Court Copy

Mr. ALan L. Burns, # 143218
Broad River C.I., MLT 1103 B
4460 Broad River Road
Columbia, SC 29210 - 4047

MARCH 11 , 2020

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

Re.: AlanL. Burns v. State of S.C., Appellate Case No.:
2019 - 000380

Dear Mr. Shearouse :

Enclosed please find for filing and processing the original and one (1) exact copy of the Petitioner's Pro Se petition For A Writ Of Certiorari.

Please clock and retun the additional copy to me at the above address.

Thanking you in advance, I am . . .

Respectfully ,

ALB/alb

Enclosures: Petition For A Writ Of Certiorari
Attachment # A,(Letter for Susan Hackett,dated 6/16/16)

Court Copy

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

PCR Case No.: 2017-CP-10-0271

ALAN L. BURNS , ...PETITIONER ,

v.

STATE OF SOUTH CAROLINA , ... RESPONDENT .

APPELLATE CASE NO.: 2019 - 000380

PRO SE

PETITION FOR A WRIT OF CERTIORARI

MR. ALAN L. BURNS, # 143218
Broad River C.I., MLT 1103 B
4460 Broad River Road
Columbia, SC 29210 - 4047
Petitioner

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QUESTIONS PRESENTED

1 Did the court error in finding that the contracts between the Town of Mount Pleasant Police Department and the Charleston County Sheriff's Department were valid ?

2 Did the PCR Court error that there was no ineffective assistance of counsel where counsel abused her discretion of not petitioning for rehearing where counsel testified that she did not agree with Court of Appeals opinion ?

CASE HISTORY

Between January 2011 and August 2012, Petitioner was allegedly indicted on twelve (12) felony charges. Petitioner proceeded Pro Se through all pretrial and trial proceedings. In pretrial and trial Petitioner raised two (2) specific issues, 1) he requested the grand jury impanelment documents to challenge the legality of the grand juries that had indicted him, and 2) he challenged the lawfulness of the territorial jurisdiction of the investigating, charging and prosecuting municipal police department. Both issues were well preserved in the record for appeal.

Petitioner went to trial on August 6th, 2012 and was found guilty on August 10th, 2012 of thirteen (13) [SIC] indictment charges.

He timely filed a notice of appeal. The SC Office of Appellate Defense was appointed to represent him and that office assigned Ms. Susan B. Hackett, as counsel of record. Petitioner immediately informed Ms. hackett of his involvement in the case. That he had proceeded pro se, and detailed how he had specifically preserved the two (2) issues for appeal.

In spite of Petitioner's insistence and instructions to Ms. Hackett to brief and argue both issues she only raised one issue, the grand jury issue. She refused to brief the territorial jurisdiction issue.

The Court of Appeals denied Petitioners direct appeal on June 15, 2016. The following day June 16, 2016 Ms. Hackett sent Petitioner a letter informing him that she and her office were closing their file on his case. She never petitioned the court to be relieved as counsel of record. The Petitioner attempted to contact Ms. Hackett to have her file a petition for rehearing and received no response.

The Petitioner then attempted unsuccessfully to file for rehearing and to petition for a writ of certiorari to preserve his right to challenge . He attempts were all denied. On July 1, 2016 the remittitur was issued .

On January 18, 2017 the Petitioner filed application for Post- Conviction Relief asserting ineffective assistance of counsel in that Ms. Hackett refused to include the territorial jurisdiction violation in the direct appeal and for refusing and failing to petition for rehearing following the Court of Appeals denial of the direct appeal.

After several postponement, on December 4, 2018 an evidentiary hearing was held at the Charleston County Courthouse before the Honorable G. Thomas Cooper, Jr. The Petitioner appeared pro se. Christopher L. Murphy was appointed as standby counsel for the Petitioner. The State was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson.

At the hearing Petitioner called two (2) witnesses to testify on his behalf, Assistant Solicitor Deborah Herring-Lash and Appellate Defense Counsel Susan B. Hackett.

