STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Cherokee County
The Honorable Lee S. Alford, Plea Judge
The Honorable Robin B. Stilwell, PCR Judge

Appellate Case No. 2017-001777

ALONZO COLUMBUS JETER, III,

PETITIONER,

v

STATE OF SOUTH CAROLINA,

RESPONDENT.

REPLY OF PETITIONER

Alonzo C. Jeter, III

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

PETITIONER / *PRO SE*

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I. Petitioner's allegation that plea counsel was ineffective for failure to provide adequate advice regarding the sale of a controlled substance within proximity of one-half mile of a playground is properly preserved for this Court's review.

The Respondent argues unreasonably that Petitioner's issue regarding Plea Counsel's ineffectiveness in failing to provide adequate advice regarding the sale of a controlled substance within proximity of one-half mile of a playground and the indictment regarding such is not properly preserved. However, Petitioner disagrees and this Court should as well. See Rule 8(f), SCRCP (All pleadings shall be so construed as to do substantial justice to all parties.

Most important, Respondent states that this is not an extraordinary case where preservation deficiencies should be overlooked in the interest of justice. *(pg. 13 of Brief of Respondent)*

Petitioner would emphasize the issue is preserved for review as Petitioner did raise the issue. Petitioner has also provided the court with Supplemental Appendix I and Supplemental Appendix II which does show that this is in fact an "extraordinary case." See *Odom v State*, 337 SC 256, 261, 523 SE2d 753, 755 (1999); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.") There were letters written from Petitioner to PCR Counsel. Although Petitioner was not sure of the correct legal jargon to use he did specify that not only that the insufficient indictment issue would be raised and is not to be "abandoned" but also the proximity issue as a whole would be raised in all regards. (See ROA pgs. 191, 192, 204, and 205). See *Castleberry v Crisp*, 414 F.Supp. 945 (1976) "Defendant should not suffer for mistakes of his counsel."

By way of correspondence dated February 27, 2017, Petitioner informed PCR Counsel as follows:

> "I would like to incorporate and add the following grounds and facts to my PCR application by way of amendment. I do not wish to vacate nor abandon any of the grounds that have already been asserted, which are also already in my PCR application. Please amend by adding the following:"
>
> "2) Erroneously charged with 44-53-445 proximity - I should not have been charged with proximity to basketball goal located at a church."

(Supp. Appx. pg. 4)

The PCR Judge decided to take the proximity matter under advisement. (Appx. pg. 114). Petitioner would further point out the fact that the Attorney General's office is the drafter of the PCR order of dismissal. *Fishburne v State*, 427 SC 505, 832 SE2d 584 (2019) [The Supreme Court of South Carolina] recognize[s] the prevailing party often prepares a proposed order for the PCR Court; *Hall v Catoe*, 360 SC 353, 365, 601 SE2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.")

The drafter of the PCR order of dismissal did, as vaguely as possible include the insufficiency of indictment issue and also the failure to investigate issue. The drafter intentionally included misstatements and did try to confuse and conflate the issues and the record.

Wilson v State, 348 SC 215, 559 SE2d 581 (2002) (A defendant has the procedural right to one fair bite at the apple.

PCR Counsel failed to amend the PCR application as required by Rule 71.1(d), SCRCP. PCR Counsel's Rule 71.1(d), SCRCP and ultimate ineffectiveness with regard to the entire PCR matter does make this an "extraordinary case" as Petitioner has displayed within his filings the ineffectiveness of PCR Counsel. However, Respondent cannot lean upon PCR Counsel's ineffectiveness and attempt to assert that Petitioner's issues aren't preserved.

Respondent should only be concerned with the truth of the matter and this is whether or not the indictments were insufficient or not and whether PCR Counsel performed an adequate investigation of this matter or not.

The record in this case would also show as well that Petitioner motioned for his appointed appellate counsel to be relieved as well due to further ineffectiveness of counsels. The record would show the reasons which were provided by Petitioner as to why he would choose to seek to file a motion to relieve appellate counsel. Petitioner also proffers more correspondence for the record which is correspondence between Petitioner and his PCR Counsel and also correspondence between Petitioner and his appellate counsel. See correspondence dated June 8, 2018, from LaNelle Cantey DuRant informing Petitioner that the proximity issue was raised as sufficiency of the indictment, as attorney DuRant was under the misbelieve that Petitioner would err in raising the issue as insufficient indictment. This again displays the overwhelming misconception even counsel of the South Carolina Bar has in understanding the concepts between insufficiency of an indictment and subject matter jurisdiction. Petitioner did not err in raising the issue as insufficient indictment as well as failure to investigate.

