

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Timothy Earl Green, #324607,
Applicant,
v.
State of South Carolina,
Respondents.

) C/A No.: 2009-CP-40-02149
)
)
)
)
)
)
)

APPLICANT'S MOTION
TO ALTER
OR TO AMEND
JUDGMENT

JEANETTE W. McBRIDE
C.P. & G.S.

2012 DEC 27 AM 8:14

RICHLAND COUNTY
FILED

NOW COMES the Applicant in the above-captioned action, acting by and through himself, appearing Pro Se, respectfully moving this Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to Alter or Amend its Order of Dismissal that was filed January 20, 2012. In support of this Motion, the Applicant would show unto this Honorable Court the following:

While the Order of Dismissal denies all of the allegations raised in the Applicant's Application for Post-Conviction Relief, the Order of Dismissal does not address any additional allegations raised by the Applicant at the Post-Conviction Relief's Evidentiary Hearing that was held on November 16, 2011. However, the grounds for relief that was attached to the application was not ruled upon listing eleven (11) issues.

Therefore, the Applicant respectfully request that the Court alter and amend its Order listing those additional issues on the attachment.

Respectfully Submitted,

RECEIVED

APR 5 2013

Timothy Earl Green
Timothy Earl Green
Applicant

S.C. Supreme Court

INDEX

INDEX 1

TABLES OF AUTHORITIES 2

ISSUES TO BE PRESENTED ON APPEAL. 4

STATEMENT OF THE CASE 5

ARGUMENT

1. Did the Post-Conviction Relief (PCR) Court err in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel, where the record clearly shows counsel's conduct was outside of Professional Norms? 8

2. Did the Post-Conviction Relief (PCR) Court err in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel, where the claim was properly presented to the PCR Court on failure to adequately put up a Meaningful Defense by conducting an investigation of the case in order for the Petitioner to make an informed decision to plea guilty?. 12

CONCLUSION 18

DESIGNATION OF MATTER TO BE INCLUDED ON APPEAL 19

TABLES OF AUTHORITIES

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 8,
Stricklan v. Washington, 446 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d
674 (1984). 8, 11, 13,
Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 8, 9,
Hill v. Lockhart, 474 u.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203
(1985). 9, 11,
McCrary v. State, 249 S.C. 14, 152 S.E.2d 235 (1967); certiorari
denied, 386 U.S. 1013, 87 S.Ct. 1362, 18 L.Ed.2d
445 (1967). 9,
State v. Lewis, 225 S.C. 466, 179 S.E.2d 616 (1971). 9,
Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333
(1980). 9, 10;
Cuyler v. Sullivan (Sullivan II), 723 F.2d 1077 (1983). 10,
United States v. Fulton, 5 F.3d 605. 10,
Maldonado v. Denno, 348 F.2d 12 (1965); certiorari denied, 384 U.S.
1007, 86 S.Ct. 1950, 16 L.Ed.2d 1020 (1966). 10, 11, 17,
State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) 11,
United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781; (2002) . 11,
Bradbury v. Wainwright, 658 F.2d 1083 11,
Taylor v. State, 258 S.C. 369, 188 S.E.2d 850 (1972). 12,
Jeffers v. Leeke, 486 U.S. 1008, 108 S.Ct. 1734, 100 L.Ed.2d 198
(1987). 12,
United States v. Decoster, 487 F.2d 1204 (1973). 12, 17,
United States ex. rel. Cosey v. Wolff, 727 F.2d 656 (1984). 13, 17,
Brady v. Maryland,
Gibson v. State, 334 S.C. 515, 514 S.E..2d 320 (1999). 13,
State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997). 13,
Workman v. Tate, 957 F.2d 1339 (1984). 13,
Crisps v. Duckworth, 743 F.2d 585 (1985). 13,
North Carolina v. Pearce, 395 U.S. 725 (1969). 13,
Brady v. United States, 397 U.S. 758 (1970). 14,
Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274
(1969). 14,
Roddy v. State, 339 S.C. 33, 528 S.E.2d 420 (2000). 14,

The Petitioner reserves the right to amend its Petition for Writ of Certiorari upon receipt of any relevant materials or submit an amended Petition for Writ of Certiorari to reflect any amended Tables of Authorities in a more detailed authority.