The State did not call any witness or present any evidence.

On February 20, 2019 Order was entered denying Petitioner's Post-Conviction Relief Application. Petitioner received written notice of the order on February 26, 2019.

On March 11, 2019 Petitioner filed and served Notice of Appeal.

THIS PETITION FOR A WRIT OF CERTIORARI FOLLOWS :

PURVIEW FOR POST - CONVICTION RELIEF

When an attorney's error amounts to constitutionally ineffective assistance of counsel, that error is imputed to the State, for it the State that has failed to comply with the constitutional requirements to provide effective counsel rendering the error external to the prisoner. Coleman v. Thompson, 501 U.S. 722, 752 (1991); Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309 (2012).

An appellate counsel appointed by the State in a criminal appeal has an inherent duty to the prisoner and to the courts to raise and bring to the court's attention [a]ll viable appealable issues. This would primarily ensure that the prisoner's right to due process and equal treatment under the State's constitution and 4th, 5th, 6th,8th and 14th Amendments to the U.S. Constitution are not infringed upon. **More importantly, this protects the Courts and the State's interest in ensuring that they both stand clear of any semblance of bias, corruption , injustice or unfairness.**

In post-conviction relief proceedings where ineffective assistance of counsel is asserted, the burden is on the Applicant to prove, 1) that counsel failed to render reasonable effective assistance under the prevailing professional norms, and 2) that he was prejudiced by counsels ineffective assistance. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129, 131 (1991); Judge v. State, 321 S.C. 554, 471 S.E.2d 146, 151 (1996); see also, Bell v. State, 321S.C. 238, 467 S.E.2d 926, 927 (1996), holding that "Allegations of ineffective assistance of counsel must be supported by proof that counsel was deficient in his performance and that this deficiency resulted in prejudice to the Applicant."

In determining whether a genuine prejudicial issue exists in any regards, the act, inaction and/or violation committed by the attorney must be viewed and considered in totality under the given circumstances from an objective standard of reasonableness as to, [i]f but for counsel's errors and/or negligence there is a greater

than lesser probability that the results of the proceedings would have been different.

It is this reasonability that defines prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538, 539 (1995); Sikes v. State, 23 S.C. 28, 448 S.E.2d 560, 562 (1994); esp., Jolly v. State, 314 S.C. 17, 19-20, 443 S.E.2d 566, 568-69 (1994).

In establishing this prejudice, the Petitioner must show 1) that the issue was preserved or one that did not require preserving for appeal; 2) that there was probative evidence to support the issue, that it was meritorious; 3) that the Petitioner suffered a serious deprivation and/or violation that is shocking to the conscious and undermines confidence in the outcome of the proceedings; and 4) that there was relief at stake and available.

I

DID THE PCR COURT ERROR IN FINDING THAT THE CONTRACTS BETWEEN THE TOWN OF MOUNT PLEASANT POLICE DEPARTMENT AND THE CHARLESTON COUNTY SHERIFF'S DEPARTMENT WERE VALID ?

Even though S.C. Code §§ 23-1-215 and 23-20-50, were repealed, sections 23-20-40 and 17-13-45 remains in full effect and fully supports Petitioner's arguments. Detective Bacon of the Mt. Pleasant police department was not responding to a distress call or a call or request for assistance.

At the time she began her investigation she stated in her incident reports and warrants that she was acting within her vested territorial jurisdiction. She further stated that for the incidents that had occurred prior to the area being incorporated she contacted the Charleston County Sheriff's Department. She never made any statements or implications that she was acting under some type of legally binding mutual aid agreement or contract between Charleston County Sheriff's Department and the Town of Mt. Pleasant.

This most Honorable Court stated in State v. Alexander, 424

S.C. 270, 818 S.E.2d 455, 457 (2018), "Jurisdictional boundaries mean something , and absent specific lawful authority , an officer has no authority to act in his official capacity beyond his jurisdiction." Id. 424S.C. at 276, 818 S.E.2d at 458.

