

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

RECEIVED

JAN 08 2020

S.C. SUPREME COURT

January 6, 2020

Re: Appellate Case No. 2019-000525

Dear Mr. Shearouse,

Enclose, please find Petitioner's Memorandum in Support of
Johnson Petition to be file in this court.

Thank You in this matter

Respectfully submited

/s/ Touriarnold Spann

Touriarnold Spann #305939

Perry Correctional Institution

430 Oak Lawn Road

Pelzer, South Carolina 29669

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
HONORABLE ROBERT E. HOOD, CIRCUIT JUDGE

TOURIARONLD SPANN,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA

RESPONDENT(S).

APPELLATE CASE NO. 2019-000525

MEMORANDUM IN SUPPORT OF JOHNSON PETITION

TOURIARONLD SPANN
APPELLATE

PERRY CORRECTIONAL INSTITUTION
430 OAK LAWN ROAD
PELZER, SOUTH CAROLINA 29669

DAVID ALEXANDER, ESQUIRE
APPELLATE DEFENDER FOR PETITIONER

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WHETHER THE PCR COURT ERRONEOUSLY DENIED PETITIONER'S DISCOVERY CLAIM WHEN SUCH EVIDENCE WAS EXCULPATORY AND TRIAL COUNSEL DID NOT HAVE THE DVD TO CONSIDER ITS PROBATIVE VALUE BEFORE HE ADVISE PETITIONER TO PLEA GUILTY.

STATEMENT OF THE CASE

ON MARCH 23, 2015, PETITIONER ENTERED A PLEA OF GUILTY TO MULTIPLE CHARGES BEFORE THE HONORABLE MAITE MURPHY IN ORANGEBURG COUNTY. PEGGY HINDS AND BREEN STEVENS REPRESENTED PETITIONER AND ASHLEY CORNWELL REPRESENTED THE STATE. PETITIONER PLED GUILTY TO MALICIOUS INJURY TO PERSONAL PROPERTY, FIRST-DEGREE BURGLARY, A WEAPON CHARGE, IMPERSONATING A LAW ENFORCEMENT OFFICE OFFICER, CAR-JACKING, AND ARMED ROBBERY. JUDGE MURPHY ACCEPTED PETITIONER'S PLEA. JUDGE MURPHY SENTENCED PETITIONER TO CONCURRENT TERMS OF IMPRISONMENT TOTALING THIRTY YEARS.

ON NOVEMBER 30, 2015, PETITIONER FILED A PCR APPLICATION. ON MAY 24, 2017, THE HONORABLE ROBERT E. HOOD HELD A HEARING. JONATHAN D. WALLER REPRESENTED PETITIONER AND RUSTON W. NEELY REPRESENTED PETITIONER. JUDGE HOOD GRANTED PCR ON ONE GROUND WITH THE STATE'S CONSENT --AN ILLEGAL SENTENCE FOR CAR-JACKING. THE MAXIMUM SENTENCE WAS TWENTY-YEARS SENTENCE IMPOSED BY JUDGE MURPHY. JUDGE HOOD RESENTED PETITIONER TO TWENTY YEARS IMPRISONMENT ON THAT CHARGE. THE PCR COURT DENIED PETITIONER'S REMAINING ALLEGATIONS. THIS MEMORANDUM FOLLOWS THE JOHNSO'S PETITION.

STANDARD OF REVIEW

WHEN DETERMINING ISSUES RELATING TO GUILTY PLEAS, THE COURT WILL CONSIDER THE ENTIRE RECORD, INCLUDING THE TRANSCRIPT OF GUILTY PLEA AND THE EVIDENCE PRESENTED AT THE HEARING. HARRES V. LEEKE, 282 S.C. 131, 318 S.E.2D 360 (1984). SPECIFICALLY, THE VOLUNTARINESS OF A GUILTY PLEA IS NOT DETERMINED BY AN EXAMINATION OF A SPECIFIC INQUIRY MADE BY THE SENTENCING JUDGE ALONE, BUT IS DETERMINED FROM BOTH THE RECORD MADE AT THE TIME OF THE ENTRY OF THE GUILTY PLEA, AND ALSO FROM THE RECORD OF THE PCR HEARING.

