

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Robin B. Stilwell, Circuit Court Judge

App. Case No. 2017-002002

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Oct 06 2020

SC Court of Appeals

Rashaun Jamine Sobers,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING
AND FOR REHEARING *EN BANC*

Tricia A. Blanchette
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Attorney for Petitioner

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STATEMENT OF THE CASE

During the November 2009 term of the Spartanburg County Grand Jury, Petitioner was indicted for murder (2009-GS-42-6427). App. p. 603. On September 7, 2010, a trial was convened at the Spartanburg County Courthouse in front of the Honorable J. Derham Cole. Petitioner was represented by N. Douglas Brannon, Esquire, Timothy Ryan Langley, Esquire, and the late Brac H. Turnipseed, Esquire. Harold W. Gowdy, III, Esquire, and Barry J. Barnette, Esquire, represented the State. On September 9, 2010, Petitioner was found guilty as indicted. Judge Cole sentenced Petitioner to imprisonment for a term of life. App. p. 605.

A notice of appeal was timely filed, and Robert M. Dudek, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence via Opinion filed on June 26, 2013. State v. Sobers, Op. No. 5146 (filed June 26, 2013). App. p. 658. The Remittitur was issued on July 15, 2013.

On February 24, 2014, Petitioner filed an Application for Post Conviction Relief. App. p. 664. A Return was filed on September 10, 2014. App. p. 682.

On August 12, 2016, Petitioner filed a detailed amendment alleging ineffective assistance of trial and appellate counsel. App. p. 688. Petitioner filed an additional amendment on September 8, 2016, which alleged: Ineffective assistance of trial counsel for failure to object to the State's closing argument. App. p. 690.

On June 27, 2017, an evidentiary hearing was convened at the Spartanburg County Courthouse in front of the Honorable Robin B. Stilwell. Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Valerie G. Giovanoli, Assistant Attorney General. Petitioner testified and called Dr. Marjie T.

Britz and N. Douglas Brannon, Esquire, to the stand. Respondent called Barry J. Barnette, Esquire, to the stand. The court had before him a copy of the Spartanburg County Clerk of Court's records, the records from the South Carolina Department of Corrections, appellate records, post conviction filings, Petitioner's exhibits 1-12, and Respondent's exhibit 1.

At the conclusion of the evidentiary hearing, the court took the matter under advisement. Thereafter, the court requested that the State submit a proposed Order. An Order of Dismissal with Prejudice was signed on August 2, 2017 and filed on August 7, 2017. App. p. 853. Thereafter, Petitioner timely filed a Motion, pursuant to Rule 59, SCRPC. App. p. 882. An Order denying Petitioner's Motion was signed on August 29, 2017. App. p. 886.

On September 29, 2017, a notice of appeal was filed. On September 24, 2018, a Petition for Writ of Certiorari and Appendix were filed. On January 22, 2019, the State submitted a Return to Petition for Writ of Certiorari. On January 30, 2019, the appeal was transferred to the South Carolina Court of Appeals. On September 24, 2020, this Court denied the Petition for Writ of Certiorari via written Order, from which this Petition for Rehearing and Petition for Rehearing *En Banc* follows.

ARGUMENT

Pursuant to Rule 221, SCACR, Petitioner respectfully petitions this Court for rehearing and for rehearing *en banc*. In doing so, Petitioner would respectfully request that the panel and entire Court review the Petition for Writ of Certiorari and the entirety of the arguments contained therein. Petitioner would further request that the panel and the entire Court review the lengthy record contained in the previously filed Appendix.

By way of the Petition, the following argument was raised: The lower court erred by failing to grant a new trial due to counsel's handling of the gang evidence and testimony at trial. Even though this issue is both simple and complex, the errors of counsel and the lower court can be simply argued. This Court must reconsider the denial of certiorari because the lower court's finding that trial counsel provided effective assistance is not supported by the record; therefore, reversal is absolutely necessary. See Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

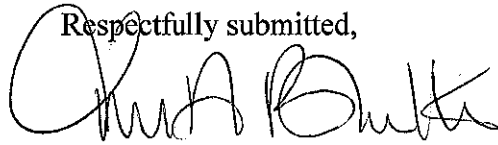
As is argued in detail in the Petition, trial counsel admitted that Petitioner's defense was grounded in the argument that he was in fear of a gang and acted in self-defense, yet counsel failed to develop a record whereby the trial court could find that the evidence and expert testimony regarding the gang activity was admissible. The record before the lower court provided what was prejudicially absent from trial and the record on direct appeal: 1) the testimony of Petitioner, which established relevance of the prohibited testimony, evidence and expert and 2) a duly qualified expert (Dr. Britz) that provided testimony and evidence that should have been presented in support of Petitioner's defense to the jury. As is discussed in detail and must have been overlooked in the Petition, counsel opined that Petitioner's defense "hinged on the gang activity involvement in the case." App. p. 788, Ins. 9-11. Yet, the lower court errantly found no deficiency in counsel's performance that directly removed the gang evidence from the trial nor any prejudice from the sterilized defense provided by counsel. Petitioner begs this Court to not overlook that he is serving a life sentence as a result of a trial whereby counsel failed to properly present his defense.

Therefore, Petitioner would urge this Court rehear and/or reconsider the arguments raised in the Petition, which are supported by the record. Petitioner would respectfully ask this Court to allow the arguments to be further addressed by granting certiorari or whatever step the Court deems proper.

CONCLUSION

In consideration of the arguments contained in the Petition and the above stated argument, Petitioner respectfully requests that the Court conduct a full review of the previously submitted Petition for Writ of Certiorari and Appendix. Petitioner would further urge this Court to reverse the Order filed on September 24, 2020 and allow Petitioner to brief the arguments or reverse the lower court and grant a new trial.

Respectfully submitted,



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This 10th day of October 2020.

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In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Robin B. Stilwell, Circuit Court Judge

App. Case No. 2017-002002

Rashaun Jamine Sobers, 342645,

Petitioner,

vs.

State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that a copy of the Petition for Rehearing and for Rehearing *En Banc*, were emailed to Megan H. Jameson, Senior Assistant Deputy Attorney General, this 6th day of October 2020 at the following email address: mjameson@scag.gov. A copy of the email is attached.



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October 6, 2020

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SC Court of Appeals



Tricia Blanchette <blanchettelaw@gmail.com>

Rashaun Sobers v. State: Petition for Rehearing Service

1 message

Tricia Blanchette <blanchettelaw@gmail.com>

Tue, Oct 6, 2020 at 11:02 AM

To: Megan Jameson <MJJameson@scag.gov>

Megan,

Per c-track, you are listed as counsel of record, so I am serving you via this email with the Petition for Rehearing in Sobers v. State. I will be printing this email for filing with the Court.

Thanks,

Tricia

--
Tricia Blanchette
Attorney at Law


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Oct 06 2020

SC Court of Appeals

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