ISSUES TO BE PRESENTED ON APPEAL

1. Did the Post-Conviction Relief (PCR) Court err in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel, where the record clearly shows counsel's conduct was outside of Professional Norms?

2. Did the Post-Conviction Relief (PCR) Court err in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel, where the claim was properly presented to the PCR Court on failure to adequately put up a Meaningful Defense by conducting an investigation on the case in order for the Petitioner to make an informed decision to plea guilty?

STATEMENT OF THE CASE

On August 17, 2005, the Petitioner, Timothy Earl Green, was indicted by the Richland County Grand Jury for the offense of Murder (2005-GS-40-06547) and Armed Robbery (2005-GS-40-06546).

On October 17, 2007, the Petitioner appeared before the Honorable Judge G. Thomas Cooper, Jr., where the Petitioner plead guilty to the offenses charged. Petitioner was represented by Carolyn Rose Gripp and Lauren Mobley of the Richland County Public Defender's Office, and the State was represented by John P. Meadows and William Bryant of the Fifth Judicial Circuit Solicitor's Office. The Honorable Court sentenced the Petitioner to thirty (30) years imprisonment on the Murder offense and ten (10) years imprisonment on the Armed Robbery offense. The sentences were to be served concurrently. The Petitioner did file a timely Notice of Intent to Appeal his convictions and sentences.

On January 13, 2009, the South Carolina Court of Appeals issued an Order of Dismissal, dismissing the Petitioner's direct appeal. The Court of Appeals noted in their Order, "[I]t appears that [Petitioner], with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal."

On March 23, 2009, approximately sixty-nine (69) days after the conviction became final, filed an Application for Post-Conviction Relief (PCR) (2009-CP-40-02144). An Evidentiary Hearing was held after the Respondents made its Return on May 11, 2009, on November 18, 2011, before the Honorable L. Casey Manning. The Petitioner was represented by Tristan Shaffer, Esquire, and the Respondents

was represented by Brian T. Petrano of the South Carolina Attorney General's Office. The Petitioner was present at the Evidentiary Hearing with counsel. The Petitioner testified at the hearing along with Plea Counsel, Carolyn Rose Gripp-Sutherland.

At the Evidentiary Hearing, PCR Counsel argued that "[t]here is an alleged due process violation based off an unconstitutional trial tax... basically, threatening a higher punishment by [Petitioner] exercising his right to go to trial" citing North Carolina v. Pearce, 395 U.S. 711 (1969) and Bordenkircher v. Hayes, 434 U.S. 357 (1978) as persuasive authority. PCR Counsel also argued that "the other issue is ineffective assistance of counsel based off of . . . counsel advising [Petitioner] to plead guilty partially based off of the threat of a trial tax...." PCR Counsel further noted that "[plea counsel] advised [Petitioner] to plead guilty based off . . . the assumption that [Petitioner] was looking at a recommendation of forty-five (45) years versus an unofficial straight-up plea" and that "[Petitioner] decided not to [go to trial] based off of [plea counsel's advise.]"

Plea Counsel subsequently explained how she informs her clients of the 'trial tax' issue:

Trial tax, as I explain it to my clients, is when the judge imposes a sentence that might be harsher as a result of going to trial, and how I typically explain it is: You get credit for taking responsibility for your crimes. So if you plead guilty or take a plea offer, the judge will give you some type of credit towards your time that they're going to sentence you to. But if you take it to trial and it's deemed that you've wasted time, that there was an offer that should have been taken and given the facts of the case, they'll [judges] take that into consideration and they might sentence you harsher than had you pled guilty.

App. Pg. 94, lines 11-24 (emphasis added). Plea Counsel also revealed, "I believe that many judges would give [a criminal defendant] more time if you were to take a case to trial where there were no clear merits or issues of law to argue." Plea Counsel ultimately admitted, "I believe that [Petitioner] would be sentenced more harshly if he had gone to trial...." Petitioner testified that he pled guilty based on plea counsel's advise that there was no benefit in going to trial.

On January 20, 2012, the Honorable Judge Manning ruled in the Order of Dismissal that Petitioner failed to prove plea counsel provided ineffective assistance of counsel and denied Petitioner's PCR claim. The PCR Court found Petitioner's testimony not credible and plea counsel's testimony credible. The PCR Court further found that "there is no evidence that the trial court indicated that it would sentence [Petitioner] more harshly solely if he exercised his right to a jury trial" and that "[Petitioner] failed to present any evidence of actual (versus a presumption of) vindictiveness on the part of the sentencing judge by sentencing [Petitioner] to the minimum sentence following a guilty plea."

