife, to violate their 4<sup>th</sup> Amendment rights and search the home ..... 1

The PCR Court’s finding that Petitioner failed to show there was *any* basis for Counsel to file a motion to reconsider and failure to show that the outcome *would* have been different does not properly ascertain the testimony given by trial counsel in the record nor does it consider prior precedent that the presumption of adequate representation disappears when counsel admits no trial strategy ..... 3

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## ARGUMENTS

- 1) **The PCR court failed to properly consider the newly-discovered evidence of Officer Strickland's multiple instances of misconduct and ethical malfeasance during the time of Petitioner's arrest as further supporting the trial argument that Strickland in fact used *threat* and *coercion*, as testified to by Petitioner's wife, to violate their 4<sup>th</sup> Amendment rights and search the home.**

PCR counsel presented evidence at the Hearing that Det. Strickland, the officer involved in the warrantless search of Petitioner's home, had been indicted on multiple counts of Misconduct related to acts of moral turpitude. This was evidence not known at time of trial but goes directly to corroborating the testimony of Petitioner's wife that she was in fact threatened and coerced by Strickland to allow law enforcement into the home without a warrant. Our United States Supreme Court has long-held that the "Prosecutors burden of proving that consent, sought to justify lawfulness of search, was, in fact, freely and voluntarily given cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Buimper v. North Carolina*, 391 U.S. 543 (1968). Strong-arming through the conveyance to a Housewife that if she didn't consent to law enforcement entering her home without a warrant then Strickland would "destroy the contents of her house" should be given the same effect as if officers threatened a Master Carpenter to destroy his coveted Wood shop. Her will was overborne in light of the alternative given her.

In the PCR Court's Order of Dismissal (pg. 13-15), the Court failed to consider how Officer Strickland's criminal convictions of moral turpitude would or could (if known) potentially defeat the State's burden of proving consent. Especially when coupled with Mrs.

Hakeem's testimony at both the trial and PCR. At the time of trial, without the evidence that Officer Strickland was abusing his authority during the time of Petitioner's arrest, the suppression hearing came down to a credibility contest – the word of an arrestee's wife against the word of a police officer then in good standing but in reality corrupt. Neither the trial judge nor the Petitioner were given the opportunity to properly have this critical Constitutional issue considered with the truth in its totality. In *State v. Ellefson*, our South Carolina Supreme Court held that the question of whether consent is in fact voluntary “is to be determined by the *totality of all the circumstances* and is a matter which the *Government has the burden of proving.*” 266 S.C. 494, 224 S.E.2d 666 (1976) [emphasis added]

Further, the PCR court ruled that “such evidence does not directly affect Applicant's guilt or innocence.” (pg. 14, bottom of page) This is an error of law in that if the after-discovered evidence, placed on the record at the PCR, would be properly and fully considered with a new suppression hearing then potentially the search could be ruled unconstitutional. Thus, the inculpatory items of clothing found within the home would likely amount to “fruit of the poisonous tree” and charges against Applicant potentially dismissed. As the clothing was clearly the most damaging evidence against the Petitioner, its admission at the trial was not harmless error. (*see Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1964))

- 2) **The PCR Court’s finding that Petitioner failed to show there was any basis for Counsel to file a Motion to Reconsider and failure to show that the outcome would have been different does not properly ascertain the testimony, in its totality, given by trial counsel in the record nor does it consider prior precedent that the presumption of adequate representation disappears when counsel admits no trial strategy.**

Recently our Supreme Court has again reminded PCR courts that they “should carefully review the [proposed] order prior to signing it” and not doing so as to any issue may result in the conclusion that “the circuit court erred by signing the PCR order.” *Reese v. State*, 425 S.C. 108 (2018). In the State’s PCR order of Dismissal, as it relates to the specific issue of trial counsel failing to file a Motion for Reconsideration, statements of fact are made that Petitioner “failed to show there was any basis for Counsel to file a motion to reconsider.” This statement is not supported by the record. Counsel made it clear that the Solicitor had conveyed that he’d be okay with a 10-year sentence” and that he could “have got a 10 year minimum sentence for armed robbery.” (ROA pg. 298, ll 23-24; pg. 299, ll 1-2). Then, he admitted his own shock and surprise at the sentence the trial court ultimately gave his client: “Judge Miller was as harsh as he could get about the sentence. And I thought that was a little bit excessive.” (ROA pg. 299, ll 6-8). Common sense and the duties owed a client would dictate that if an attorney’s client was given exceedingly more than the attorney thought he would get, as indicated in his own statement above, then this would be a reasonable basis to *file* a Motion for Reconsideration to at least *attempt* to have the judge consider the initial plea offer for a compromise in between amongst other factors in a Reconsideration. After all, an attorney’s duty to look out for the best interests of his client does not end at sentencing.

Counsel further conceded: “I thought about that [reconsideration], but -- and, of course, you have 10 days to do that *and perhaps I* -- but I’ll be frank and plain with you. Maybe the Judge would have softened up some, but he wasn’t going to soften up had I done it right then. And I *usually do make that motion and that was inadvertent*, I will admit. Probably, I should have waited a few days *and filed that motion*, but I didn’t do it and file an appeal. So I will admit that *that was inadvertent*. Something that perhaps *I should have done*.” (ROA pg. 302, ll 22-25; pg. 303, ll 1-7) [emphasis added]

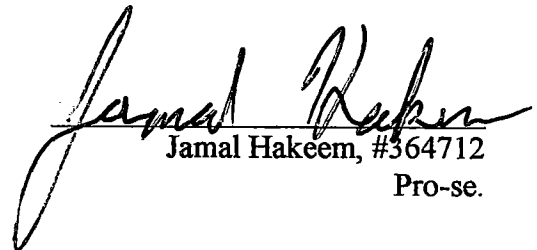
How can this record be interpreted any other way but a concession within his own words that counsel typically filed Motions of Reconsideration, he inadvertently failed to do so for Petitioner, and that he “*should have*” waited a few days and filed it? Clearly, despite the wording in the State’s order, there was a basis for doing so and in conceding he should have done so he was deficient. Furthermore, the signed State’s order states that Applicant “has failed to show the motion *would* have been granted.” Unless an attorney has legitimate psychic powers as the PCR Court’s order infers this trial attorney did, he cannot know what the Court “would” or wouldn’t have granted. Similarly, neither can the state. Trial counsel in fact owned a failure to file a critical post-trial motion and though a favorable result was unguaranteed it cannot be deemed “futile” as the PCR Order so states. A PCR applicant cannot show that a Motion for Reconsideration “*would*” have been granted because his counsel failed in even attempting to file for one, “*should have done*” so, and did not do so “inadvertently.” Considering counsel’s testimony below and the fact that the Judge had a level of involvement in a 10-15 year offer, Petitioner was prejudiced by the failure to even *attempt* to mitigate Petitioner’s “harsh as he could get” sentence. Thus, he was left with a

25-year sentence – over twice as much as the plea offer and in company with an individual who has voluntarily taken another person's life.

**CONCLUSION**

Petitioner humbly requests this Court, given the fundamental issues of Constitutional importance, grant the *pro se* petition for Writ of Certiorari and order a new suppression hearing where Officer Strickland's convictions of misconduct can be properly considered and/or a Motion for Reconsideration Hearing or, in the alternative, allow for full briefing on the issue(s).

Done this 7<sup>th</sup>, Day of **June** 2019

  
Jamal Hakeem, #364712  
Pro-se.

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**S.C. SUPREME COURT**

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