Det. Bacon was an experience investigator who meticulously investigated her territorial jurisdiction as it related to petitioner and these charges. After immediately discovering (to use her word) "the territorial jurisdiction issue" , she proceeded to manipulate her superiors, the solicitors and the courts by stating that some of the assaults occurred prior to the area being incorporated. Implying that she made a factual discovery that the area was within the territorial jurisdictional boundaries of the Town of Mount Pleasant and that she had legal authority to proceed accordingly.

After the Petitioner provided rock solid evidence in the form of certified jurisdictional maps from both the Town of Mt. Pleasant Planning and Zoning and Charleston County Planning and Zoning, the State dug up two (2) expired contracts, form 1993 and 1998 and submitted them, stating that they gave authority to Det. Bacon .

Here in this instant case a determination should first be made as to whether the contracts were valid and the actions of the Mount police department were lawful . If it is determined that the contracts were invalid then all evidence obtained by Mt. Pleasant that was relied on by the Charleston County Sheriff's Department and Mt. Pleasant must be excluded as a matter of law .

In State v. Copeland, this Court held that "The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police , and the evidence has been obtained by explotation of that illegality. (Citing Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 409, 9 L.Ed.2d 441 (1963)."

Detective Avila of the Charleston County Sheriff's Department testified that the warrants she took out against the Petitioner were based on written statements originally given to the Mt. Pleasant police department. (App.pl503 12 - 504 1.1). This testimony substantiates that the indictment charges brought by the Charleston

County Sheriff's Departmentare the products of fruit of the poisonous tree. See State v. Copeland, 321 S.C. 318, 323, 468 S.E. 2d 620, 624 (1996) .

The PCR court clearly acknowledged that the two (2) written contractual agreements were entered into before June 1, 2000. The PCR court stated in its written order :

> " At the evidentiary hearing, Assistant Solicitor Deborah Herring-Lash testified the area where some of the assaults occurred was located within a small, doughnut-hole type area of unincorporated Charleston County that is entirely surrounded by Mount pleasant but is not part of the Town of Mount Pleasant. She identified these areas on a large map, admitted as Applicant's Ex. No. 3 (previously Defendant's Ex. No. 12 from trial). She testified that while working on this case, she recognized the potential jurisdictional issues pertaining to the crimes and was able to obtain contracts between Charleston County and the Town of Mount Pleasant to allow Mount Pleasant to provide police, water, fire, and other similar services to these small, doughnut-hole areas. She identified two of these contracts, which were admitted as Applicant's Ex. Nos. 1 and 2 at the hearing (previously State's Ex. No. 22 from trial), from 1933[sic] and 1998 respectively, which explicitly provided for law enforcement services in those areas to be conducted by the Town of Mount Pleasant. - - - However, because some of the sexual assaults occurred in the 1980's before the contracts, she sought and obtained involvement from the Charleston County Sheriff's Department to investigate these assaults from the 1980's, including interviewing witnesses. "

(App. p.1038 - 1039).

The Petitioner here directs the Court's attention to the terms of the two individual contractual agreements. The first was entered into on October 13, 1993 for a term of one (1) year. That contract

specifically stated :

" ARTICLE V

Term and Consideration

1. The term of the contract shall be from December 1, 1993, to November 30, 1994. "

(App. p. 1026) .

The second contract was entered into on September 10, 1998 and November 10, 1998, respectively. Also for a term of one (1) year. That contract specifically stated :

" ARTICLE V

Term and Consideration

1. The term of the contract shall be from January 1, 1998 to December 31, 1998. - - - "

(App. p. 1030) . However, in the year 2000 the South Carolina Legislature promulgated S.C. Code § 23-20-50 to require County approval of multi-jurisdictional agreements. This section primarily pertained too and specifically addressed contractual agreements that were entered into prior to the enactment of that statute. This section states in pertinent part :

" - - - - An agreement entered into with a local law enforcement authority pursuant to this chapter must be approved by the governing body of each jurisdiction. **For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction.** "

S.C. Code Ann. § 23-20-50(A)(2007), (emphasis added).