Furthermore, the PCR Court noted, "Plea Counsel explained that the State indicated in a chambers meeting that the State was going to ask for the maximum if the case went to trial, but that if the [Petitioner] pled guilty, the State would probably not affirmatively oppose a request for the minimum sentence, i.e. thirty (30) years." The PCR Court ruled, "[Petitioner] has not satisfied his burden of proof [by] demonstrate[ing] that counsel's performance was deficient, nor has he demonstrated any prejudice."

This Petition for Writ of Certiorari follows.

ARGUMENT

I. The Post-Conviction Relief (PCR) Court erred in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel, where the record clearly shows counsel's conduct was outside of professional norms.

In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that 'counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result'. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal case. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its 'reasonableness under professional norms'. Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that 'there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceedings would have been different'. Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

The Constitutional Right to the accused to competent counsel requires only that counsel, in good faith and to the best of their ability, render service that is directed towards the furtherance of a Fair trial. McCrary v. State, 249 S.C. 14, 152 S.E.2d 235 (1967); certiorari denied, 386 U.S. 1013, 87 S.Ct. 1362, 18 L.Ed.2d 445 (1967). Quality of service rendered by counsel must meet all the requirements of Due Process, when counsel is a member in good standing of the State Bar; gives their client their complete loyalty; serves their client in good faith to the best of their ability; and their service is of such character as to preserve essential integrity of the proceeding as a trial in a court of justice; however, he is not required to be infallible, nor to do the impossible, since the defendant is entitled to a Fair Trial and not a perfect one or a perfect result. State v. Lewis, 225 S.C. 466, 179 S.E.2d 616 (1971).

In order to establish a violation of the Sixth Amendment right to the effective assistance of counsel based on a claim of a Conflict of Interests, the defendant must establish that an actual conflict of interest adversely affected his lawyer's performance. Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Actual Conflict of Interest is evidenced if,

during the course of the representation, the defendant's interests diverge with respect to a material, factual or legal, issue or to course of action. This conflict must cause some lapse in representation contrary to the defendant's interest, but such lapse need not rise to the level of actual prejudice. Cuyler v. Sullivan (Sullivan II), 723 F.2d 1077 (1983). Courts have held that the presumption of prejudice set forth in Cuyler applies as well to situations where the personal interests of the attorney and the interests of the client are in actual conflict. United States v. Fulton, 5 F.3d 605 (1993).

In the present case, the petitioner was being represented by Carolyn Gripp, now Carolyn Rose Sutherland, with the assistance of Lauren Mobley, whom both believed that the Petitioner was subjected to the Death Penalty, however, no notice was submitted for such. (App. Pg. 93, lines 6-15). Plea Counsel not only believed that the facts of the case were gruesome, she also believed that she would have lost if went to trial. (App. Pg. 94, lines 8-10). However, Plea Counsel may have been laboring under some form of uncertainty as to her confidence at trial, whereas counsel specifically relied on a 'Bluff', which is not confidence, but to trick the State of South Carolina. (App. Pg. 96, lines 2-11). It is one thing to have confidence in counsel whom should be devoted to the case, but it is another thing to attempt a 'bluff' of a party where a life is being determined, so the confidence must be abandoned somewhere. "Petitioner must have complete confidence in his counsel, without such confidence, a defendant may be better off representing himself." Maldonado v. Denno, 348 F.2d 12 (1965); cert. denied, 384 U.S. 1007, 86 S.Ct. 1950,

