October 18th, 2019

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

RE: Johnny R. Walker Jr. V. State
Appellate Case No. 2019-000176

Dear Respondent:

I have enclosed my pro se response to the petition for Writ of certiorari. In which my counsel, Joanna K. Delany, filed. In my pro se respose is the argument in which I wish to raise to the courts attention. Along with evidence to back up my argument to show the court it is with merit, "exhibit's A, B, and C." May the court be opened minded and take everything into consideration. This is my written memoradum.

Sincerely,

Johnny R. Walker Jr.

exhibit's A

WALLER
LAW GROUP

November 28, 2018

Johnny Ray Walker
SCDC ID: 372580
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

Re: Johnny Ray Walker, Jr. vs. State of South Carolina
C/A No: 2018-CP-33-00261

Dear Mr. Walker:

As we discussed, please find enclosed a copy of some documents from Hank Anderson's file in your case. Mr. Anderson provided me these documents prior to the hearing in your PCR case. I have made copies of these documents and am providing the original copies to you.

If you have any questions, please do not hesitate to ask.

Sincerely,

Jonathan D. Waller

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

Discovery

(envelope that discovery came in.

WALLER
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1116 Blanding Street, Suite 2B
Columbia, SC 29201

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Johnny Ray Walker
SCDC ID: 372580
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067
LEGAL MAIL

exhibit's "B"

Exhibit's "C" (Appendix) Exhibit's "C"

ADVISEMENT OF IMPLIED CONSENT RIGHTS

WALKER, JOHNNY RAY JR
Subject's Name (Print)

08-22-1989
Date of Birth

38901574
Driver's License Number

NC
State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

(A) Will test be video recorded? If answer is Yes, start here-> - Inform subject of video recording.
If answer is No, start here -> - Inform subject of type samples requested(i.e. breath,blood,urine).

(B) Provide subject with a written copy of the following advisement and read the advisement to the subject:

- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program, and your refusal may be used against you in court.
- If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program.
- You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, shall provide you affirmative assistance.
- You have the right to request a contested case hearing within thirty (30) days of the issuance of the notice of suspension.
- If you do not request a contested case hearing or if your suspension is upheld at the contested case hearing, you shall enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

(C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occured.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occured.)

ADVERTENCIA Y LECTURA DE DERECHOS POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

(A) ¿Se grabará el análisis en video? Si la respuesta es Si, empiece aquí-> - Informe a la persona que va a ser grabada en video.
Si la respuesta es No, empiece aquí-> - Informe a la persona de las muestras que se requieren (ejemplos: soplar, sangre, orina).

(A) Dele a la persona una copia escrita de la advertencia siguiente y lea la advertencia al sujeto:
(B) Dele a la persona una copia escrita de la advertencia siguiente y léasela a la persona:

- Usted está arrestado por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código Legal de Carolina del Sur de 1976, según su enmienda.
- El policía que efectuó el arresto dispuso que le sacaran muestras de alcohol y/o drogas para ser analizada(s).
- Se obtendrán y analizarán las muestras según la Sección 56-5-2950 y las normas del SLED.
- Usted no está obligado a hacerse los análisis ni a proporcionar muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar su privilegio de manejar en Carolina del Sur por lo menos durante seis (6) meses con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque. Negarse a ello podrá usarse en su contra en un tribunal.
- Si usted se somete a los análisis o proporciona las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, podría ser acusado en vez de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
- Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, su privilegio de manejar en Carolina del Sur debe ser suspendido por lo menos durante un (1) mes con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque.
- Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice por su cuenta los análisis adicionales que usted tendrá que pagar y en ese caso, el agente debe brindarle ayuda si usted la solicita.
- Usted tiene el derecho de solicitar una audiencia para disputar el caso dentro de los treinta (30) días a partir de la fecha en que se emitió la notificación de la suspensión.
- Si usted no solicita una audiencia para disputar el caso o si se le confirma la suspensión en la audiencia para disputar el caso, usted tiene que inscribirse en un Programa de Medidas de Seguridad para el Consumo Responsable del Alcohol y las Drogas.