In addition to the above section of law, at the PCR hearing Petitioner had witness, Assistant Solicitor Herring-Lash to read into the record this Court's interpretation of that statute, cited in State v. Boswell. In that mirroring case to this presently at bar, this Court held :

" Given this statute was in effect at the time of - - - arrest, we must assess the validity of the 1999 agreement. The last sentence of subsection A states that 'the

> " agreement may be ratified by the governing bodies of each jurisdiction.' The State construes the phrase 'may be ratified' to mean that the governing bodies - - - did not have to formally approve the 1999 agreement after the 2000 amendment. WE DISAGREE. ¶ In contrast to the State's interpretation, we construe subsection A as requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity. Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority. "

State v. Boswell, 391 S.C. 592, 602, 707 S.E.2d 265, 270 (2011) (emphasis added). (App. p. 959 line 13 - p. 960 line 17) .

There is absolutely no mistake about it, the PCR Court errored when it found that the contracts in question in this case were valid. In this instance the court only considered the word " may " in its analysis of the statute rather than the phrase " May be ratified."

The word "may" when viewed solely expresses wish or desire. The phrase " may be ratified " on the other hand when viewed of its self means, to confirm, accept and approve a previous act making or giving it formal sanction and continued validity. This exact type situation has been scrutinized and fully explained by this Most Honorable Court in State v. Boswell, Supra., which Petitioner had read into the record by the witness Assistant Solicitor Herring-Lash. (App. p. 959 line 13 - p. 960 line 17) .

Further, the fact of this opinion and the statute was both purposefully solicited and put into the record by Petitioner so that there could be no later contention of a misunderstanding of the law or the facts on this issue. [I]t is clear that the PCR Judge thought little of this Court's opinion and instead substituted its own opinion as the governing authority. The PCR Judge stated in his ruling :

" Further, the Agreement in this case was entered into in before June 2000. As a result, section 23-20-50 does not require it be approved by the governing bodies of each county in order for it to remain in effect. The section states: "For agreements antered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction. " S.C. Code Ann. § 23-20-50 (2000). "

(App. p. 1042 paragraph 3)(emphasis added).

Clearly the court reviewed the appropriate section of law. The court acknowledged that the agreements in this case were in fact entered into before June 2000. It is most baffling how the court then reached its conclusion that section 23-20-50, did not require it to be approved while quoting the law that said it had to be approved.

Additionally, this Court has found that " Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding. " State v. Dudley, 364 S.C. 578, 614 S.E.2d 623, 626 (2005). That Court went on to state further that, " The exercise of extraterritorial jurisdiction implicates the - - - sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent. " (Ibid).

based upon these holdings by this Honorable Court, the Petitioner had right to raise this issue and obtain a ruling on the merits of the claim.

ERROR OF LAW - The decision of a trial or PCR court must be overturned if the decision is based on an error of the law that resulted in prejudice. In a criminal case, an appellate court sits to review errors of law only. Here in this case the PCR court clearly formulated its decision in error of law. The Supreme Court

has interpreted section 23-20-50(A), in the manner it sought it to be applied and lower courts are bound by that Court's ruling and orders.

The court committed error in interpreting and appling the law with the facts and evidence in this case . Before the PCR court for review were the following :

1) Exhibit No. 1 - 1993 Contract , (App. p. 1023 - 1027) ;
2) Exhibit No. 2 - 1998 Contract , (App. p. 1028 - 1031) ;
3) Exhibit No. 3 - Jurisdictional Map , (App. p. 978 - 979) ;
4) Exhibit No. 4 - Brief , (App. p. 993) ;
5) S.C.Code Ann. § 23- 20-50(A) (2011) , (App. p. 9
6) State v. Boswell, 391 S.C. 592, 602, 707 S.E.2d 265, 270 (2011) (App. p. 959 - 960) ;
7) Testimony of Assistant Solicitor Deborah Herring-Lash - (App. p. 950 - p. 968 ; **esp.**, p. 975 - p. 979 line 4) ;
8) Testimony of Appellate Defense Attorney Susan B. Hackett - (App. p. 981 - p. 1008) .