16 L.ed.2d 1020 (1966). It is apparent that the decision to attempt to Bluff the State was solely counsel's and not the Petitioner's. The record clearly shows that Plea Counsel failed to file Pre-Trial and Post-Trial Motion for the purpose of having the indictment quashed, dismissed, and/or charges reduced in the situation where effects are mandated according to State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2205) and United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The Petitioner made several attempts to have the indictment dismissed by himself or through counsel. Counsel had numerous opportunities to present or prepare such motions and failed to do so. Therefore, counsel failed to honor the Petitioner's requests. In Bradbury v. Wainwright, 658 F.2d. 1083, the Supreme Court held that 'counsel must be familiar with the facts and law in order to advise the defendant meaningfully of options available upon entry of guilty plea, such responsibility includes investigating potential defenses so that defendant can make an informed decision. Here, counsel did not make any attempt to rely on law or facts during the course of the case. The Petitioner and Plea Counsel were on different paths. Plea Counsel used the theory of 'trial tax' in deciding that her advise to Petitioner to plead guilty was insomuch wrong. The Petitioner was sentenced to the minimum and not the maximum, and the Plea Court did not state it would give the Petitioner a harsher sentence if he had went to trial. Therefore, counsel's decision was extremely prejudicial and should be consider as ineffective assistance of counsel. The Petitioner has once again met his burden of proof set out in Strickland and Lockhart.

Therefore, the PCR Court decision is erroneous.

ARGUMENT

II. The Post-Conviction Relief (PCR) Court erred in denying relief to the Petitioner on the ground of Ineffective Assistance of Counsel where the claim was properly presented to the PCR Court on failure to adequately put up a Meaningful Defense by conducting an investigation on the case, in order for the Petitioner to make an informed decision to plead guilty.

Mere perfunctory representation by counsel does not satisfy the constitutional rights of the accused. Taylor v. State, 258 S.C. 369, 188 S.E.2d 850 (1972). In pursuing claim of ineffective assistance of counsel, a criminal defendant must overcome the presumption that challenged actions of counsel might be considered Sound Trial Strategy, but counsel is not insulated from finding that their performance was ineffective merely by classifying challenged actions or inactions as being Sound Trial Strategy. Jeffers v. Leeke, 486 U.S. 1008, 108 S.Ct. 1734, 100 L.Ed.2d 198 (1987). Counsel must conduct appropriate investigations, both factual and legal, to determine what matters of defenses can be developed... The adversary system requires that "all available defenses are raised" so that the government is put to its proof. This means that in most cases a defense attorney, or his agent, should interview not only his own witnesses, but those that the government intends to call, when they are accessible. The investigation should always include efforts to secure information in the possession of the prosecution and Law Enforcement authorities. And, of course, the duty to investigate also requires adequate legal research. United States v. DeCoster, 487 F.2d 1204 (1973). Where counsel fails to investigate and interview promising witnesses, and therefore 'has no reason to believe they would not be valuable in securing defendant's release', counsel's inactions

constitute negligence, not trial strategy. United States ex. rel. Cosey v. Wolff, 727 F.2d 656 (1984). Although counsel's strategic choices made after thorough investigation of Law and Facts relevant to plausible options are virtually unchallengeable, counsel has a duty to make reasonable investigation or to make a reasonable decision that makes that particular investigation unnecessary. Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. at 2064, 80 L.Ed.2d at 674. A Brady v. Maryland violation arising from the prosecution's failure to disclose exculpatory material in its possession is 'material' in the context of a guilty plea when there is a reasonable probability that, but for the government failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial. Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999).

A defendant is entitled to a self-defense charge where the evidence shows that (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) a reasonable prudent person of ordinary firmness and courage would have entertained the same belief. State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997). Counsel's inactions in failing to discuss a defense and failure to prepare for a trial can not be deemed or viewed as strategic, but rather negligent. Workman v. Tate, 957 F.2d 1339 (1984); Crisps v. Duckworth, 743 F.2d 585 (1985). Due Process of law, then, requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial. North Carolina v. Pearce, 395 U.S. at 725 (1969). The United

States Supreme Court has held that 'guilty pleas are no more foolproof than full trials to the court or jury.... Accordingly, we take great precautions against unsound results'. Brady v. United States, 397 U.S. at 758 (1970). An 'unsound result' occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing. Roddy v. State, 339 S.C. at 33, 528 S.E.2d at 420 (2000).