ARGUMENT ONE

PETITIONER OBJECTION TO JOHNSON'S BRIEF AND PETITION TO BE RELIEVED OF COUNSEL

PETITIONER OBJECTS TO DAVID ALEXANDER PETITION TO BE RELIEVED AS COUNSEL OF RECORD, AND THAT THE GRANTING OF DAVID ALEXANDER'S PETITION WOULD BE DENY PETITIONER HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON HIS FIRST COLLATERAL APPEAL OF RIGHT.

DAVID ALEXANDER (ALEXANDER) WAS APPOINTED TO REPRESENT PETITIONER ON A COLLATERAL FOR PCR. ON NOVEMBER 25, 2019 ALEXANDER FILED A NO MERIT APPEAL, PURSUANT TO JOHNSON V. STATE, 294 S.C. 310, 364 S.E.2D 201 (1988), CLAIMING THE APPEAL IS WITHOUT LEGAL MERIT SUFFICIENT TO WARRANT A NEW TRIAL WAS SEQUENTLY MOTIONING THIS COURT TO BE RELIEVED OF COUNSEL.

PETITIONER OBJECTS TO ALEXANDER'S PETITION TO BE RELIEVED AS APPELLATE COUNSEL ON THE GROUNDS THAT THERE IS MERITOROUS AND SUBSTANTIVE ISSUES AVAILABLE AND UNBRIEFED OR/AND IMPROPERLY BRIEFED THAT WAS PROPERLY PRESERVED FOR APPELLATE REVIEW DURING HIS PCR HEARING DATED MAY 24, 2017 AND RULED UPON APRIL 13, 2018.

PETITIONER ASSERTS HE HAS A RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON HIS COLLATERAL APPEAL. ALEXANDER SHOULD NOT BE RELIEVED AS COUNSEL BECAUSE PETITIONER CANNOT REPRESENT HIMSELF (HYBRID REPRESENTATION) AND THIS HONORABLE COURT CANNOT CONSIDER ANY PRO-SE EFFECT BY PETITIONER EXCEPT THROUGH APPOINTED COUNSEL. PETITIONER REQUEST THIS HONORABLE COURT TO HAVE APPOINTED COUNSEL TO BRIEF THE FOLLOWING ISSUES IN ACCORDANCE TO AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2D 395 (1997).

DISCUSSION

UNDER ANDERS V. CALIFORNIA, 384 U.S. 738, 87 S.Ct. 1896 (1969), THE UNITED STATES SUPREME COURT HELD THAT AN APPOINTED ATTORNEY MUST ADVOCATE HIS CLIENT'S CAUSE VIGOROUSLY AND MAY NOT WITHDRAW FROM A NON-FRIVIOUS APPEAL ... APPOINTED COUNSEL MUST PRESENT ON APPEAL [ALL] NON-FRIVIOUS ARGUMENTS REQUESTED BY HIS CLIENT.

IN THE INSTANT MATTER, ALEXANDER HAS ABANDONED SUBSTANTIVE MERITORIOUS ISSUE(S), THAT IN GRANTING ALEXANDER'S PETITION TO BE RELIEVED AS COUNSEL WILL RESULT IN A DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL ON THIS APPEAL; DENY HIM DUE PROCESS AND PROCEDURALLY BAR HIS CLAIMS FOR FURTHER REVIEW.

IT MUST BE NOTED, REGARDLESS OF WHETHER AN ATTORNEY HAS BEEN APPOINTED TO ACT FOR THE CLIENT OR RETAINED BY THE CLIENT, THE CLIENT IS ENTITLED TO FIDELITY FROM ALEXANDER; TO THAT END.. PETITIONER HOLD THAT ATTORNEY APPOINTED BY SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE FOR THE PURPOSE OF RAISING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

THEREFORE, THE UNDERLYING SUBSTANTIVE CLAIMS THAT ALEXANDER HAS ABANDON IS RAISED HEREIN THIS MEMORANDUM.

ARGUMENT TWO

DID THE PCR COURT ERRED IN DENYING PETITIONER A NEW TRIAL WHEN PETITIONER COUNSEL DID NOT CONVEY THE POSSIBLE DEFENSE(S) TO CONFRONT THE STATE CASE.

FACTS

THE VICTIM DAVID SMITH (SMITH) STATED AT THE PLEA HEARING, THAT:

"HE DROVE MY CAR AWAY. HE SLAMMED ME AGAINST TH[E] CAR TWICE...[THEN] HE THREW ME IN THE MIDDLE OF THE STREET."

