



ALAN WILSON  
ATTORNEY GENERAL

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APR 03 2020

April 3, 2020

S.C. SUPREME COURT

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

Re: Brian J. Phillips, #318212 v. State of South Carolina  
Case No. 2013-CP-19-386

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. The PCR transcript is being requested on today's date. Enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.

Sincerely,

Taylor Z. Smith *TZS*  
Assistant Attorney General

TZS/jj

cc: Arthur K. Aiken, Esquire  
South Carolina Department of Corrections  
The Honorable Charles L. Reel, Edgefield County Clerk of Court  
The Honorable Rick Hubbard, Eleventh Circuit Solicitor  
Victim Advocacy Division

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APR 03 2020

APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable William P. Keesley, Trial Court Judge  
The Honorable J. Cordell Maddox, Jr., PCR Court Judge

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Case No. 2013-CP-19-386

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Bryan J. Phillips, #318212, ..... Respondent,

v.

State of South Carolina, ..... Petitioner.

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**NOTICE OF APPEAL**

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Respondent, the State of South Carolina, appeals the order of the Honorable J. Cordell Maddox, Jr., dated May 25, 2018, and filed May 31, 2018, granting post-conviction relief to Petitioner Bryan J. Phillips, #318212. Respondent received notice of entry of the order granting relief on June 5, 2018. Respondent filed a motion to alter or amend the judgment in accordance with Rule 59(e), SCRCP, on June 19, 2018, and served Mr. Phillips therewith on June 15, 2018. Thereafter, Judge Maddox denied Respondent's motion by an order issued on November 18, 2019, and filed on November 25, 2019. However, Respondent was not served with a copy of the order and did not receive notice of entry of the order until March 20, 2020, when this Court

forwarded Respondent a copy of Mr. Phillips' pro se letter the Court that referenced the issuance of the order denying Respondent's motion. Copies of the both orders on appeal are attached to this notice.

Respectfully submitted,

ALAN WILSON  
Attorney General

TAYLOR ZANE SMITH  
Assistant Attorney General  
S.C. Bar # 103282

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By:

  
Attorneys for the Petitioner

Columbia, South Carolina

April 3, 2020

*Other counsel of record:*

**Arthur Kerr Aiken, Esquire**  
PO Box 90707  
Columbia, SC 29290

EDGEFIELD COUNTY  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )  
2019 NOV 25 AM 11:29 )  
IN THE COURT OF COMMON PLEAS )  
ELEVENTH JUDICIAL CIRCUIT )

C.A. No. 2013-CP-19-00386

Bryan Jordan Phillips,  
SCDC# 318212

ORDER DENYING RESPONDENT'S  
MOTION TO ALTER OR AMEND

Applicant,

v.

State of South Carolina,

Respondent.

This matter came before the Court through the Respondent's Motion to Alter or Amend.

After careful consideration and review, the Court finds that Respondent's Motion to Alter or Amend should be denied.

It is hereby ordered that Respondent's Motion to Alter or Amend is denied.

IT IS SO ORDERED.



The Honorable J. Cordell Maddox, Jr.  
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

November 18, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF EDGEFIELD

COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Bryan J. Phillips,

Plaintiff,

vs.

State.,

Defendant.

CA No.: 2013-CP-19-386

**ORDER**

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL  
2018 MAY 31 PM 12:07

### INTRODUCTION

This is a postconviction relief action brought by the Applicant, Bryan Phillips (Phillips), who is currently incarcerated in the South Carolina Department of Corrections under Orders of Commitment issuing from Edgefield County, South Carolina. The State produced for this Court all records concerning Phillips' convictions and sentences as well as a complete Transcript of Phillips' trial. On December 13, 2017, this Court held a hearing in this case at which both Phillips and the State were represented by counsel. Phillips, Phillips' appellate counsel, Lanelle C. Durant (Durant), and Phillips' trial counsel, Randall D. Williams (Williams), testified at the December 13, 2017 hearing.