In the present case, an 'unsound result' occurred because Petitioner did not freely and intelligently waive his right to a jury trial, constitutionally. Specifically, Petitioner testified that he pled guilty based upon plea counsel's advise that there was no benefit in going to trial. (App. Pg. 134, lines 17-24). The Petitioner relied on plea counsel's assistance in preparations for trial where Petitioner reluctantly expressed his desire to go to trial. (App. Pg. 132, lines 18-23). However, plea counsel insisted on several occasions with the assistance of Lauren Mobley, in various amounts of locations, such as in the Solicitor's Office (William Bryant's Office) while the Petitioner's mother was present for two (2) hours; not in the Public Defender's Office where Plea Counsel worked. (App. Pg. 132, lines 3-16). It was very apparent that Plea Counsel wanted Petitioner to enter a plea considering the circumstances surrounding the Petitioner's case, Plea Counsel made eight (8) attempts to have the Petitioner plea

to which he did not want to voluntarily. (App. Pg. 121, lines 8-15). The record clearly supports the Petitioner's claim that he relied upon the advisement of Plea Counsel in his decision to plea guilty. Looking at the record, the Petitioner was under the impression that his was pleading straight-up to an open plea. (App. Pg. 136, lines 10-16). Therefore, the Petitioner could not have made an informed decision to plea guilty because in order for the Petitioner to make an informed decision, Plea Counsel must gain trust of the Petitioner and his case, that Plea Counsel will exercise her right(s) to go the distance as if she was in the Petitioner's shoes. There was no confidence nor was there trust present.

The defense of Self-Defense was also not a proper defense to be preparing the Petitioner to because there was nothing in the record present between the victim and the Petitioner. (App. Pg. 118, lines 12-18). Therefore, counsel was not in any form of preparations of a trial, by any means.

As to the Lack of Investigation, Plea Counsel had various opportunities to interview the Co-Defendant, Curtis McAuthur Harris, Jr., whereas he was more than accessible. If counsel wanted to attempt to impeach Mr. Harris's statement, she had many months to do so, twenty-seven (27) to be exact. (App. Pg. 109, lines 2-22).

Considering the investigation, the shoes of the Petitioner not being reviewed by counsel, again she had many opportunities to have them examined independently, but choose not to. (App. Pg. 151, lines 15-25).

The PCR Court erred when it denied relief to the claim of ineffectiveness as the Petitioner had met his burden of proof.

The Petitioner's desire to go to trial was infringed upon by counsel's lack of confidence in herself as she knew the Petitioner had moved the Court on a Relievement motion that was filed pro se and ex parte. Petitioner's expressed concerns of willingness to have Plea Counsel removed for lack of preparations for trial was made on numerous occasions to Plea Counsel, however, she took it upon herself to disregard the intentions of the Petitioner. (App. Pg. 120, lines 6 to Pg. 121, line 2).

When reviewing the Lack of Investigation, counsel may have been prepared to cross examine every State witness, but she was in no way prepared to cross examine Mr. Harris, the Notary Public or the Witness who were present when Mr. Harris gave the Voluntary Statement. (See Applicant's Exhibit #1).

As to the informed decision to plead guilty, counsel mistakenly believed the case would be lost at trial because of the gruesome nature of the case. However, the fact that the Petitioner's shoes revealed no blood splatter or D.N.A., the likelihood of overcoming the jury on the Hand of One is the Hand of All theory, would be prevailing. The State relied on the Statement of Mr. Harris where he stated the Petitioner had 'kicked' the victim. Let the record reflect, D.N.A. did not reveal any blood of any sort on the Petitioner's shoes. Therefore, he could not be guilty of the theory of the Hand of One is the Hand of All. Guilty by Association cannot stand alone, either. The Accomplice Liability theory also fails in this case. Again, the Petitioner has met his burden of proof in showing deficient performance on the part of Plea Counsel and proof of prejudice has arose for those deficiencies.

Neither of counsel's actions or inactions can be deemed as

being Sound Trial Strategy. (See DeCoster and Wolff). Look very closely to where Plea Counsel decided to have an Attorney-Client Conference at, the Solicitor's Office and not the Public Defender's Office of the Detention Center where the Petitioner was being housed at the present time. A Security reason is not a substantial reason to have a meeting with any client in the office of the adverse party. That alone is not perfunctory representation, by any means. It is apparent that Plea Counsel was laboring under some form of conflict.

It is furthermore apparent that the interests of Plea Counsel and the interests of the Petitioner may be at the stage of confusion. Plea Counsel would like for the Petitioner to plead guilty and the Petitioner would like for different counsel to be had to go to trial. Defendant's dissatisfaction with earlier appointed counsel did not make his request to proceed without counsel on morning of trial, equivocal. Maldonado v. Denno, supra.

