

South Carolina Supreme Court
P.O. Box 1130, Columbia, SC 29211
Daniel E. Shearouse

RECEIVED

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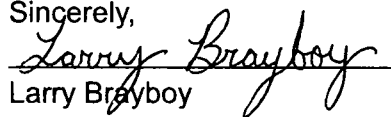
S.C. SUPREME COURT

Re: Pose Petition for Writ Certiorari

Dear Mr. Daniel E. Shearouse,

Enclosed is a copy of the Prose Petition for Writ Certiorari. I'm requesting it be filed with the South Carolina Supreme Court and a copy returned to me.

Sincerely,


Larry Brayboy

State of South Carolina

) Appellate Defense

C/A _____

Lee County

)

Affidavit of Service

Larry Brayboy

Appellate

)

VS

State of South Carolina

)

Respondent

)

I, Larry Brayboy, Hereby served a true copy of Letter Notify counsel file motion pursuant to S.C. Code Ann. §17-27-80; requires the PCR court makes ruling on each issue in PCR application.

SI Larry Brayboy
Larry Brayboy

Date October 30 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

LARRY BRAYBOY

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002171

PROSE PETITION FOR WRIT OF CERTIORARI

Larry Brayboy
Lee Correctional Institution F1A1155
990 Wisacky Hwy
Bishopville, SC 29010

South Carolina Supreme Court
Daniel E. Shearouse

Attorney General
Allan Wilson

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 PCR Judge Err in making ruling pursuant to §17-27-80 each ground alleges in the PCR Application and Amend. S.C. Code Ann §17-27-80 (1976), requires the PCR court to “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” 3-4

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ISSUE PRESENTED

Whether PCR Judge erred in making ruling pursuant to §17-27-80 each ground alleges in the PCR application and amend. S.C. Code Ann §17-27-80 (1976), requires the PCR court to “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” ?

STATEMENT OF THE CASE

On December 6, 2008 around 11:00pm male intruders entered a Pizza Hut in Lake City, South Carolina. One of them had a pistol and the other had a shotgun. Employees were hit in the head with the weapons and given orders to surrender their wallets, cellphones, and keys. Two perpetrators, Brown and Turner, were captured by police as they fled the scene.

Both Brown and Turner agreed to plead guilty to lesser charges to testify against Petitioner. Almost a month later, after receiving a tip where the Petitioner was located, police arrested Petitioner at a friend's house. Petitioner was indicted in April 2009 in Florence County for armed robbery, kidnapping, and assault and battery of a high and aggravated nature. On August 24-26, 2009, Petitioner proceeded to trial before the Honorable Thomas A. Russo. Without any forensics set-up, nor any identification made by victims or officers testimony of Petitioner, with merely contradicting testimonies from co-defendants offered as a deal as the State's only evidence, the Petitioner was sentenced to 18 years. A timely notice of appeal was served and filed.

ARGUMENT

PCR Judge erred in making ruling pursuant to §17-27-80 each ground alleges in the PCR application and amend. S.C. Code Ann §17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

Order of Dismissal pgs. 3-4 (Issues not ruled on)

1. "Ineffective Assistance of Trial Counsel", in that:
 - a. "Trial counsel failed to interview an alibi witness, when the petitioner specifically requested counsel to interview the witness and call himself to testify at trial on Petitioner's behalf."
 - d. "Trial counsel failed to argue illegal search and seizure of Petitioner."
 - e. "Trial counsel failed to object to erroneous burden shifting jury instructions."
 - h. "Trial counsel failed to object to prosecutor's unconstitutional, improper, prejudicial and burden shifting closing arguments."
 - i. "Trial counsel failed to present good character witnesses and good character evidence for Petitioner."
 - j. "Trial counsel failed to contact, interview, and subpoena potential witnesses."
 - k. "Trial counsel failed to object to prosecutor's blostering [sic] of co-defendants [sic] testimony."
 - l. "Trial counsel failed to impeach co-defendants at trial on statements made."
 - m. "Trial counsel was ineffective for not objecting to the state [sic] using a federal inamte's testimony; who was offered a deal in exchange for his testimony."
 - n. "Trial counsel failed to challenge/argue the insufficiency of the Multiple Count Indictment."

2. "Ineffective Assistance of Appeal [sic] Counsel", in that:
 - b. Appellant [sic] counsel ineffective for not raising on appeal the issue of "There was insufficient evidence from which a reasonable juror would have convicted Petitioner of the crimes."

3. "Newly/After Discovered Evidence", in that:

- a. "There is a witness that can testify to the fact that Petitioner's co-defendant told this witness that he lied at trial and placed the crimes on Petitioner."

§17-27-80 states "The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." *McCray v State* (S.C. 1991) 305 S.C. 329, 408 S.E. 2d 241. Remand was required on appeal from denial of post-conviction relief where post conviction court dismissed movant's ineffective assistance of counsel allegation without making findings of fact on specific allegations raised, violating statute and precluding appellate review. Code 1976, §17-27-80; U.S.C.A. Const. Amend. 6." The PCR court dismissed McCray's allegations of ineffective assistance of counsel without making findings of fact on the specific allegations raised.

S.C. Code Ann. §17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

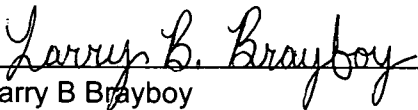
The PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in the statute.

Accordingly, we reverse the order denying McCray's relief and remand for a new PCR hearing.

CONCLUSION

Petitioner respectfully request this Court grant the prose petition for writ of certiorari and order full briefing on the issue presented. He ultimately request this Court reverse the order denying Petitioner relief and remand for a new PCR hearing.

Respectfully submitted,


Larry B Brayboy

Petitioner for Prose Petition for Writ of Certiorari

This 17th day of October, 2019