PLEA RECORD DATED MARCH 23, 2015, PAGE 20, L. 25; PAGE 21, LL. 1-3.

A DEFENDANT WHO PLEADS GUILTY ON THE ADVICE OF COUNSEL MAY COLLATERALLY ATTACK THE VOLUNTARINESS OF HIS PLEA ONLY BY SHOWING THAT:

- (1). COUNSEL WAS INEFFECTIVE AND THAT
- (2). THERE IS A REASONABLE PROBABILITY THAT BUT FOR ERROR'S, THE DEFENDANT WOULD HAVE PLEAD GUILTY.

WHEN CONSIDERING AN ALLEGATION ON P.C.R. THAT A GUILTY PLEA WAS BASED ON 'INACCURATE' ADVISE OF COUNSEL, THE TRANSCRIPT OF THE GUILTY PLEA WAS BASED ON INACCURATE ADVISE OF COUNSEL, THE GUILTY PLEA HEARING WILL BE CONSIDERED TO DETERMINE WHETHER INFORMATION CONVEYED BY THE PLEA JUDGE CAUSE ANY POSSIBLE ERROR MADE BY COUNSEL. MOOREHAED V. STATE, 329 S.C. 329, 496 S.E.2D 415 (1998); WOLF V. STATE, 326 S.C. 589, 576 S.E.2D 144 (2003).

AN EVIDENTIARY HEARING WAS HELD. PETITIONER TOOK THE STAND ON HIS BEHALF. THE PCR COUNSEL ASKED:

Q: 8 "OKAY, Y'ALL DISCUSSED ANY POTENTIAL DEFENSE YOU 9 MIGHT HAVE HAD FOR THOSE CHARGES?"

A: 10 No, SIR.

Q: 11 OKAY. SINCE THAT TIME, DO YOU FEEL THAT YOU HAD SOME 12 DEFENSES?"

A: 13 YES, SIR. I GOT A LOT OF DEFENSES.

Q: 14 OKAY. DID YOU AND MR. STEVENS DISCUSS ANY [OF] THEM?"

A: 15 No, SIR.

Q: 16 OKAY. IF Y'ALL HAD, WOULD YOU HAVE STILL PLEAD GUILTY?"

A: 17 No, SIR. I WOULD HAVE WENT TO TRIAL?"

POST CONVICTION RELIEF RECORD DATED MAY 24, 2017 PAGE 16, LL. 8-17. [AFTER PETITIONER PLEAD GUILTY TO THE OFFENSES TESTIFIED AT HIS BROTHER TRIAL FOR THE SAME OFFENSES].

THE FACTS INCIDENT TO THE PETITIONER'S ARREST, IN WHICH BROUGHT ABOUT THE "INDICTMENT" AND "CONVICTION" ARE IN GREAT DISPUTE. THE PETITIONER WAS INDICTED AS PRINCIPLE ON MULTIPLE CHARGES I.E., IMPERSONATING A LAW ENFORCEMENT OFFICER, A WEAPON CHARGE, CAR-JACKING AND ARMED ROBBERY, TO NAME A FEW. HOWEVER, THE FACTS STILL REMAINS CLEAR THAT PETITIONER'S COUNSEL COULD NOT HAVE SET DOWN AND EXPLAINED OR DISCUSSED "POSSIBLE DEFENSES". PETITIONER'S COUNSEL NEVER INFORM HIM THAT "IF HE PLEA THEN HE GIVES UP THOSE "POSSIBLE DEFENSES" OR THAT HAD HE WENT TO TRIAL, HE COULD BE GUILTY UNDER THE "HAND-OF-ONE, IS THE HAND-OF ALL".

UNDER THIS THEORY, THE STATE WOULD HAVE TO PROVE THAT PETITIONER ACTING TOGETHER OR SUBSTANTIALLY ACTING TOGETHER ASSISTING (CO-DEFENDANT'S) IN THE OFFENSE(S).

THE PCR'S COURT FINDING WAS 'ERRONEOUS' BY RULING COUNSEL'S DID NOT LACK "A REASONABLE INVESTIGATION" AND THAT THE "EVIDENCE

AGAINST [PETITIONER] WAS OVERWHELMING." SEE ORDER OF DISSAL PAGE 6-7.

