

State of South Carolina

In the Supreme Court

Certiorari to Colleton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

Travis Javon Harris,

Petitioner

v.

State of South Carolina,

Respondent

Appellate Case No 2018-001578

Pro-Se Response to Petition Filed by Counsel

Travis Javon Harris

Proceeding Pro-se

386 Redemption Way  
McCormick SC 29849

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AUG 01 2019

S.C. SUPREME COURT

## Statement

Petitioner Travis Jaron Harris pled guilty to Murder, second-degree burglary, and four counts of first-degree burglary during the December 2011 term of the Colleton County General Sessions Court and received a sentence of fifteen years on the second-degree burglary conviction and five LWOP (Life without the possibility of Parole) sentences on the remaining convictions. App. 1-40. Attorneys Scott Lee and Dudley Buffalo represented Petitioner at the plea proceeding and Assistant Solicitor Duffie Stone appeared on behalf of the State. App 1-40. Petitioner filed a PCR Application with the Colleton County Office of the Clerk of Court on December 28th 2012. App. 42-56. The respondent filed a return dated June 24th, 2015 requesting that a PCR hearing be held in the case. App. 57-61

A PCR hearing was convened on June 4th, 2018 at Beaufort County Courthouse before Judge Diane Schafer Goodstein. Petitioner was present at the hearing and represented by James K. Falk and Assistant Attorney General Christian Saville appeared on behalf of the State. App. 63-188. On August 8, 2018

Issue (1): PCR Court erroneously found Scott Lee and Dudley Ruffalo to be credible and persuasive on the Petitioner's claim of ineffective assistance of counsel. Where PCR court erred in claims that Petitioner did not meet the requirement and the burden of proof Plea counsel being ineffective.

Issue (2): PCR Court erroneously found that Plea Counsel did not prejudice Petitioner or prove deficient in failing to advise Applicant on a myriad of issues in reference to Miranda issues and violations.

Ground 2: PCR Court erroneously found pertaining to issue (2) raised in this pro-se petition that there is nothing in the record to suggest inadmissibility of Applicant's statement. Also findings that the Petitioner's decision was based on reasonable and competent advice from counsel.

Ground 3: PCR Court also found that Petitioner failed to meet his burden of proving both deficiency and prejudice regarding issue 2.

Issue (3): PCR Court erroneously found Petitioner's Co-defendant Jacoby G. Fields testimony to be self-serving, not credible, and contradictory to both parties previous statements and existing evidence.

Ground 2: In addition PCR erred in ruling Petitioner's claim of ineffective assistance of Plea Counsel being meritless pertaining to Issue (3), for failing to advise him regarding

the admissibility of co-defendant's statement against him, co-defendant's potential plea deals and in their investigations into the circumstances surrounding his co-defendant's statement.

Ground 3: Regarding Issue (3) PCR Court erroneously found that Plea Counsel was not deficient for failing to interview co-defendant whose counsel would not allow them to speak to him.

Ground 4: PCR Judge erroneously found Plea Counsel also adequately advised Applicant of issues related to *Bruton v. United States*, 391 U.S. 123 (1968).

Ground 5: PCR Judge also erroneously found that Plea Counsel credibly testified Applicant never raised an alibi defense to them.

Ground 6: Furthermore, PCR Court erroneously found that any assertion that co-defendant Fields would have somehow provided anything other than harmful testimony at trial, much less an alibi defense of Applicant.

Issue (4): PCR Court erroneously found that Plea Counsel was not ineffective for failing to advise Petitioner of Fourth Amendment issues in this case, failed to talk to him about any kind of defenses, did not review Rule 5 with him (about any kind of defense strategies) and did not explain the elements of his charges.

Ground (2) PCR Court erroneously found these Allegations meritless.

Ground (3) PCR Court erroneously found Plea Counsel

Lee's testimony credible that their investigators thoroughly investigated the facts and circumstances of the case.

Ground 4: PCR Court erroneously found Plea Counsel was amply prepared for this case and amply advised Applicant of the evidence and law surrounding the case.

Issue (5): PCR Court erroneously found Applicant has failed to establish deficiency on part of Plea Counsel as they clearly investigated any possible mental issues, and has failed to establish and prejudice from alleged deficiency in their investigation.

Ground (2) PCR Court erroneously Found Petitioner's claim meritless.

Issue (6): PCR Court erroneously found that Petitioner's guilty plea was free and voluntary.

Ground 2: PCR Court also erroneously found that there was no coercion affecting Petitioner's decision to Plead Guilty.

