

No. 18-6470

(2:17-cv-00071-REH)

~~18-7937~~  
IN THE

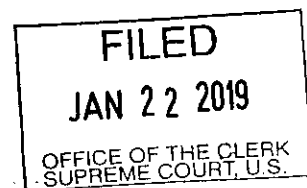
SUPREME COURT OF THE UNITED STATES

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JAQUES J. SULLIVAN

Petitioner

V.



SCOTT LEWIS, Warden, Perry Correction Institution

Respondent

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

ORIGINAL

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PETITION FOR WRIT OF CERTIORARI

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Jaques J. Sullivan

430 Oaklawn Road

Pelzer, S.C. 29669

QUESTION(S) PRESENTED

That the Lower courts erred in judgment by dismissing Petitioner "Actual Conflict in dual-representation" when trial counsel's dementia was cause for such ineffective assistance of counsel guaranteed by the Sixth and Fourteenth amendment of the United States constitution.

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TABLE OF AUTHORITIES CITED

STATE

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NANCE V. OZMINT 367 S.C. 547, 626 S.E.2d 878 (2006)

STATE V. NANCE 320 S.C. 501, 466 S.E.2d 349 (1996)

FEDERAL

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BROWN V. FRENCH 147 F.3d 307 (4th Cir. 1998)

IN RE ESTATE OF FLOWER 88 W.E.3d 599 (6th Cir. 2017)

STEPHENS V. BRANKER, 570 F.3d 198 (4th Cir. 2009)

UNITED STATE SUPREME COURT

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FERRI V. ACKERMAN 444 U.S. 193 (1979)

FLORIDE V. NIXON 543 U.S. 175 (2004)

HERRING V. NEW YORK 422 U.S. 853 (1975)

JONES V. BARNES 463 U.S. 745 (1983)

STRICKLAND V. WASHINGTON 466 U.S. 668 (1984)

UNITED STATES V. CRONIC 466 U.S. 648 (1984)

CONSTITUTION

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Sixth amendment of the United States c<sup>s</sup>on<sup>A</sup>stitution

Fourth<sup>s</sup>eth amendment of the United States c<sup>s</sup>on<sup>A</sup>stitution

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at 740 Fed. Appx 347; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at 2018 WL 1524090; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at No. 2011-UP-446; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Court of Common Pleas court appears at Appendix \_\_\_\_\_ to the petition and is

☒ reported at 2012-CP-23-06281; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 25, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Dec. 16, 2016  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## STATEMENT OF THE CASE

On July 15, 2009, petitioner was sentenced to twenty-five years in prison and a \$50,000.00 fine for trafficking cocaine and five years in prison for possession of a weapon during a violent crime. Petitioner's charges arose from a controlled buy involving an informant Roddric Ingram. After Ingram contacted petitioner and agreed to purchase cocaine, petitioner was arrested at a nearby Burger King. Officers found 127.42 grams of cocaine and 8.48 grams of marijuana in petitioner's possession. A subsequent search of petitioner's home pursuant to a search warrant revealed an additional 84.11 grams of cocaine and a firearm.

In the instant petition for habeas corpus, petitioner claims he was denied effective assistance of counsel because defense counsel was representing Ingram's (informant) girlfriend, Julia Anderson on drug charges at the same time he was representing petitioner.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FERRI V. ACKERMAN 444 U.S. 193, 204 (1979) " That an indispensable element of the effective performance of [defense counsel's] responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation."

HERRING V. NEW YORK 422 U.S. 853, 862 (1975) " The very premise of our adversary system of criminal justice is that partisan advocacy on both side of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free."

JONES V. BARNES 463 U.S. 745, 758 (1983) " That in order to satisfy the Constitution, counsel must function as an advocate for the defendant, as opposed to a friend of the Court."



## REASON FOR GRANTING THE PETITION

The outline in petitioner's adjudication details the complete failure of the Lower Court's failure to conduct an evidentiary hearing on counsel, Daniel Farnsworth (Farnsworth) esq., performance while he suffered from behavioral variant frontotemporal dementia. Petitioner also contends that the Lower Court's error in not addressing the P.C.R. credibility determination in favor of Farnsworth constitute an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254(d).