FIRST, THE PLEA COLLOQUY IS VIOL THAT PETITIONER COUNSEL INFORM HIM OF AN ' STRATEGY' OR 'POTENTIAL DEFENSE' AGAINST THE STATE'S CHARGES. SECOND, THE PLEA COURT'S RULING (AND EXCEPTNCE OF HIS PLEA), CREATED AN FALSE IMPRESSION OF THE "MATERIAL FACTS" THAT THAT PETITIONER'S (ACTUAL PRESENCE) "CONSTITUTES YOU BEING GUILTY ... OF THE [] CRIMES." SEE PLEA RECORD PAGE 17, L. 25; PAGE 18, LL. 1-2.

PETITIONER STATED AT THE PLEA HEARING:

MR. SPANN: "I WAS DRIVING, THEY [FIRST TIME THE STATE IDENTIFIED THE PERPETRATORS: KENDRIKA SINGLETON AND JAMES BRYANT] GOT OUT. ONLY TWO 12 PERSON GOT OUT AND HE [THE VICTIM DAVID SMITH] KNOW THAT. I STAYED IN THE TRUCK.

THE COURT: DID YOU WITNESS THEM DOING THAT?

MR. SPANN: YES, MA'AM.

THE COURT: DO YOU KNOW EXACTLY WHAT EACH OF THEM DID?

MR. SPANN: YES, MA'AM.

THE COURT: TELL ME.

PLEA RECORD PAGE 17, LL. 11-18. [AS OF GOOD FAITH, PETITIONER SEEK THE PLEA COURT MERCY OR LENTIENCY "IN THE INTEREST OF JUSTICE TO HELP THE STATE TO CATCH EVERYONE INVOLVED."] PLEA RECORD PAGE 14-15.

THE STATE CASE, AT BEST, ONLY DISCRIBES 'ONE BLACK MALE' "APPROACHED" MR. SMITH CAR. HE HAD A BADGE ON HIS HIP, AS WELL AS, A GUN. THE BLACK MALE APPROACHED HIM; ASKED FOR THE DRIVER'S LICENSE. THE BLACK MALE RE RECEIVED THE DRIVER'S LICENSE FROM SMITH, HE THEN PULLED THE VICTIM OUT OF THE CAR AND BEGAN BEATING ON THE VICTIM. SEE PLEA RECORD PAGE 7, LL. 22-25; PAGE 8.

THE PLEA AND P.C.R. RECORD IS CLEAR, HAD PETITIONER'S COUNSEL INVESTIGATED THE CHARGES AND THEN EVALUATE THAT EVIDENCE WITH THE POSSIBLE DEFENSE WITH THE PETITIONER, THE PETITIONER WOULD HAD KNOWN THAT:

1. PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THE CRIME.
2. [MERE] PRESENCE AT THE SCENE OF A CRIME, IN AND OF ITSELF DOES NOT MORE A PERSON AN ACCOMPLISH. STATE V. COLLINS, 266 S.C. 566, 225 S.E.2D 189 (1976).
3. THE PETITIONER NEVER BECOME INVOLVED AFTER THE COMMISSION OF THE SUBSTANTIVE OFFENSE, AN ONLY ESTABLISHING PETITIONER'S "MERE PRESENCE" AT THE SCENE. PLEA RECORD PAGE 18, LL. 13-14.

THE PLEA COLLOQUY OF PETITIONER AND THE STATE:

THE SOLICITOR: "WERE YOU IN THE VICTIM'S VEHICLE WHEN YOU STOPPED AT CANAL ONE STOP?"

MR. SPANN: NO, MA'AM.

THE SOLICITOR: WHERE WERE YOU?

MR. SPANN: I WAS AT HOME. I DONE WENT AND PARKED THE TRUCK.

THE SOLICITOR: WHO WAS IN THE VICTIM'S VEHICLE AT CANAL ONE STOP?

MR. SPANN: KENDRICKA AND BRYANT.

THE SOLICITOR: IF YOU DROVE YOUR TRUCK HOME HOW DO YOU KNOW WHO WENT TO CANAL ONE STOP AND WHO WAS IN THE TRUCK?

MR. SPANN: BECAUSE ALL THEM WAS STAYING WITH ME.