This Court has reviewed all the records concerning Phillips' convictions and sentences as well as the Transcript of Phillips' trial and has considered all the testimony presented at the December 13, 2017 hearing. This review and consideration convinces this Court that Phillips convictions and sentences violate the Sixth Amendment to the U.S. Constitution because Williams gave Phillips such deficient representation at Phillips' trial that Phillips suffered prejudice. As explained more fully in the following sections of this Order, this Court grants Phillips' Application for postconviction relief and vacates Phillips' convictions and sentences.

## **FACTS**

### **I. Investigation of the alleged crimes**

Four Chinese nationals, Ji Queng Chen, Li Ai Meng, Guang Xing Li, Guan Xin, Selina Li , and Winson Li , who spoke only Mandarin Chinese, reported that they were robbed in Johnston, South Carolina on August 14, 2008. These witnesses alleged that there were three individuals involved in the robbery, but they could not identify the alleged robbers.

An informant, Patrick Stevens (Stevens), reported to Investigator Roosevelt O. Young, III (Young) of the Edgefield County Sherriff's Department (ECSD) that Alvin Phillips, Phillips, and K.C. Langford (Langford) robbed the four Chinese nationals. Johnston Police Department (JPD) personnel detained Alvin Phillips and interrogated him, and Alvin Phillips gave a statement in which he implicated himself, Phillips, and Langford in the robbery of the Chinese nationals.

JPD personnel secured Arrest Warrants charging Phillips with criminal conspiracy, armed robbery, burglary in the first degree, and kidnapping. The Edgefield County Grand Jury true billed Indictments against Phillips that allege criminal conspiracy (2008-GS-19-718), armed robbery (2008-GS-19-723), burglary in the first degree (2010-GS-274), and kidnapping (2010-GS-19-277).

### **II. Pretrial**

The government put Phillips and Langford on trial together. On May 17, 2010, the Court held a pretrial hearing to take up Motions to Dismiss on speedy trial grounds that had been filed by Phillips and Langford. The government presented several justifications for the delay in putting Phillips and Langford on trial. As its principal justification for the delay, the government argued the difficulty that it was having in securing a Chinese language interpreter. The government represented to the Court that South Carolina Court Administration had no certified Chinese interpreters.

On the first day of the trial of Phillips and Langford, September 7, 2010, the trial court entertained additional pretrial matters. Most importantly, the trial judge took up the issue of the qualifications of the Chinese interpreter. The Chinese interpreter engaged by the government was not certified by South Carolina Court Administration. After hearing testimony and explaining the proper role of the interpreter, the trial court qualified the Chinese interpreter under S.C. Code § 15-27-55. (Tr. pp. 140-142)<sup>1</sup> Williams made only a general objection to the interpreter's qualifications. (Tr. p. 138)

### III. Trial and Appeal

The Chinese nationals were vitally important witnesses; only their testimony could establish the corpus delicti of the alleged offenses. At several points during cross-examination by defense counsel of the three Chinese nationals that testified at trial, Ji Quing Chen, Li Guan Xin, and Li Ai Ming, the Chinese interpreter engaged in conversations in Chinese with the witnesses that were not confined to the attorney's questions and the witnesses' answers to those questions. (Tr. pp. 188, 209, and 214-215) These extraneous conversations were so obvious that the trial judge admonished the Chinese interpreter three times that his translations had to be verbatim the questions and answers. (Tr. pp. 188, 209, and 214-215) Williams did not retain a defense Chinese interpreter to participate in the trial of Phillips and Langford.

In its case-in-chief, the government presented only the testimony of Alvin Phillips to show that Phillips and Langford participated in the alleged crimes. Defense counsel thoroughly and persuasively cross-examined Alvin Phillips. Defense counsel even presented in evidence a written statement signed by Alvin Phillips in which he stated that Phillips and Langford had no participation in the alleged crime. In the defense case, Williams called Young to testify. During his direct examination of Young, Williams elicited testimony about the double hearsay statement

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<sup>1</sup> TR references are to the Transcript of the jury trial of Phillips and Langford.