Even more so, the Petitioner's case was so strong and well presented that the State did not cross examine the second witness, Ms. Susan Hackett. Above all else , the State **did not** call any witnesses of their own. The State **did not** offer any evidence to refute the charges in the application. (App. p. 925 - 926) .

Here in this case the Petitioner clearly met the burden of proof and showed by an overwhelmingly preponderance of the evidence that he was denied effective assistance of counsel, that there is a jurisdictional violation , that the PCR Judge errored and abused it's discretion, and he was prejudiced thereby .

II

DID THE PCR COURT ERROR THAT THERE WAS NO INEFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL ABUSED HER DISCRETION OF NOT PETITIONING FOR REHEARING WHERE COUNSEL TESTIFIED THAT SHE DID NOT AGREE WITH COURT OF APPEALS OPINION ?

In the State of South Carolina the appeals procedures are well established. The decision to file or not to file a direct appeal following a criminal conviction rest solely in the discretion of the prisoner not counsel for the prisoner.

Like wise, following the denial of a direct appeal the decision to file or not to file for rehearing should rest in the discretion of the prisoner. [O]f course counsel should have discretion not to file if in her opinion, she does not believe the issue to be meritorious. However, in cases such as this counsel should be required to comply with the procedures in Anders v. California, 386 U.S. 738, --- S.Ct. ___ (1967), or at the very least, the Court should give leave for the prisoner to file a pro se petition for rehearing. And counsel should be required to inform the prisoner that he can so petition for said rehearing.

To leave the decision of whether to file for rehearing solely to the appellate counsel's discretion opens the door to abuse and the denial of due process. This Court should not forget that counsel is not an infallible being. They are very much capable of passing over on cases by not petitioning for rehearing when it was clearly warranted simply to lessen their case loads.

These procedures will not stand as a guarantee to a rehearing instead, they will work as an aid to pointing out and preventing the abuse of discretion by attorneys.

This Most Honorable Court has on numerous occasion found the court of appeals to have abused its discretion. Surely it is not now inferring to attorneys are incapable of same .

In this case presently at bar the most prominent violation committed by counsel was her flagrant sbandonment of representation of Petitioner. The court of appeals filed it unpublished opinion on June 15, 2016. The very next day June 16, 2016 counsel sent petitioner a letter informing him that she was closing her file on his case. (App. p. 922). (Attachment # A).

S.C. Rules of Appellate Procdure, Rule 264(b), specifically states :

> " Withdrawal. An attorney of record in amatter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of the client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party. "

Rule264(b), SCACR . In this instance, counsel totally disregarded and violated this rule..

Additionally, counsel testified at PCR hearing that she filed a merits brief regarding the grand jury issue. She further testified that she was still of the opinion that the issue had been preserved. She testified, " I certainly did not agree with the Court of Appeals opinion that it wasn't preserved." (App. p. 994 line 1 - line 24).

Counselor Hackett testified extensively regarding her educational and employment history . Ms. Hackett testified :

> PCR Pp. 58 Line 22 - Pp. 59 Line 12
>
> 22 Q. Okay. Is there any other significant educational
> 23 accomplishments in your background that would affect the
> 24 way you perform your duties as appellate defense attorney?
> 25 A. I was a law clerk when I first graduated, for a
>
> PCR Pp. 59
>
> 1 circuit court judge. And then I began working for a small
> 2 criminal defense firm in Columbia where we handled criminal
> 3 matters, trial appellate, PCR. I focused on death penalty

cases.

And I was the executive director of the Center For Capital Litigation where I focused on death-sentenced individuals or people against whom the State was seeking the death penalty.

And then I went to the Office of Disciplinary Counsel. And now I have been in appellate defense for seven years.

I am not sure I you need any additional information for education or conferences or training.