THE SOLICITOR: SO THEY TOLD YOU THAT THAT'S WHERE THEY WENT?

MR. SPANN: YES, MA'AM.

PLEA RECORD PAGE 18, LL. 13-25; PAGE 19 AT 1; AND 4.

WHAT "CONSTITUTE ACCOMPLICE" IS 'ESSENTIAL ELEMENT' PARTICIPATION; BY AIDING AND ABETTING IN THE COMMISSION OF THE OFFENSE. STATE V. LANGLEY, 334 S.C. 643, 646-49, 515 S.E.2D 98, 302 (1976)

(1999).

THE PETITIONER'S CULPABILITY IS IN DISPUTE OR SUSCEPTIBLE OF DIFFERENT INFERENCES TO THE PCR COURT'S RULING (AND THE STATE'S CASE).

UPON A REVIEW OF ALL THE EVIDENCE AS "WHOLE" IN THE LIGHT MOST FAVORABLE TO THE STATE, AS IT MUST BE, IT IS "SUFFICIENT" TO GIVE RISE THAT PETITIONER WAS NOT INFORM OF ANY ANY DEFENSE(S) AGAINST THE STATE EVIDENCE. PETITIONER PLEAD GUILTY UPON "INACCURATE ADVICE" OF COUNSEL, PREJUDICE PETITIONER'S HIS RIGHT TO A TRIAL.

ARGUMENT THREE

WHETHER THE PCR COURT ERRONEOUSLY DENIED PETITIONER'S DISCOVERY CLAIM WHEN SUCH EVIDENCE WAS EXCULPATORY AND TRIAL COUNSEL DID NOT HAVE THE DVD TO CONSIDER ITS PROBATIVE VALUE BEFORE HE ADVISE PETITIONER TO PLEA GUILTY.

IN *BOYKIN V. ALABAMA*, 396 U.S. 238, 89 S.Ct. 1709 (1969), THE UNITED STATES SUPREME COURT HELD THAT BEFORE A COURT CAN ACCEPT A GUILTY PLEA, A DEFENDANT MUST BE ADVISED OF THE CONSTITUTIONAL RIGHT HE WAIVING. *Id.* SPECIFICALLY, A DEFENDANT MUST BE AWARE OF THE (1) THE PRIVILEGE AGAINST SELF-INCRIMINATION (2) THE RIGHT TO A JURY TRIAL, AND (3) THE RIGHT TO CONFRONT ONE'S ACCUSERS. *Id.*

IN *LAMBERT*, 225 S.C. 574, 225 S.E.2d 340 (1976), THE COURT RECOGNIZE "KNOWING AND VOLUNTARY" WAIVER OF STATUTORY OR CONSTITUTIONAL RIGHTS MUST BE ESTABLISHED BY A COMPLETE RECORD, AND "MAY BE ACCOMPLISHED BY COLLOQUY BETWEEN COURT AND DEFENDANT, BETWEEN COURT AND DEFENDANT'S COUNSEL OR BOTH." *STATE V. RAY*, 310 S.C. 437, 427 S.E.2d 171, 174 (1993).

"SURMOUNTING *STRICKLAND*'S HIGH BAR IS NEVER AN EASY TASK." *PADILLA V. KENTUCKY*, 559 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). AN INEFFECTIVE ASSISTANCE CLAIM CAN FUNCTION AS A WAY TO ESCAPE RULES OF WAIVER AND FORFEITURE AND RAISE ISSUE NOT PRESENTED AT TRIAL, AND SO THE *STRICKLAND* STANDARD MUST BE APPLIED WITH SCRUPULOUS CARE, LEST "INTRUSIVE POST-TRIAL INQUIRY" THREATEN THE INTEGRITY OF THE VERY ADVERSARY PROCESS THE RIGHT TO COUNSEL IS MEANT TO SERVE. *STRICKLAND V. WASHINGTON*, 466 U.S. AT 689-690, 104 S.Ct. 2052.

THE EVIDENCE DOES NOT REFLECT PETITIONER AS A PRINCIPLE, EXCEPT THROUGH THE PLEA AGREEMENT. HOWEVER, PETITIONER WAS NOT PROPERLY INFORM OF ANY DEFENSE, EXCEPT WHAT WAS STATED BY PETITIONER AT HIS PLEA HEARING. ALTHOUGH, IT CAN BE INFERRED BY THE RECORD TO ESTABLISHED PETITIONER'S PRESENCE AT THE SCENE, BUT NOT AS A RESULT OF PREARRANGEMENT TO AID, ENCOURAGE OR ABET IN THE PERPETRATION OF THE CRIME.