Ground 3: Furthermore, PCR Court erroneously found Petitioner was not coerced, but pled guilty freely and voluntarily

PCR Court has erroneously found and concluded Petitioner has not established any constitutional violations or deprivations that would require this Court to grant his application and Petitioner will clearly show why:

### Arguments

Petitioner's Argument will substantially address

Issues: 1, 3, 4, and issue 6 - A criminal defendant has a Sixth Amendment right to counsel which includes the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, (1970). A two-pronged test is used in evaluating allegations in ineffective assistance of counsel. First, the Petitioner must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by it's reasonableness under professional norms. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The Proper Measure of Performance is whether the attorney provided representation within the range of competence required in criminal cases. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. Strickland v. Washington, 466 U.S. at 689. A Petitioner must

Overcome this presumption in order to receive relief.  
Cherry v. State 300 S.C. at 117.

Under the second prong of the Strickland test, a petitioner must show that his trial counsel's deficient performance must have prejudiced Petitioner such that there is a reasonable probability that, but for counsel's deficient performance and unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. at 695. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.

Johnson v State, 325 S.C. 182, 480 S.E.2d 733 (1997)

In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper function of the adversarial process that the trial cannot be relied upon as having produced a just result.  
Strickland v. Washington, 466 U.S. 668.

Entering a guilty plea results in a waiver of defendant's right under the fifth and sixth Amendments to the United States Constitution. Therefore a defendant's Due Process right requires that guilty pleas be entered into voluntarily, knowingly, and intelligently.

Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d

623, 624 (1999) citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In order for a defendant to make a voluntary, knowing, and intelligent decision to plead guilty he must be aware of the nature and crucial elements of the offense of which he is charged. Pittman, 337 S.C. at 599.

A defendant who enters a plea on the advice of counsel may attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness Roscoe v. State 546 S.E.2d 417 (2001)

The two-part standard adopted in Strickland v. Washington applies to guilty plea challenges based on ineffective assistance of counsel. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). In applying the Strickland analysis to guilty plea cases the first inquiry is whether plea counsel's advice was deficient and the second prong is met by showing that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

A criminal defense attorney has a duty to make a reasonable and independent investigation of

the facts and circumstances of a case. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). At a minimum defense counsel has a duty to interview potential witnesses. Ard 372 S.C. at 332. Counsel's failure to adequately investigate potential witnesses expected to testify against a defendant can be sufficient to meet the first prong of the Strickland test. Jackson v. State, 329 S.C. 345, 349, 495 S.E.2d 768, 770 (1998).

Indictment 2019-GS-15-890 charged Petitioner in the murder of Colleton County Sheriff's Deputy Dennis Compton. Trial Counsel testified that had Petitioner's case gone to trial the state would seek the death penalty citing Murder of a law enforcement officer in the line of duty as an aggravating factor. S.C. Code § 16-3-20(c)(a)(7). Both Scott Lee and Dudley Rufalo testified that they were certified to represent defendants in death penalty cases, which is why they were appointed to Petitioner's case.

At the Plea hearing 14th Circuit Solicitor Duffie Stone advised the court that Colleton County Deputy Compton was shot with a 12 gauge shotgun and that shotgun was later found at Petitioner's home. (Transcript p. 24 l. 18-18; and p. 25 l. 24-25). Additionally,

Solicitor Stone advised the court that Co-defendant Jacoby Fields gave a post-miranda statement in which he stated that petitioner shot Deputy Dennis Compton. After SLED agents confronted Petitioner with Field's statement, Petitioner then gave a post-miranda statement naming Field as the gunman, (Transcript p. 251, 15-23). Petitioner was 19 years old at the time of the shooting and had an otherwise minor criminal record. A misdemeanor when he was 14 years old. Both Plea Counsel Lee and Ruffalo testified that when they met with Petitioner prior to the plea hearing, they discussed the strength of the State's case emphasizing that the murder weapon was found on the property where Petitioner lived and Petitioner's co-defendant gave a statement implicating Petitioner as gunman. Attorney Ruffalo testified that he told Petitioner that based upon the strength of the state's case, if petitioner's case went to a jury trial that Petitioner would be given the death penalty and hanged. In essence, Attorney Lee testified that he gave Petitioner a similar assessment of the likelihood of a conviction. Both plea counsel testified that they advised Petitioner that if he were found guilty it is certain that he would get the death penalty. Petitioner testified that based on his attorney's advice and heightened by the fear of a death sentence he plead

guilty to all his charges.