(App. p. 981 Line 22 - p. 982 Line 12) .

Ms. Hackett then attempted to mislead the court by implying that with her background she did not know what a petition for rehearing or reinstatement were . She testified :

PCR Pp. 772 Line 15 - Line 22

Q. Okay. And with all of that, why did you not file a petition for a rehearing or reinstatement to preserve my right to later petition the court of - - the Supreme Court for a petition for writ?

A. Well, I would not file a petition for reinstatement because I don't know what a petition for reinstatement is, particularly in the procedural posture in which your case was.

(App. p. 995 Line 15 - Line 22) . Official court filings and documentations shows without a doubt that Ms. Hackett has on many occasion filed petitions for rehearings and reinstatements in a number of different cases throughout the State. These documents are readily available to the public on line.

However, what is most important at this juncture is the fact of why Ms. Hackett made the statement, "I certainly did not agree with the Court of Appeals opinion that it wasn't preserved. " The answer to that question of " **WHY** " can easily be answered. There is clear and concise documented record to show that the Court of

Appeals ruling was erroneous .

The court cited State v. Dunbar, 356 S.C. 138, 142,587 S.E.2d 691, 693-94 (2003), " In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. "

The Court of Appeals went on and cited Malloy v. Thompson, 409 S.C. 557, 561,762 S.E.2d 690, 692 (2014), " The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. "

In response to these two (2) holdings by the Court of Appeals the Petitioner submits the following colloquy from the Ttial, it reads as follows :

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THE COURT: I will happy to hear from you.

MR. ALAN BURNS: Your Honor, on August 1st, I appeared before the Court for a Motions hearing. At that Motions hearing, I specifically asked for the impanelment of a grand jury, I asked for the impaneling judge's Order. I also asked that the State produce the petition and any other materials. I also have copies of the - - in my original specific Brady request, Rule 5, I asked for these documents as well.

At the time I made the request for these documents, the State responded that these documents do not exist. I would like to challenge the legality of the County grand jury and due to the fact the State states that these documents do not exist, I

would ask that the indictments be quashed on the ground that there is no proof that the grand jury was legally impaneled.

And I would like to present, if I may, copies of the - - that is the original Rule 5 Brady request.

THE COURT: What does this have to

TT Pp. 123

do with- - the grand jury impaneling, with the Brady request information?

MR. ALAN BURNS: I had requested the grand jury documents in my Rule 5.

THE COURT: What grand jury documents are you referencing?

MR. ALAN BURNS: The impaneling documents.

THE COURT: What has that got to do withBrady issues?

MR. ALAN BURNS: Well, I requested it through Brady.

THE COURT: I understand. There is no - - there's nothing about the grand jury that would have anything to do with a Brady motion, Why is that pertinent to a Brady motion? Maybe I don't - - I don't understand. Maybe you can clarify it for me. What the grand jury constitution has to do withBrady.

MR. ALAN BURNS: The case law that I have, it specifically states that if you request it through Brady - - -

THE COURT: What? Grand jury material?

MR. ALAN BURNS: Yes, sir, can be

TT Pp. 124

requested through your Rule 5.

THE COURT: What case are you relying on?

MR.ALAN BURNS: Evans v. State.

THE COURT: Do you have a copy of it?

MR.ALAN BURNS: Yes, sir, I do.

THE COURT: May I see it?

MR.ALAN BURNS: (Tendering to bench by Lori Proctor).

THE COURT: Do you want that to be marked as a court's exhibit?

MR. ALAN BURNS: Yes, sir, I do.

THE COURT: Court's Exhibit 2 is material provided which is in response to the Brady motion, provided by the defendant.

(SO ENTERED AS COURT'S EXHIBIT 2)

MR.ALAN BURNS: I have some areas in that already highlighted.

THE COURT: Well, sir - - some areas in what?

MR. ALAN BURNS: In that case.

THE COURT: I am going to hand you the case back, (Tendering).

What is your response, Ms. Herring-

TT Pp. 125

Lash?