The record would also show that Petitioner did in-fact motion this Court for an order that would instruct the Cherokee County Clerk of Court to provide for the

record all correspondence that Petitioner has filed in that court's office which was letters written to Petitioner's PCR Counsel regarding this case.

When there is ineffective assistance of Trial/Plea Counsel, then further ineffective assistance of PCR Counsel, then it is clear that the case certainly does become an "extraordinary case."

Respondent also incorrectly asserts that Petitioner argues that the indictments should have said that the locations giving rise to a proximity charge must be "public" places, and that a drug transaction made within proximity of such location must be sold "knowingly." This exist a fallacy in Respondent's argument as Petitioner rather supported his argument of counsel's ineffectiveness and failure to investigate by showing that the indictment was insufficient as it did not contain the "public" or "knowingly" elements on its face, title nor body of indictment. The indictment should contain *all* elements of the charge.

Respondent further argues that the indictment was not insufficient. However, Petitioner has clearly shown this Court that the indictment was in-fact insufficient.

Respondent creates another fallacy as it asserts that Petitioner argues "that his plea counsel's performance was deficient when he traveled to the church to measure the distance, but not to look for a playground". Respondent continually insists on conjuring up a fact that simply doesn't exist. Plea Counsel never travel, drove to, nor investigated the church at no time nor in any form or fashion. Plea counsel never stated that he drove to the church nor investigated in anyway. This is exactly where the root of Plea Counsel's ineffectiveness derives from; his ineptness and failure to investigate.

Again, Petitioner does understand that Respondent must attempt to create an illusion of Plea Counsel's effective investigation. The trouble is, it is not possible when eyes are opened and the record clearly reveals Plea Counsel's failure to perform any type of investigation. See *Robinson v State*, 422 SC 78, 810 SE2d 32 (2018) ("[The South Carolina Supreme Court] finds troubling an order of the PCR Court which contains findings that are flatly contradicted by the record.

Cartrette v State, 323 SC 15, 448 SE2d 553 (1994) (The post conviction relief process is specifically designed to allow for an inquiry into the relevant facts surrounding the adequacy of a defendant's information and/or waiver of rights.

Halsey v Simmons, 432 SC 54, 849 SE2d 578 (2020) ("The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way.")

Ray v Austin, 388 SC 605, 698 SE2d 208 (2010) ("One who is ignorant and unwary might require more explanation than a sophisticated applicant.")

McLeod v Starnes, 396 SC 647, 723 SE2d 198 (2012) ("[T]here is no virtue in sinning against light or persisting in palpable error, for nothing is settled until it is settled right.")

Respondent's arguments fail as they have no merit.

II. The PCR Court did err in finding Petitioner's Plea Counsel provided effective assistance where Plea Counsel failed to challenge indictments for proximity of one-half mile of a playground, based on Macedonia Baptist Church.

Respondent argues that Petitioner entered a plea of guilty to the proximity charges because Petitioner did not want to risk the sentencing exposure at trial for trafficking in methamphetamine, third offense.

Respondent supports its assumption by pointing to the exchange which Petitioner and his PCR Counsel had on direct examination at the evidentiary hearing:

> PCR Counsel: [D]id you plead guilty to [trafficking, second offense] because you believed that those charges were, uh, were going to stick?
>
> Applicant: No, it, um, they said it was my third offense and I asked Mr. Kennedy and he said yes, it's gonna be my third offense and said that, um, have have a plea deal for ya for second offense and I I took the plea because I thought it was gonna be third offense and, uh, you know, it's gonna be automatic t--uh, 25 years.

(App. 65, 23 - App. 66,6).

Respondent attempts again to create an illusion and fallacy. The context of this exchange between Petitioner and PCR Counsel was in relation to the *enhancement* of the charges, not whether there was any evidence to any of the charges.

In its fallacy, Respondent fails to bring to this Court's attention the context of the conversation. Petitioner would point out the fact that the context of the conversation was in regards to the enhancement of the drug charges and not the proximity charges. PCR Counsel changed the subject to speak regarding the enhancement of the drug charges and the questioning became conflated and ambiguous. If the records seems confusing at this point is should, as you can see that even the court stenographer was not sure of his direction as the stenographer could not make out either what exactly PCR Counsel was talking about at that point.