Trial counsel provided deficient representation and prejudice when he recommended that Petitioner plead guilty without first performing a proper pre-trial investigation. Petitioner lived at 2189 with his mother. Petitioner's mother testified that the alleged murder weapon was not found on her property. This testimony was corroborated by Willie B. Drain, a neighbour of Petitioner's mother and owner of the property where the weapon was found. At a trial evidence that the alleged murder weapon was found on property adjacent to the defendant's or at another location outside the scope of the search warrant for that matter is less incriminating than if the weapon were found on a defendant's own property. Trial counsel did not interview Willie B. Drain in the course of preparing for trial. Had trial counsel interviewed Mr. Drain, counsel would have known and Petitioner would therefore have known that the alleged murder weapon was not found on the property where Petitioner lived. Trial Counsel's failure to investigate on whose property the alleged murder weapon was found or what location, caused trial counsel to give Petitioner deficient advice regarding the

relative strength of the State's case.

Trial counsel provided deficient representation by failing to interview Jacoby Fields. Trial counsel testified that they made no effort to conduct a pre-trial interview of Fields. In regards of preparation or in defense of Petitioner during his time awaiting trial, At the evidentiary hearing Fields testified that he was coerced by law enforcement to make the statement he provided. Fields testified that he was seeking to suppress his statement because it was both involuntary and coerced. Fields testified that law enforcement told him the only way to avoid a death sentence was to confess to his involvement in Deputy Compton's shooting. Fields testified that had Petitioner's trial counsel spoken with him, that Fields would have told them that his statement was coerced and that he was seeking to have it suppressed. Making multiple appearances in court regarding such issues with attorney Boyd Young of the South Carolina Office of Indigent Defense as proof and evidence that his testimony at Petitioner's PCR hearing and proceeding were in fact accurate, credible, and true. Contrary to the PCR judge's ruling

in regards to his testimony being self-serving.

The testimony that trial counsel failed to investigate on whose property the alleged murder weapon was found or what location and the testimony that trial counsel failed to interview Jacoby Fields is uncontroverted. The testimony provided by Petitioner's mother, Willie B. Drain, and Jacoby Fields was clearly the absolute truth. Petitioner testified had he known that the alleged murder weapon was not found on his property and had he known that Jacoby Fields was asserting that his statement was coerced, he would not have pled guilty and he would have continued demanding his Sixth Amendment right to trial. Petitioner avers that the only reason he pleaded guilty and answered "yes" when the Court asked if he was pleading guilty because he was in fact guilty was because his lawyer told him that he had to say that in order to avoid the death penalty. Petitioner trust that this honorable Court will find Petitioner's testimony is believable regarding the circumstances leading to his guilty plea.

At this time Petitioner will raise Issue (2):

Petitioner uses Transcript References as proof and evidence supporting Miranda violations and issues in support of Petitioner's claim that Plea Counsel Failed to advise her of the constitutional violations SLED Agents committed during police interrogation. The denial of the right to an attorney, the denial of a request to make a phone call. The presentation of a weapon, a shotgun in particular in the room with petitioner. The promises of leniency, police misrepresentations, the threats of punishment and the threat of imminent death. Five hours of custodial investigation with no food, water, shoes, socks, hand cuffed and no proof miranda warnings were given at the outset, the middle, or end of the interview. Counsel in no regard created any form of defense or advise me of all Petitioner's Constitutional rights. Counsel never attempted to truly challenge the false confession. Proving deficient and prejudice as representation fully aware that statement was not freely, voluntarily, or intelligently given. That the fear of the electric chair threats from law enforcement, and the ~~totality~~ of the circumstances are sufficient to enough to satisfy Petitioner's claim that counsel did not fully or properly prepare Petitioner during the pre-trial process.

Had counsel advise Petitioner's ability to challenge the confession because of (5) Fifth Amendment and (4) Fourteenth Amendment violations. Plea counsel clearly shows ineffectiveness and insufficiency on behalf of the Petitioner. Counsel Scott Lee and Dudley Ruffalo failed to raise any type of defense and the record supports without a doubt the Petitioner's claim.

The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970); see *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969); *Machibroda v. United States*, 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed.2d 473 (1962)

Clearly Petitioner's pleas involuntary and unintelligently entered due to Plea counsel's failure to advise applicant of violations regarding Miranda issues. Counsel's representation fell below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. at 687-688, 104 S.Ct. at 2065

The two-part standard adopted in Strickland v. Washington test applies to challenges to guilty Pleas based on ineffective assistance of counsel.

In the context of guilty pleas, the first half of the Strickland v. Washington test is nothing more than a restatement of the standard of attorney competence already set forth in Tollett v. Henderson, supra, and McMann v. Richardson, supra. The second, or "prejudice" requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Clearly in the present case. Petitioner has met the two-prong analysis of Strickland v. Washington and the additional prejudice required in Hill v. Lockhart.