SOLICITOR HERRING-LASH: Your Honor, I am not exactly sure what he is referring to. I think that he went over this issue with Judge McDonald last week and the case that he handed up at that time regarded

the statewide grand jury, which is a different - - which is an investigatory grand jury.

THE COURT: (Affirmative nod) .

SOLICITOR HERRING-LASH: I don't know exactly what he - - at that time he was asking for witnesses and tapes that had to do with the grand jury. I don't know what he is talking about exactly. I didn't see the case. I don't know if it is the same case or not.

MR. ALAN BURNS: If I may, your Honor?

THE COURT: Sure.

MR ALAN BURNS: In accordance with this case, the South Carolina Supreme Court case, it gives the Defendant the right to timely challenge the legality of thegrand jury that indicted him.

TT Pp. 126

THE COURT: I understand.

MR. ALAN BURNS: Upon that timely request, it's incumbent upon the court to verify that the grand jury was legally constituted.

THE COURT: How have you challenged it?

MR ALAN BURNS: Yes, sir.

THE COURT: How have you timely challenged the - - -

MR. ALAN BURNS: That's what I said. I made my request in my discovery and I also made my request by submitting - - if I

may present you with a copy, (Tendering) .
THE COURT: (Upon review), this Motion that has been handed to me, this matter has been raised, - - -
MR. ALAN BURNS: Right, this has been raised several times. This isn't the first time.
THE COURT: This is what you argued before Judge McDonald?
MR. ALAN BURNS: Yes, sir.
THE COURT: She denied the Motion.
MR. ALAN BURNS: Yes, sir, for the

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impanelment documents.
THE COURT: Your Motion is then denied. It's a part of the record of this case. You don't raise that again. That's already been raised.
MR. ALAN BURNS: So I can't ask for the indictments to be - - -
THE COURT: You can't ask me to do that. You've already asked Judge McDonald to do that, and she denied your Motion.
MR. ALAN BURNS: I understand. What I am asking Your Honor is I'm raising a matter of subject matter jurisdiction.
THE COURT: Well, I - - based on what?
MR. ALAN BURNS: That if the grand jury that impaneled - - if the grand jury was illegally impaneled, then that would relieve

this court of subject matter jurisdiction.

THE COURT: Might. But that issue has been raised and denied. So your Motion now is denied further, denied based on the fact that it has already been decided.

MR. ALAN BURNS: I just want to make sure that it's on record for appeal.

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THE COURT: Every Motion that has been - - for which you've been to court and Motions have been filed, all those are part of the record of your case. It doesn't have to be heard by me. In fact , I can't hear it because I can't change the decision another judge has made. That's part of the record. The reviewing court will consider that and decide wh that and decide whether that judge made the correct determination.

MR. ALAN BURNS: That was simply the hearing judge. YOUR THE TRIAL JUDGE AND - - -

Trial Transcript Pp. 122 Line 1 - Pp. 128 Line 13, **(App. p. 122- Line 1 - p. 128 Line 13)** (emphasis added) .

The written record clearly shows that the Trial Court errored and that the error was properly preserved . The record also clearly shows that the Trial Judge tried to prevent the Petitioner from preserving the issue by giving erroneous instructions. The Court told Petitioner that an issue that had been raised in a pretrial hearing could not be raised to him the trial judge. That within itself is error.

All this answers the question of 'why' Ms. Hackett stated " I certainly did not agree with the Court of Appeals opinion that it wasn't preserved.." (App. p. 994 Lines 22 - 24). That's because it was all clearly preserved in the record.

What's more is the fact the Petitioner had an absolute right to receive the impanelment documentation to challenge the legality of the grand jury that had indicted him. Petitioner thought well in advance of the day of trial that something was amiss with the grand jury and the indictments against him and he sought information and the impanelment documentations of the grand jury.

From the very onset the State declared that they were no written records of the grand jury.