PETITIONER'S TESTIMONY AT HIS P.C.R. DISCLOSED:

"I TESTIFIED AT MY BROTHER'S TRIAL AND THE JURY "ACQUITTED" HIM".

IT WAS DURING HIS BROTHER TRIAL WHEN PETITIONER WAS INFORMED THAT THE STATE OR/AND HIS COUNSEL HAD A DVD (VIDEO) OF THE INCIDENT HE PLEAD GUILTY TO ON THE ADVICE OF HIS COUNSEL. HAD COUNSEL DULY INVESTIGATE AND INFORM PETITIONER THAT THE STATE HAD A DVD (VIDEO) FOOTAGE OF THE ALLEGED CRIME, PETITIONER WOULD HAVE FULL KNOWLEDGE OF THE CASE AGAINST HIM. THE DVD WAS TANTAMOUNT IN ESTABLISHING A DEFENSE. HAD PETITIONER WENT TO TRIAL AND TOLD HIS STORY TO THE JURY, THEY COULD HAVE FOUND PETITIONER ACTED ONLY AS AN ACCESSORY --- IS THE EQUIVLENT TO A FINDING OF NOT GUILTY. SEE COLLINS, SUPRA., 225 S.E.2D AT 192. IT WAS AFTER PETITIONER PLEAD GUILTY WHEN HIS COUNSEL MADE HIM AWRAE OF AN EXISTING DVD VIDEO TYPE. IN FACT, THE VIDEO TAPE WAS ACTUALLY EXCULPATORY IN NATURE; IN VIOLATION OF BRADY V. MARYLAND.

AT PETITIONER'S PLEA, PETITIONER TESTIFIED:

"I WAS DRIVING, THEY GOT OUT, ONLY TWO PERSON GOT OUT AND HE [THE VICTIM] KNOW THAT: I STAYED IN THE TRUCK. THE OTHER TWO GOT OUT. I STAYED IN THE TRUCK."

PLEA RECORD PAGE 17, LL. 11-13.

THE VIDEO CORROBORATED PETITIONER'S VERSION OF HOW THE CAR-JACKING HAPPEN. HAD COUNSEL BEEN AWARE OF THE EXISTING DVD VIDEO, HAD COUNSEL REVIEWED IT WITH PETITIONER, A JURY OF HIS PEERS, OBVIOUSLY WOULD HAVE BELIEVED PETITIONER'S VERSION AS DID THE JURY BELIEVED HIS VERSION AT HIS BROTHER TRIAL.

PLEA COUNSEL TESTIFIED AT P.C.R. STATING:

"I DON'T HAVE A COPY OF IT IN MY FILE. I CAN'T SAY WHETHER WE HAD IT BEFORE OR AFTER HIS PLEA."

SEE PCR RECORD DATED MAY 24, 2017 PAGE 25, LL. 17-18.

REGARDLESS, THE VIDEO THAT WAS LATER SHOWN AT HIS BROTHER'S TRIAL, WHEN [PETITIONER] DID TESTIFY PRETTY MUCH ACKNOWLEDGING EVERYTHING, INCLUDING HIS OWN ACTIVITY AND ACTION OR THE LACK OF HIS INVOLVEMENT IN THE MATTER. WHAT WAS TESTIFIED TO AT HIS BROTHER TRIAL "PRETTY MUCH CONFIRMED WHAT WAS ACTAULY ON THE VIDEO."

SEE TRIAL COUNSEL TESTIMONY AT PCR PAGE 26, LL. 7-11.

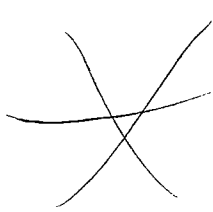
THE PETITIONER NEVER POSSESS A WEAPON. HE WAS NOT THE ONE'S WHO CAR-JACK[ED] THE VICTIM'S VEHICLE. HE DID NOT IMPERSONATED A LAW ENFORCEMENT OFFICER, AND HE DID NOT COMMIT ARMED ROBBERY.