Si es pertinente, haga lo siguiente:

(C) Inspeccione la boca de la persona y quite todo material extraño de la boca. (No se requiere si se niega la persona.)
(D) Ingrese los datos biográficos en el DataMaster DMT. (Obligatorio para todos los análisis aunque se niegue la persona.)
(E) Observe a la persona un mínimo de (20) minutos antes de obtener una muestra de su aliento. (No se requiere si se niega la persona.)

Refused Blood

Subject's Signature
Firma de la Persona (recibió una copia)

7-10-15

Officer's Signature
Firma del Agente

0205 date/time
fecha/hora

SLED Forensics Form # ICS 010, October 1, 2014

Argument

The PCR Court Erred In Finding Plea Counsel Competent And Not Ineffective For His Failure To Procure And Provide Discovery Before Advising Appellant To Plead Guilty.

During Appellant's plea hearing, Counsel ensured the Court that he had explained to Appellant the charges of DUI Resulting In Death and DUI Resulting In Great Bodily Injury, the possible defenses, possible penalties, the elements of the charges, and his constitutional rights. (Tr.p.4, Lns.12-20).

The State provides its factual basis for the two charges. (Tr.pgs.5-9). The Solicitor describes a head-on collision between Appellant's Mustang and the car driven by Rayneisha Eaddy. Another vehicle was also involved. Tr.p.5, Ln.25-(Tr.p.7, Ln.1)

Due to the impact of the collison, Appellant suffered multiple injuries, fractures and internal injuries and was hospitalize for several weeks. (Tr.p.7, Lns.14-17). In fact, due to his serious injuries, Appellant was unable to remember the events of the crash. (Tr.p.21, Lns.10-13).

The Solicitor informed the Plea Court that "At a trial, your Honor, the state would introduce evidence of his (Appellant) ethanol level at the time was 20/100ths of one percent per volume of what we know as .20." (Tr.p.7, Lns.21-23). He further stated that because a cooler of beer was found in Appellant's car, he suspected all three people were consuming alcohol. (Tr.p.9, Lns.13-15). However, there were no opened containers found in or near the car and Appellant refused blood work, therefore there

can be no proof of Appellant's ethanol level. (See Exhibit's "C.")

Appellant was not in agreement with the State's factual basis due to the State's contradictive reports and his distorted memory and inability to remember what happened. He informed the court that he simply would like to know the truth before pleading guilty. It should have been quite obvious to Plea Court at that point Counsel could not have went over discovery with Appellant and was not making an informed decision or pleading voluntarily. (Tr. p. 10, Ln. 1 - Tr. p. 11, Ln. 10). Appellant had to stop and confer with Counsel, where he advised Appellant to continue with the plea. (Tr. p. 12, Lns. 14-21).

Appellant filed his PCR application on April 9th, 2018 alleging Ineffective Assistance Of Plea Counsel for his failure to provide discovery materials among other issues. The PCR Court held an evidentiary hearing on November 7th 2018. Appellant received an incomplete or uninformative discovery package on December 12, 2018. (See Exhibit's "A" and "B.") The PCR Court denied Appellant's application on January 4, 2018.

At the hearing, Plea Counsel stated he went over the discovery with Appellant. He further stated there was some confusion about the chain of custody of the blood work. However, there was never any blood work done at all in this case, (See Exhibit's, "C") and Appellant received his discovery after the PCR hearing on December 12, 2018 (See Exhibit's, "A" and "B"). In fact, there was no blood work done in this case and of course, there was not any chain of custody or chemical analysis forms as required by law to prove Appellant to be guilty of DUI elements. For the PCR Court to find Plea Counsel Competent and not Ineffective in this case was an error of law and its decision should be reversed for the following reasons,

Law Analysis

A defendant who pleads guilty usally may not later raise independant claims of constitutional violations, Rivers V. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975), stating "The general rule is that a plea of nonjurisdictional defects and defects including claims of violation of constitutional rights prior to the plea." However, "waivers of constitutional rights must be knowing and intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Gustine V. State, 325 S.C. 123, 127-28, 480 S.E.2d 444, 446. In this case, Appellant raises an argument grounded in Ineffective Assistance of Counsel and Brady V. Maryland, 373 U.S. 583 (1963).