PCR Counsel: Uh, regarding the -- [Enhancements] so you're, you were charged with third offenses on these drug charges, ---

Applicant: Yes, sir.

PCR Counsel: -- correct? And they were, as part of the negotiations Mr. Kennedy had worked out with the solicitor's office, they were reduced down to second offenses, ---

Applicant: Yes, ---

PCR Counsel: --- correct?

Applicant: --- sir, but it ---

PCR Counsel: Uh, were were you, uh, di-- did you plead guilty to that because you believed that those charges were, uh, were going to stick?

Applicant: No, it, um, they said it was my third offense and I asked Mr. Kennedy and he said yes, it's gonna be my third offense and said that, um, have have a plea deal for ya for second offense and I I took the plea because I thought it was gonna be third offense and, uh, you know, it's gonna be automatic t--uh, 25 years.

(App. p. 65)

Petitioner has provided the Court with sufficient argument on this matter within his briefs. It is clear that PCR Counsel was ineffective and that Petitioner did not enter a plea of guilty to the proximity charges based on any factor other than the trust that Petitioner had in his ineffective Plea Counsel to know the law regarding the charges. Petitioner, just like any other person who is represented by counsel of the South Carolina Bar, has an inherent expectation that the attorney is knowledgeable of the law with regard of the matters in the case. The client is most certainly expected that the attorney would have investigated the law and facts of the case. See *Creighton v State*, No. 2012-213667 (S.C. Ct. App. 2016) ("Defendant is not required to second-guess plea counsel's advice absent facts that would put him on notice that the advice was erroneous."); *Hotz v Minyard*, 304 SC 225, 230, 403 SE2d 634, 637 (1991) ("An attorney/client relationship is by nature a fiduciary one."); See also *Robinson v State*, 422 SC 78, 810 SE2d 32 (2018) ("For a plea hearing to cure deficient advice, as an element of ineffective assistance of counsel, the plea hearing must unambiguously address and resolve the incorrect advice.")

However, in this "extraordinary case" Plea Counsel failed to do anything that would have been deemed effective in these regards.

Respondent further argues, "The notion that Petitioner would have proceeded to trial on both the proximity charges and the more severe third-offense distribution charges had his counsel told him that he could likely beat the proximity charges alone is in plain contradiction of the record, as well as common sense." However, Respondent fails to address, as it again attempts to create an illusion, that the outcome would have been different. Whether the outcome would have been to proceed to trial, to seek a more favorable plea agreement with effective assistance of counsel that had the "common sense" to plea bargain without those two (2) proximity charges which are labeled as "Serious" offenses; it is clear that the outcome would have been different.

ENHANCEMENT / STRIKES and PREJUDICE

Respondent would like this Court to believe that all of his offenses result in one (1) serious 'Strike" in regards of South Carolina's 3-Strike Laws on his record. Respondent makes this statement and there is no such statement in this regard made by the judge in Petitioner's sentencing phase in this case.

Petitioner would show the Court the great misunderstanding with regard to Petitioner's 2004 conviction which the PCR Court chose to use to enhance Petitioner's current charges. This issue alone is enough to show that Respondent's assertion that Petitioner suffers no prejudice is another fallacy and attempt to create an illusion.

Respondent cites the case of *Bryant v State*, 384 SC 525, 534, 683 SE2d 280, 284-85 (2009) to support its argument with regard to South Carolina's "2-Strike" and "3-Strike" Law and the "closely connected offense" safeguard; S.C. Code of Laws 17-25-45 and 17-25-50 respectively. However, Respondent fails to bring out the fact in Bryant that the South Carolina Supreme Court in that case has spoken concerning the ambiguity in the closely connected offense statute; the same statute which Respondent claims will not allow Petitioner to be considered to have more than one (1) strike on his record as a result of the convictions.