AT THE PLEA, PETITIONER TESTIFIED THAT AFTER THE INCIDENT, HE WENT STRAIGHT HOME. THE REAL PERPETRATOR'S INFORMED PETITIONER THE EVENTS THEREAFTER LATER THAT DAY. SEE PLEA RECORD.

CLEARLY, PETITIONER'S COUNSEL DID NOT INVESTIGATE AND PETITIONER'S PLEA WAS NOT "KNOWINGLY AND VOLUNTARY" GIVEN IN-VIOLATION TO STATUTORY OR CONSTITUTION BY THE RECORD SET ~~HEREFORTH~~. PETITIONER COUNSEL WAS INEFFECTIVE WHEN THE SURFACE

VIDEO EVIDENCE WAS INCONSISTENT TO THE STATE'S CASE AGAINST HIM. PLEA RECORD PAGE 21-22. HAD PETITIONER'S COUNSEL HAD INFORM HIM ABOUT THE POSSIBLE DEFENSE(S), PETITIONER WOULD HAVE BEEN ABLE TO "CONFRONT THE STATE'S" CASE AND "DETEST" WHAT THE STATE HAD ALLEGED IN THE INDICTMENT; WHETHER IT MATCHES UP WITH WHAT THE VICTIM HAD SAID HAD OCCURRED.

LAST, BECAUSE PETITIONER'S COUNSEL WAS NOT AWARE OF THE VIDEO, COUNSEL HAD NOT INVESTIGATE THE CASE, HE COULD NOT HAVE HELP HIS CLIENT, FOCUS ON WHO WAS ACTUALLY INVOLVED IN THE ALLEGED CRIMES. PLEA RECORD, DATED MARCH 23, 2015. SEE ATTACHED EXHIBIT (A).



CONCLUSION

FOR THE FOREGOING REASON, PETITIONER'S CONVICTION SHOULD BE REVERSED AND THIS CASE REMANED FOR A NEW TRIAL OR AS AN ALTERNATIVE INSTRUCT APPELLATE COUNSEL TO REBRIEF THESE ISSUES ACCORDANCE WITH AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2D 395 (1997).

RESPECTFULLY SUBMITTED,

/s/ Touriarnold Spann
TOURIARNOLD SPANN

DAVID ALEXANDER, ESQUIRE
APPELLATE DEFENDER
SOUTH CAROLINA COMMISSION ON
INDIGENT DEFENS
P. O. Box 11589
COLUMBIA, S.C. 29211-1589

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
HONORABLE ROBERT E. HOOD, CIRCUIT JUDGE

TOURIARNOLD SPANN,

PETITIONER,

VS

STATE OF SOUTH CAROLINA,

RESPONDENT(S).

APPELLATE CASE NO. 2019-000525

APPENDIX (A)

The State of South Carolina

OFFICE OF SOLICITOR
First Judicial Circuit

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ACCEPTANCE OF SERVICE

State v. Spann

1. 4 cds (2 surveillance videos; 2 evidence processing discs)

Received By: _____

A handwritten signature in black ink, appearing to be "D. Pascoe", is written over a horizontal line.

Date: _____

3.11.15

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DA 3.11.15
INF 18 [Signature]

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
HONORABLE ROBERT E. HOOD, CIRCUIT COURT JUDGE

TOURIAROLD SPANN,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA

RESPONDENT(S).

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFY THAT A TRUE COPY OF THE MEMORANDUM TO JOHNSON PETITION FOR WRIT OF CERTIRARI AND A COPY OF THE APPENDIX EXHIBIT (A) IN THE ABOVE CASE HAS BEEN SERVED UPON THE SUPREME COURT OF SOUTH CAROLINA, DANIEL E. SHEAROUSE, CLERK OF COURT, POST OFFICE BOX 11330, COLUMBIA, SOUTH CAROLINA 29211 BY PLACING THE SAID IN U.S. MAIL BOX ON THIS DAY 1/6, 2020 JANUARY.

/s/ Touriarold Spann
TOURIAROLD SPANN

TOURIANOLD SPANN #305939
PERRY CORRECTIONAL INSTITUTION
430 OAK LAWN ROAD
PELZER, SOUTH CAROLINA 29669

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE, CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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JAN 06 2020

REG. MAIL RESM

LEGAL MAIL
LEGAL MA