Brady V. Maryland, 373 U.S. 583, 83 S.Ct 1194 (1963) held that a State violates a defendant's due process rights when it fails to disclose to defendant prior to trial "evidence favorable to the accused, where the evidence is material." Id at 87, 83 S.Ct 1194; See also, U.S. V. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976). Under Brady "evidence more favorable to the accused includes impeachment as well as exculpatory evidence." Basden V. Lee, 290 F.3d 602 (4th Cir. 2002).

Standard of review of allegation that the defense was unable to review and prepare is whether discovery material is presented in time for effective use at trial. Brady material must be disclosed in time for its effective use at trial. U.S. V. Gill, 297 F.3d 93 (2nd Cir. 2002).

One of the most underated but most helpful devices from the standpoint of the defendant and defense Counsel

prior to trial. The purpose of discovery will meet contemporary needs for informed pleas, speedy trial, due process and will minimize surprise and afford opportunites for effective cross-examination. ABA Advisory Committee on Pretrial Proceedings, Standards Relating to Discovery and Procedure Before Trial (New York: Institute of Judicial Administration, 1969), pp. 19-22.

The government has an obligation to make timely disclosures of favorable evidence under Brady V. Maryland, and it is pertinent to, not only, an accused's preparation for trial but also to his determination of whether or not to plead guilty. The defendant is entitled to make that decision with full awareness of favorable material known to the government. Gibson V. State, 314S.C.515, 514S.E.2d320(1999). A defendant's decision whether or not to pled guilty is often heavily influenced by his appraisal of the prosecution's case. Sanchez V. U.S., 50F.3d1448, 1453(9th Cir.1995). It is fundamentally unfair if the State proceeds against a defendant without making certain that he has access to materials integral to building an effective defense as well. Mason V. Mitchell, 320F.3d604(6th Cir.2003). Furthermore, when a defendant lacks knowledge of the material evidence in the prosecutor's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary. Accord, Appellant's plea was not voluntary as he had little knowledge of the case against him. Sanchez, 50F.3d at 1453; Gibson, 514S.E.2d at 324. The plea in this case does not represent a voluntary course of action opened to the Appellant at the time of the plea. Brady V. U.S., 397U.S. 742, 90S.Ct. 1463(1970).

Counsel failed to investigate or make a reasonable decision not to investigate through full discovery. "Such a complete lack of pretrial preparation puts at risk both, defendant's right to an ample opportunity to meet the case of the prosecution" and the "reliability of the adversarial testing process." Counsel was indeed ineffective. Kimmelman V. Morrison, 477U.S.365(1986). Here, Appellant's Counsel failed to conduct and provide a reasonable Rule5/Brady Motion[5] material to Appellant before advising him to plead guilty. Plea Counsel was ineffective for failing to procure relevant and adequate discovery materials, which lead to Appellant making an involuntary plea. Kolle V. State (Opinion No. 26771, Feb. 16, 2010). Counsel's representation fell below the standard of reasonableness and but for Counsel's error, there is a reasonable probability that Appellant would not have pled guilty, but would have insisted on going to trial. Hall V. Lockhart, 474U.S.52(1985).

The PCR Court's "Finding Of Fact And Conclusion Of Law" upon this issue was as follows: "Plea Counsel stated that at first, the State was having difficulty establishing the chain-of-custody for the blood work from the hospital..." "Plea Counsel stated he believed the State could have gotten the bloodwork into evidence." (Order of Dismissal, pg.5). The Court continued: "Plea Counsel articulated he was prepared to attack the chain-of-custody of the bloodwork report taken from the hospital. The Court finds this strategy reasonable." The Court found Counsel credible on this issue and not ineffective. (Order Of Dismissal, pg.8)

The PCR Court erred where there was no blood work in the first instance, for there to be a chain-of-custody or chemical analysis. (See Exhibit's "C."). Appellant did not receive his discovery until after

the PCR hearing. (See Exhibit's A, and B). Even with all discovery there was no valuable or useful material proving the charges brought against Appellant by the prosecution. Counsel should have moved to have the indictments dismissed, pretrial, because there was no evidence to proceed with the charges. The PCR Court's findings are without any evidence of probative value to support a finding of Counsel's Competency as Credible and not to been ineffective for not procuring and providing discovery before advising Appellant to plead guilty. See Holland V. State, 332 S.C. 111, 4705.E.2d 378 (1996) (Court will not uphold PCR Courts findings where there is no probative evidence to support them).

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