of the informant Stevens that Alvin Phillips, Phillips, and Langford participated in the robbery of the four Chinese nationals. (Tr. pp. 368-393) The testimony of Young figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490)

The jury convicted Phillips on all counts. The trial judge sentenced Phillips to twenty years for kidnapping, twenty years for armed robbery, twenty years for burglary in the first degree and five years for criminal conspiracy with all sentences to run concurrently. Williams timely filed a Notice of Appeal, and Durant of the Appellate Division of the South Carolina Office of Indigent defense perfected the appeal. The South Carolina Supreme Court issued an unpublished opinion affirming Phillips' convictions and sentences. In footnote one of that opinion the Supreme Court observed that that S.C. Code § 15-27-155(B) "is the statute for interpreters in a civil case, not a criminal one." State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1.

## LAW

### I. The test for ineffective assistance of counsel

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the

result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052.

"A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698).

## **II. Instances of deficient representation**

### **A. The interpreter statute**

As the Supreme Court observed in its memorandum opinion affirming Phillips' convictions and sentences, the trial court erroneously qualified the interpreter under the interpreter statute for civil cases, S.C. Code § 15-27-155, instead of the proper interpreter statute for criminal cases, S.C. Code § 17-1-50. State v. Phillips, Memorandum Opinion No. 2012-MO-049 (2012), fn. 1. Evidence was presented at the December 13, 2017 hearing that Williams had a copy of S.C. Code § 17-1-50 that he was referring to during Phillips' trial.

When the trial court announced its ruling qualifying the Chinese interpreter under the wrong statute, Williams made only a general objection as to qualifications. Durant testified at the December 13, 2017 hearing that this objection was much too general to preserve the issue of the proper statute to be used in qualifying an interpreter in a criminal case for appellate review. Williams' failure to preserve the issue of the proper statute for the qualification of an interpreter in a criminal case constitutes deficient representation.

### **B. Defense Chinese interpreter**

On cross-examination at the December 13, 2018 hearing, Williams acknowledged that he knew as of the May 17, 2010 hearing that the government's Chinese interpreter would not be certified by South Carolina Court Administration. During the same cross-examination, he also admitted that the Chinese nationals were critical witnesses because only their testimony could establish the corpus delicti of the alleged crimes.

Williams also testified that an organization known as Foreign Translations with an office in Greenville, SC could have provided defense translation services and that Williams could have had access to South Carolina Commission on Indigent Defense funding for those services. Williams' failure to hire a defense Chinese interpreter was deficient representation when he knew that the government's interpreter would be uncertified and that the testimony of the Chinese nationals was critical to the case.

**C. Calling Young as a witness**

In presenting Young's testimony, Williams succeeded only in providing an additional connection between Phillips and the alleged crime when the only other connection, Alvin Phillips' testimony, had been weakened by cross-examination and by the introduction in evidence of Alvin Phillips' statement that Phillips and Langford had not participated in the alleged crime. The wound was entirely self-inflicted. The government could not have used Young's testimony about the statement of the informant, Stevens, because testimony by Young on that point would have been double hearsay. Young's testimony about Stevens' statement was allowed in evidence only because Williams' offered it.

At the December 13, 2017 hearing, Williams claimed that he called Young to testify about Stevens' statement as part of his trial strategy. Williams testified that he called Young to show that the early focus on Alvin Phillips originated in an ongoing informant and law enforcement relationship between Stevens and Young. This is not what Young testified to. Williams admitted that he did not interview Young about the circumstances of Stevens' statement before putting Young on the stand. Williams testified that he was acquainted with Young and that he could have spoken with Young before putting him on the stand. Williams' failure to speak with Young before putting him on the stand to testify about the double hearsay statements of the informant, Stevens, constitutes deficient performance.

### **III. Prejudice**

#### **A. The interpreter statute**

There is a critical difference in the interpreter statutes. S.C. Code § 15-27-155 permits an interpreter that is an “instructors in a foreign language” or has a sufficient level of fluency in a particular foreign language “to interpret the foreign language of another person.” On the other hand, S.C. Code § 17-1-50 requires that an interpreter be “readily able to interpret simultaneously and consecutively ... from English into the language of the non-English speaking person, or from the language of that person into spoken English.” Because Williams failed to object to the qualification of the Chinese interpreter, there is a reasonable probability that the result of the proceedings against Phillips would have been different in that the interpreter qualified would have been demonstrably more qualified.