The Petitioner followed the procedure outlined in Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005), whereas the Court held:

> " Accordingly, impanelment documents ordinarily mey be released to a defendant after the state grand jury has issued a true bill of indictment against that defendant. **A defendant's request should be made prior to trial PURSUANT TO Rule 5, SCCrimP. If the State should object to releasing all or part of the impanel documents, a defendant may move to compel discovery of the documents. See Rule 5(d), SCCrimP.** The burden of proof is on the State to demonstrate why the documents should not be released because only the State possesses the necessary information to analyze the issue and explain to the court why releasing the documents should be prohibited or delayed. "

Id. 363 S.C. at 513, 611 S.E.2d at 520. Additionally, that Court also held:

> " Although this case involves the state grand jury, we similarly conclude that challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order

to preserve the error for direct appellate review. "

Evans,363 S.C. at 510, 611 S.E.2d at 517. In this case The Petitioner followed all steps as outlined by this Honorable Court in Evans, including moving to compel the State to produce the documents.

The question that now presents before this Honorable Supreme Court, is two part, firstwwould any other attorney given the same facts and circumstances have also refuse to file for rehearing and petitioned for a writ of certiorari ?, and second , did Ms. Hackett's refusal to do so prejudice the Petitioner ?

Answering these questions raises yet another important question, if as in this case where Ms. Hackett " certainly did not agree with the Court of Appeals opinion that it wasn't preserved " and yet she still did not file for rehearing , when would a case ever present that she would file for rehearing.

First, the PCR court errored in ruling that the contract between the Town of Mt. Pleasant Police Department and the Charleston County Sheriff's Department were valid. Also, for ruling that " because the Agreement in this case was entered into in before June 2000, as a result, section 23-20-50 does not require it be approved by the governing body of each jurisdiction in order for it to remain in effect." (App. p. 1042).

The trial court errored when it denied Petitioner's request to receive the grand jury impanelment documents of the grand jury that had allegedly indicted him, the law supports the Petitioner on this front.

Next, appellate defense counsel committed ineffective assistance of counsel when after receiving all the facts and evidence that is now before this Court, she refused to brief the territorial jurisdiction issue.

Then, the Court of Appeals errored in its ruling denying the

Petitioner's direct appeal on the grounds that it wasn't preserved or clearly stated [illegible].

Finally, appellate defense counsel committed ineffective assistance of counsel when she " did not agree with the Court of Appeals opinion " and recognizing that the ruling was erroneous and still refused to petition for rehearing, and closing their file on Petitioner's case in violation of Rule 264(b), SCACR .

C O N C L U S I O N

For the foregoing reasons, certiorari should be granted, and the convictions and sentences should be reversed, and the cases vacated, or in the alternative, remanded for a new trial.

MARCH 11, 2020

Respectfully submitted,

S/

Mr. Alan L. Burns, # 143218
Broad River C.I., MLT 1103 B
4460 Broad River Road
Columbia, SC 29210 - 4047

PETITIONER , PRO SE

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

Clerk Return Copy

June 16, 2016

Attachment #A

Alan L. Burns, #143218
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Burns:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief.** This is one year from the date of the enclosed opinion. This statute of limitations **is very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed.* **This application must be filed with the clerk of court in the county of your conviction.** There is also now a **one year statute of limitations for filing for federal habeas.** However, you must **exhaust** your **PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future.** I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure: Post-Conviction Relief Application

PAGE 1 OF 1

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # _____ DATE 4/1/11

STATEMENT OF Allison Burns

ADDRESS 1746 Ranns Hill Rd, Mt. Pleasant. PHONE # 276-5408

EMPLOYER: CCSD PHONE # _____

RACE: B SEX: F DATE OF BIRTH: 8/21/74

Questions by Det Avila to Allison Burns

Q. Do you have anything else to add to your statement that you gave Det. Bacon (MPPD) 3rd at this time?

A. No.

End of Statement.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

x Allison Burns
Signature

WITNESSES: 4/1/11

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT U/A
Signature

CCSO-109

RULE 5 HER: 00033