Wherefore, the Petitioner not only met his burden, but he also showed how prejudice was clearly outweighing the probative character of the claims of counsel. Therefore, the decision rendered by the PCR Court was disproportionate and should not have been ruled as a denial of relief. Instead, the decision was to grant relief to the Petitioner and Remand this case for a New Trial.

CONCLUSION

The Petitioner request that the Post-Conviction Relief Court decision be Reversed in its entirety and that the Petitioner be Remanded for a New Trial.

Timothy Green #324607
Timothy E. Green
Pro Se Petitioner

S.C.D.C. No. 00324607
Lee Correctional Institution
Sumter North 2227
990 Wisacky Highway
Bishopville, South Carolina 29010

PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No.: 2009-CP-40-02144

RICHLAND COUNTY
FILED
2012 DEC 27 AM 8:14
JEANETTE H. McBRIDE
C.C.P. & G.S.

Timothy Earl Green, #324607, Appellant,

v.

State of South Carolina, Respondents.

PETITIONER'S PRO SE BRIEF

**TIMOTHY EARL GREEN
PETITIONER**

S.C.D.C. No. 00324607
Lee Correctional Institution
Sumter North 2227
990 Wisacky Highway
Bishopville, South Carolina 29010

PRO SE PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No.: 2009-CP-40-02144

RICHLAND COUNTY
FILED
2012 DEC 27 AM 8:14
JEANETTE W. McBRIDE
C.C.P. & G.S.

Timothy Earl Green, #324607, Appellant,

v.

State of South Carolina, Respondents.

PROOF OF SERVICE

I, Timothy E. Green, do hereby certify that I have served the Petitioner's Pro Se Brief on Salley W. Elliott by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2012, addressed to his Attorney of Record, specifically addressed to Salley W. Elliott, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.

/s/ Timothy Green
Timothy Earl Green
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010
Pro Se Petitioner

December 17, 2012

December 17, 2012

Honorable Jeanette W. McBride
Clerk or Court
Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE.: Timothy Earl Green v. State of South Carolina
C/A No.: 2009-CP-40-02144

Dear Madam Clerk:

Will you **PLEASE BE ADVISED** and **TAKE NOTICE** that I am writing to you in regards to the above referenced matter.

Enclosed you will find for you to file , the Original (plus two (2) copies) of the Applicant's Motion to Alter, or Amend Judgment, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. You will also find the Certificate of Service showing that the Respondents have been served a copy of the enclosed Motion.

By copy of this letter, the Applicant requests that his Counsel of Record, Dayne C. Phillips of the South Carolina Commission on Indigent Defense, be relieved as counsel and of his duties and that the Applicant be allowed to move his case along, Pro-Se. Furthermore, counsel take no further action on the Applicant's behalf.

Additionally, the Applicant requests that you forward a copy of this letter, along with a copy of the clock-stamped Motion back to him for Record Filing and Keeping. A Self-Addressed Stamped Envelope is enclosed as well for those copies.

Thank you for your attention and assistance in this matter. I look forward to hearing from you or your office in these regards, Madam Clerk.

With Kindest Regards. I So Remain,

Sincerely,

Timothy Earl Green
Applicant

TEG/

2012 DEC 27 AM 8:14
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

April 5, 2013

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

RECEIVED

APR - 5 2013

S.C. Supreme Court

Re: Timothy Earl Green v. State, Appellant Case No:2012-208630

Dear Mr. Shearouse:

Please accept the enclosed *pro se* petition for writ of certiorari drafted by my client, Timothy Earl Green, in response to the *Johnson* brief I filed in this Court on November 13, 2012. Contrary to my instructions, Mr. Green sent me his *pro se* petition, so I am forwarding it to you on his behalf.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

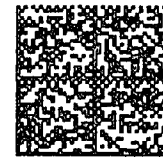
Dayne C. Phillips
Appellate Defender

DGP/kam

cc: Timothy Earl Green, #324607

Enclosure

ee CI Flo/s 2227
10 W. Sackey Hwy
Columbia SC 29010



UNITED STATES POSTAGE 1.72
PITNEY BOWES
02 1M \$ 01.72⁰
0004261422 MAR 28 2013
MAILED FROM ZIP CODE 29010

Dayne C Phillips
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia SC 29211-1589