Durant testified at the December 13, 2017 hearing that she did not raise the interpreter statute issue in Phillips’ appeal because the issue was undoubtedly not preserved for appellate review because of an insufficient objection. Durant further testified at that hearing that if the interpreter statute issue had been preserved for appellate review, she would have prominently placed it in her appellate brief as the first and most substantial issue on appeal. If Williams had made a sufficient objection on the interpreter statute issue, there is a reasonable probability that the result would have been different in that there is a reasonable probability that Phillips’ convictions and sentences would have been reversed on appeal.

#### **B. Defense Chinese interpreter**

During the cross-examinations by defense counsel of the Chinese nationals who testified at trial, the government’s Chinese interpreter engaged in conversations in Chinese with the testifying Chinese nationals that were not restricted to the questions and answers. (Tr. pp. 188, 209, and 214-215) In fact, the trial judge had to warn the government’s Chinese interpreter three times to

confine his statements to the questions and answers. (Tr. pp. 188, 209, and 214-215)

To this day, only the government's Chinese interpreter and the Chinese nationals know for certain what the government's Chinese interpreter said to the testifying Chinese nationals in these extraneous comments. A defense Chinese interpreter would have ensured that the trial judge and all parties to the trial knew what the government's Chinese interpreter said to the testifying Chinese nationals in these comments. Phillips was prejudiced by Williams' failure to hire a defense Chinese interpreter. If Williams had hired such an interpreter, there is a reasonable probability that the result of the trial would have been different.

### **C. Calling Young as a witness**

Young's testimony about his interaction with the informant, Stevens, was, without doubt, adverse to Phillips' case at trial. By calling Young as a witness and questioning him about these matters, Williams did harm to Phillips' case. Because of the double hearsay nature of Young's testimony about what Stevens told Young, the harm done to Phillips' case by Williams' calling and examination of Young was harm done by Williams to Phillips' case that could not have been done by the government alone. Young testified to the effect that Stevens was acting as a good citizen. This testimony and Young's testimony about Stevens' statement figured prominently in the government's closing argument. (Tr. pp. 477-479, 488, and 490) But for Williams' deficient representation in calling and examining Young, there is a reasonable probability that the result of Phillips' trial would have been different.

## **CONCLUSION**

Phillips has demonstrated that Williams gave him deficient representation and that each of the three instances of deficient representation prejudiced Phillips in the sense that there is a probability sufficient to undermine confidence in the outcome of Phillips' trial that, absent the deficient representation, the jury would have had a reasonable doubt respecting Phillips' guilt. For

these reasons this Court GRANTS Phillips' PCR Application and VACATES Phillips' convictions and sentences.


AND IT IS SO ORDERED!



J. Cordell Maddox, Jr.  
Presiding Circuit Court Judge

Anderson, SC  
May 25, 2018

THE ABOVE IS A TRUE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CLERK OF COURT OF EDGEFIELD COUNTY, SC



CHARLES L. REEL, CLERK OF COURT  
OF GENERAL SESSIONS AND  
COMMON PLEAS, E.C.S.C.

5-31-18  
DATED

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APR 03 2020

APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable William P. Keesley, Trial Court Judge  
The Honorable J. Cordell Maddox, Jr., PCR Court Judge

Case No. 2013-CP-19-386

Bryan J. Phillips, #318212, ..... Respondent,

v.


State of South Carolina, ..... Petitioner.

**PROOF OF SERVICE**

I, Jennifer Jennison, legal assistant to Taylor Z. Smith, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

**Arthur Kerr Aiken, Esquire  
PO Box 90707  
Columbia, SC 29290**

I further certify that all parties required by Rule to be served have been served this 3rd day of April, 2020.

  
Jennifer Jennison, Administrative Coordinator  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737