

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO COLLETON COUNTY

HONORABLE THOMAS RUSSO,
CIRCUIT COURT, PCR

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DEC 08 2018
SC Court of Appeals

QUASHON MIDDLETON,

Petitioner

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE No.: 2018-000063

OBJECTION TO MOTION TO BE RELIEVED
AS APPELLATE COUNSEL

The Pro Se Petitioner, for Writ of Certiorari Brief in Support thereof and to clarify the record, he would submit his Pro Se Objections to his Counsel Motion to be Relieved as PCR Appellate Counsel, based upon Smalls v. State (S.C. 2018), lack of objections to Admitted Evidence, Errors of law Inter Alia should not be deemed as "overwhelming evidence". PCR Counsel Failed to Amend^① PCR to illustrate effect of Smalls more clearly delineating this Issue(s) is S.C. PCR Jurisprudence and Appellate Counsel Robert Dudek Failed to argue Smalls decision use of "overwhelming evidence" when evidence in thru lack of Objection based upon both PCR Counsel and PCR Appellate Counsel Representation

① - SCRCP 71.1(d). Counsel Duty to Amend PCR to have case Remanded to PCR Court for Issue Preservation.

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has been the "cause" and deprived the Petitioner his Due Process right under U.S.C.A. 14th and S.C. Const., PCR statute and precedent establish At Least Assistance of Counsel. In State v. Middleton (SC 2014) Direct Appeal subjudice held harmless error of unobjected to and Inadmissible Evidence a overwhelming and contrary State v. Middleton the Smalls v. State (2018) decision would negate the overwhelming evidence ruling by raising at PCR. Had Counsel objected to Inter Alia (but not limited to) ② John Varner Hearsay testimony at 145, l. 6-20. The objections to hearsay testimony to Rule 803 5, 6, 8 SCRE, at Pg 114 (IE) Appellate Counsel Ineffective Assistance of Counsel for Failure to Raise as Direct Appeal per Evitts v. Lucey (U.S. 1985).

PCR Counsel Failed to object to State v. King (2018) case, that Malice may not be implied as it is required of State to prove Malice (mens rea) beyond a Reasonable Doubt In re Winship (US 1972)

② As Appellate Counsel moved to Remand case as PCR Counsel Representation Itself Denied Petitioner Due Process. SCRPC 71.1(d) Butler v. State (S.C. 1990) Procedural Bar Excused

The Cumulative Effect of Trial Counsel Failure to Object to hearsay testimonies, (bolstering each other Matthews v. State (s.c. 2001))

06 Varner 143, ⁽³⁾ of Inabinett 272 testimony, Stephens told him (L. 23 "Some young man gave him petitioner name,") Counsel objected but was ineffective for Failure to Request Court Charge Jury Not to Consider 3rd Party I.D. of Petitioner.

* This is strong evidence. Neither victim could I.D. Petitioner, but for this "some young man" or bystanders Mincey and Salley).

(3) - Contrary to Overwhelming Evidence

Neither Mack or Stephens I.D. Defendant at Scene Interview only when notified by Police of Injury of Petitioner, nor could Mincey or Salley (witnesses at scene)

corroborated by Keith Crosby who
Interview Stephens and Mack Pg. 250
L.22 Neither could provide a name.

Defense Counsel Failure to call Expert on
Trauma upon witnesses ability to
Recall accurately events was Ineffective
in this case. ⁽⁴⁾ SCRE / FRE 702, 703
would have impacted case.

Trial Counsel Failed to object pursuant
to State v. McConnell (S.C. 1985).

Use of evidence that cannot be linked
to gun or crime scene Inadmissible,
as to no evidence, as to how/when/where
shell casings came from @ (Ex. 33-37)

Pg. 267.

(4) None of these Cumulative Errors were
Raised by PCR Counsel (cause) and together
Manifest Prejudice as together per Strickland v.
Washington (1984)

I.A.C. that PCR Counsel neglected to raise
Tr. Pg. 374, ln. 22-25
Tr. Pg. 375, ln. 1-7

Use of sealed DJJ Delinquent Records
(not pursuant to Beyond Reasonable Doubt
standard but a mere adjudication of
Delinquency by Probate Judge in non-
criminal court).

