

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2019-000476
Lower Court Case No. 2010-CP-33-852

RECEIVED
JAN 15 2020
S.C. SUPREME COURT

FRED HALCOMB, JR., #311091,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
(803) 779-2555
(803) 753-9732 FAX

ATTORNEY FOR PETITIONER.

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ARGUMENT IN REPLY

- I. **The PCR court erred in concluding that the prosecution did not violate Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose an interview with potential witness Vander McCray.**

With regard to the arguments advanced by the Respondent as to why this certiorari should be denied as to this issue, the Petitioner would rely upon his arguments advanced in his certiorari petition.

- II. The PCR court erred in concluding that the Petitioner's right to a fair trial was not violated by the heightened police presence inside and outside the courthouse during the Petitioner's trial.**
- III. The PCR court erred in concluding that defense counsel was not ineffective for failing to object to the heightened security presence at trial.**

With regard to the arguments advanced by the Respondent as to why this certiorari should be denied as to these issues, the Petitioner would rely upon his arguments advanced in his certiorari petition.

IV. The PCR court erred in concluding that defense counsel was not ineffective for failing to object to the placement of a stun belt on the Petitioner during the trial.

In its Return, the Respondent argues that defense counsel could not have been found ineffective because “no binding authority extended the holding of Deck [v. Missouri, 544 U.S. 622 (2005)] to a nonvisible stun belt.” Return at 24. In other words, the Respondent contends that since there has been no case directly on point regarding stun belts, then defense counsel cannot be found ineffective for failing to take any action once he learned that the Petitioner would be fashioned with a stun belt during the trial. As the Court of Appeals has recently held, however, defense counsel can be found ineffective for failing to utilize the application of an established general principle of law to a new set of facts. See Chappell v. State, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2019) (2020 Shearouse Adv. Sh. No. 1 at 73). In Chappell, the Court of Appeals found that defense counsel was ineffective for failing to object to improper bolstering testimony from an expert in child sexual abuse and treatment even though at the time of trial “our courts had not yet considered an improper bolstering case involving an independent expert.” Id. at 80. The Court of Appeals reached that conclusion because the later cases deciding such a principle “applied the existing law to a new set of facts.” Id. at 80-81.

Similarly, the use of a stun belt is simply a type of physical restraint utilized by authorities on criminal defendants during trial. As the Ninth Circuit noted, in a decision reached prior to Deck, “the Supreme Court has long imposed constitutional limits on the use of physical restraints at trial” and that the “rule of [Illinois v.] Allen[, 397 U.S. 337 (1970)] is one of general application; there is nothing in Allen that confines it to a particular type of restraint.” Gonzalez v. Pililer, 341 F.3d 897, 904 (9th Cir. 2003). In other words, the application of Deck and Allen to stun belts would not create a new rule of law; instead, it would merely apply the existing law to a new set of facts. As

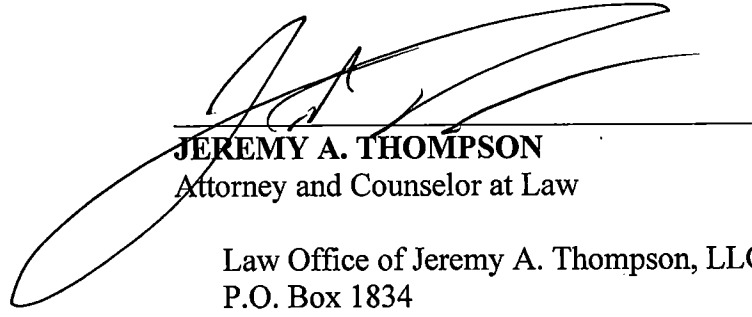
Chappell makes clear, a defense attorney can be found ineffective under those circumstances. Consequently, the Petitioner respectfully contends that the Respondent's argument that defense counsel could not be found ineffective for failing to anticipate a new law should be rejected.

With regard to the arguments advanced by the Respondent as to why this certiorari should be denied as to this issue, the Petitioner would rely upon his arguments advanced in his certiorari petition.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,



A large, stylized handwritten signature in black ink, appearing to read 'J. A. Thompson', is written over a horizontal line.

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
803-779-2555
803-753-9732 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR PETITIONER.

This 15th day of January, 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the Reply to Return to Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel, David Spencer, Senior Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 15th day of January, 2020.



JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 15th day
of January, 2020.



Notary Public for South Carolina (L.S.)
My Commission Expires: 02-28-2029

YVONNE Y BYRD
Notary Public - State of South Carolina
My Commission Expires February 28, 2029