The Court in Bryant states as follows, "[The] language in section 17-25-50 may become ambiguous in some situations..." and "The language of section 17-25-50 is ambiguous when applied to certain situations." *Id.*

Further, Justice Beatty in dissenting opinion in Bryant writes in regard of the ambiguity stating, " Section 17-25-50 is unquestionably ambiguous..." and "The Legislature has had ample opportunity... to further clarify section 17-25-50 but has not done so." *Id.*

Besides, regardless if it is determined that one (1) strike exists on Petitioner's record if Petitioner is ever in a position where he has to face a judge or the prosecutor again, these "Strikes" will certainly arise. As prosecutors have the inherent discretion of whether to charge a case and how to prosecute or proceed in a case, the two (2) "Strikes", charges labeled as serious, and charges period being serious or not is sure to play in the equation of charging, prosecuting and sentencing. The record will show that during Petitioner's sentencing phase the sentencing judge did ask the prosecutor for Petitioner's prior record. Notwithstanding the Plea Judge's preference to only be presented the charges which would be used to enhance Petitioner's charges at that time, it is elementary to know that any and all charges which were on Petitioner's record were considered during plea negotiations and the like. In seeking for employment, the charges are presented on the record as well. Prejudice is certainly there as there is nothing on the Petitioner's record that states "these charges don't matter" or "don't pay any attention to these charges." The potential employer will see these charges and doors of opportunity will close as they have in the past due to these charges which Respondent asserts mean nothing.

Respondent further argues that Petitioner speaks with regard to if he is convicted or commits a future offense. Petitioner will speak to this illusion as well. America is at a time where much is being revealed about the injustice which exists. Petitioner will point to *Alonzo C. Jeter, III, v South Carolina Department of Social Services*, Appellate Case No. 2019-001835; a case which is currently pending in the South Carolina Court of Appeals. It would be beneficial to both the Respondent and the Court to read this case, the facts and issues therein so as to know why it is detrimental that injustice cease now.

Respondent and this Court, upon taking the time to read this case may be able to place yourself in the shoes of others and begin to step out of the illusion and into reality. It is acceptable that the Court take judicial notice of records in Petitioner's other cases. See *South Carolina Dept. of Social Services v Janice C.*, 383 SC 221, 678 SE2d 463 (2009) ("A Court can take judicial notice o fits own records, files and proceedings for all proper purposes including facts established in its records."); *Andrews v South Carolina Department of Corrections*, C/A No. 8:20-cv-2633-BHH-JDA (D.S.C. 2020) ("The Court is permitted to take judicial notice of the records in [Petitioner's] cases.")

Petitioner would also show the court the importance of this as he points to *Alonzo C. Jeter, III v State*, 2019-CP-11-0457 (a PCR case of Petitioner's which is now pending before the Cherokee County Court of Common Pleas). Also, the case of *Jeter v Tucker*, C/A No. 2:19-cv-1945-MGL-MGB (D.S.C. 2020) a case which distinguishes the cases of *Brown v State*, 814 SE2d 146, 423 SE2d 56 (2018) and *McElrath v State*, 276 SC 282, 277 SE2d 890 (1981) and wherein the United States Magistrate

Judge states that the court has not found any cases in this nation which has the irregularities of the many issues within the Jeter's case and further comments on the bizarre actions of the State in the case.

If the proximity charge didn't have any significance; if it didn't matter and doesn't matter. Then tell me why the charges weren't simply nolle prossed? Why didn't the judge or Solicitor speak up during the inadequate plea colloquy and tell the truth concerning the inapplicability of the charges? Why didn't the Solicitor expose the whole truth on the charges' indictments by including the elements which would have exposed the truth concerning the charges? Why didn't the Solicitor, Judge, nor ineffective Plea Counsel discuss the charges during the plea proceeding? Why does the Respondent fight so passionately that the charges would remain?

McLeod v Starnes, 396 SC 647, 723 SE2d 198 (2012) ("[T]here is no virtue in sinning against light or persisting in palpable error, for nothing is settled until it is settled right.")

This Court should grant relief in this case.

CONCLUSION

For the reasons stated above and within Petitioner's briefs, this Court should reverse the decision of the PCR court and grant Petitioner's requested relief.

Respectfully submitted,

S/ _____

Alonzo C. Jeter, III
Plaintiff / *pro se*

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 1st day of August, 2021

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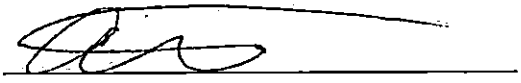
CERTIFICATE OF COMPLIANCE

I, Alonzo C. Jeter, III, hereby certify that the Reply Brief is filed in compliance with Rule 208(b)(3), SCACR and Rule 267, SCACR.



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APPELLANT / *pro se*

This 9th day of August, 2021