The purpose it was offered was to show
propensity, SCRE 406, Habit, to Aggravate
Sentence.

Since no objection pursuant to SCRE
103 was lodged by trial counsel it is presumed
Court acted upon that in its 40 year sentence
for Non Homicide.

PCR Counsel neglect, in totality, violates
Due Process Right to Redress of Federal
U.S.C.A. 6th Amend. and Fair Hearing.

This establishes cause and prejudice
is Resentencing.^⑤

Martinez v. Ryan (2012) Procedural Default
Excused.

⑤ With other Mental Health, Mitigating Evidence
must be presented at Resentencing.

Trial Counsel failed to show Miranda Varner Testimony @ 176 L. 14 "I Did One of my little things" - and 178 L. 16 (I was not in my Right State (of Mind?)) Effective Cross Examination would have illuminated 'Little things' and 'Not in Right State' was drug use that impeached her ability to recall and her credibility (SCORE 609 A) and B) (Not impeached yet used as part of overwhelming evidence) contrary to Smalls v. State (2018) ruling.

Trial Counsel failed to present Expert testimony stress factors of recollection of events impaired alleged Eyewitness Accounts.

(As Stephens and Ryan testimony differed as to him First passing then watching them by Stephens, and Mack stating he came from side, coupled with the Failure of 4 witnesses to I.D. Petitioner at Immediate Crime Scene Interview.

RELIEF

Counsel be Required to represent Petitioner to Remand PCR. For Due Process Hearing on 6th U.S.C.A. Issues. Abandoned and Manifestly Prejudicial, and/or Resentencing and Prejudicial Juvenile Record. And/or Brief Issues in totality to show Denial of Fair PCR Hearing. Aice v. State (SC 1991), Washington v. State 478 SE 2d (1996).

S/ Quashon Middleton
Quashon Middleton, #347130
M.C.I. F.3-259.A
386 Redemption Way
McCormick, SC 29899

9 - 16 - 18
DATE

ATTN:

Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Quashon Middleton, #347130
M.C.I. F.3-259.A
386 Redemption Way
McCormick, SC 29899

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Re: - Middleton v. State, No. 2018-0000063

Dear Clerk of Court:

Please find my Pro Se Brief on PCR Certiorari and Objections to Counsel Motion to Be Relieved as Counsel, and to Remand PCR for Due Process hearing on 6th U.S.C.A. issues Manifestly Prejudicial. Strickland v. Washington.

AFFIDAVIT OF SERVICE

I, Quashon Middleton, do Declare in the presence of below-signed Notary Public that I did deposit an Original and True Copy of above-noted materials to be immediately forwarded by sufficient U.S. Postage to Clerk, S.C. Supreme Court, and Donald Zelenka, Asst. S.C. Atty. Gen., P.O. Box 11549, Columbia, SC 29211, on below-noted date.

Sworn and Subscribed to
before me this 16
day of November, 2018

B. D. W. Zelenka
Notary Public, South Carolina

*My Commission Expires: 9-30-26

s/ Quashon Middleton
Quashon Middleton, #347130
M.C.I. F.3-259.A
386 Redemption Way
McCormick, SC 29899



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 6, 2018

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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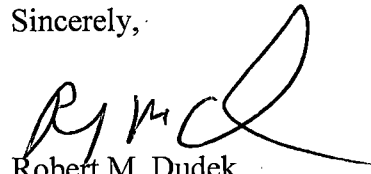
Re: Quashon G. Middleton v. The State
Appellate Case No. 2018-000063

Dear Ms. Kitchings:

Out of an abundance of caution, I am forwarding you the enclosed *pro se* document to be included as part of Mr. Middleton's submission pursuant to the *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), procedure.

I thank you for your cooperation and assistance in this matter. Please contact me if you have questions or concerns.

Sincerely,



Robert M. Dudek
Chief Appellate Defender

RMD/cp

cc: Christian Saville, Esquire
Quashon Middleton, 347130

Quash Middleton #347/30
M.C.I F.3 #252
386 Redemption WAY
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APPELLATE DEFENSE



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