Petitioner further raises in his Pro-se Petition Issue (5): Ineffective assistance of counsel for failing to have a competency hearing to determine if petitioner was fit to stand trial or the state of mind of petitioner. Clearly Attorneys' counsel, Mr. Scott Lee and Dudley Ruffalo committed ineffective assistance of counsel for failing to motion the court to have a competency hearing administered upon petitioner and further to have Petitioner evaluated to determine state of mind at the time of the alleged crime prior to advising Petitioner to plead guilty.

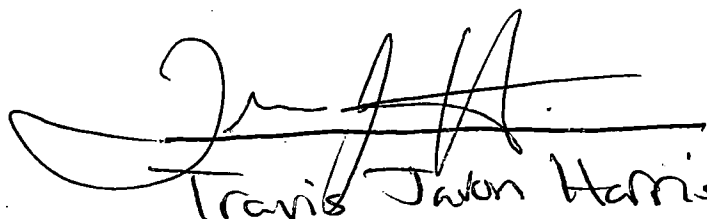
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Clearly Petitioner's pleas involuntary

and unintelligently entered due to Plea Counsel's failure to motion the court to have a competency hearing administered upon Petitioner and further to have Petitioner evaluated to determine state of mind.

## Conclusion

In conclusion Petitioner has sufficiently Proven the two prongs established in Strickland v. Washington and Further the addition established in Hill v. Lockhart and respectfully ask that this Honorable Court Reverse his convictions and sentences and Remand him back for a New Trial.

  
Travis Jason Harris  
Pro-Se Petitioner

July 26, 2019

State of South Carolina  
In the Supreme Court

Certiorari to Colleton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

Travis Jaron Harris,

Petitioner

v.

State of South Carolina,

Respondent

Appellate Case Number 2018-001578

Certificate of Service

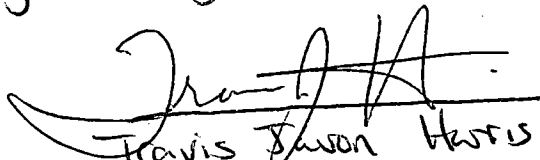
Travis Jaron Harris, Petitioner, certifies that service of his Pro-se petition in addition to a petition for writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) filed by Ms. Wanda H. Carter, Esquire was served upon the following by placing same in the U.S. mail, First-class postage having been prepared on this 26<sup>th</sup> day of July, 2019

(1) The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330 Columbia, SC 29211

(2) Assistant Attorney General  
Benjamin Limbaugh  
1000 Assembly Street, Room 519  
Columbia, SC 29201

Subscribed and sworn before me today

On this 26<sup>th</sup> day of July, 2019  
Deborah Marshall  
Notary Public For South Carolina  
My Commission Expires May 12, 2021

  
Travis Jaron Harris  
Pro-Se Petitioner

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AUG 01 2019

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Proof of Service

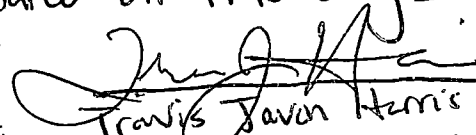
Travis Jaron Harris, Petitioner, certifies that I have served the pro-se petition in addition to a petition for writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988) filed by Ms. Wanda Carter Esquire was served upon the following by placing same in the U.S. mail, First class postage having been prepared on this day 26th of July, 2019

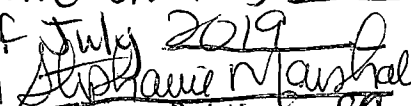
(1) The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330 Columbia, SC 29211

(2) Assistant Attorney General

Benjamin Limbangan

1000 Assembly St, Room 519 Columbia SC 29201

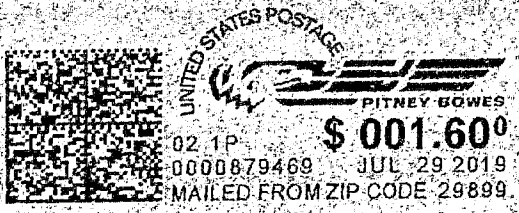
  
Travis Jaron Harris  
Pro-se Petitioner

Subscribed and sworn  
before me on this 26<sup>th</sup>  
day of July 2019  
  
Stephanie Marshall  
Notary Public for SC

May 12, 2022

Larris #349116

1 Way  
29899



S.C. DEPARTMENT OF CORRECTIONS  
McCormick Correctional Inst.  
FOR ITS CONTENTS.  
DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.  
CENSORED THIS LETTER BEFORE THE  
DEPARTMENT OF CORRECTIONS HAS REVIEWED  
IT FOR SECURITY REASONS.

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