There is no review or determination under Strickland v. Washington, 466 U.S. 668 (1984) or United States v. Cronin, 466 U.S. 648 (1984) addressing whether Farnsworth performance was reasonable under the professional norm while he confess he was diagnosed with a debilitating and progressive disease would represent a rare case where effective assistance of counsel that that this Court must be reviewed under clearly established law; if there is any.

This type of "consistently inept" form of attorney conduct or performance is not acceptable by this Court, therefore, this Court need not employ a prejudice analysis on petitioner's counsel inability is so pervasive as to render Strickland, supra., prejudice analysis unnecessary. *Id.*

It was an unreasonable application of Cronin, supra., when counsel lack of memory or memories of his own performance during petitioner's arrest, trial or/and communication between the lawyer-client relationship.

PETITIONER'S CLAIM(S)

The P.C.R. court denied relief on credibility finding. In its Order of Dismissal, dated August 13, 2014, the P.C.R. court found

i. "Trial counsel testified he could not recall when he would have represented Anderson." Id. p. 5, line 9.

ii. " Trial counsel testified he did not recall telling the [Petitioner] his case started with Anderson and noted he did not believe he would speak with one client about another. Id. p.5, line 12-14, and

iii. "Initially, this Court finds trial counsel to be credible in his assertion that he did not recall discussing Anderson with the [Petitioner] ... would not discuss one client with another. Id. p.6, line 1-3.

Based on this, the P.C.R. found trial counsel's (Daniel Farnsworth esq.,) testimony credible. This credibility determination in favor of trial counsel constitutes an unreasonable determination of the state court proceeding. 28 U.S.C. § 2254(d). Petitioner's Objections to Report and Recommendation on page 2, line 8-13, "The P.C.R. Court made ...[a] limited credibility finding due to the fact that defense counsel had been diagnosed with (variant fronto-temporal) dementia and took medication for that condition everyday.: Id.

The petitioner contends that this finding understates the evidence that was presented at the P.C.R. hearing. There was a significant amount of evidence regarding the dual-representation, including the petitioner's testimony, the petitioner's girlfriend, Pamela Stewart's testimony and clerks records showing Farnsworth esq., listed as counsel of record for Anderson. In addition, there is no doubt that the letter (with additional (8) eight pages of

discovery listed on the letter. PCR counsel failed to submit these pages before the P.C.R. court), pertained to Anderson, and not the petitioner because it refers to the search warrant against Anderson residence and drug charge that arose out of Greenville on February 2, 2008 that lead to the control buy against petitioner. See Appendix A.

Post-Conviction record, dated April 25, 2014, Daniel Farnsworth esq., testimony substantially indicates signs of memory deficiency:

Direct

" I don't recall that conversation." page 35, line 15.

" I can't tell you exactly when." page 36, line 1.

Cross

" I don't have any recollection for that." page 90, line 1.

" I don't even know if I saw that, to be honest with you." page 42 line 3-4.

" No. I don't have any recollection with respect to me saying that it all started with Julia Anderson...." page 42, line 24-25.

" I don't know when I would have known that, you know. I don't have any idea -- any recollection." page 43, line 7-8.

" No, I did not. I don't have any recollection of that." page 45, line 25.

It is clear from the record, counsel Farnsworth esq., defense was aligned with the agent of the state. He knew the petitioner's allegations, but failed to bring Julia Marie Anderson case file to the hearing for reflection. See P.C.R. transcript dated April 25, 2014, page 45-47.

Petitioner has shown that his own interest " diverged from his [trial counsel] with respect to a material factual or legal issue

or to a course of action." *Stephens v. Branker*, 570 F.3d 198, 209 (4th Cir. 2009).

#### DEMENTIA

The Lower Court during the evidentiary hearing, petitioner disclosed testimony and counsel admitted he was diagnosis with this behavioral variant frontotemporal dementia. [ Petitioner became aware that his trial counsel, Daniel Farnworth was suffering from dementia. See attach Appendix II i.e., The U.S, district Court Tr transcript dated October 22, 2013, case number 5:12-cv-2841, and affidavit of David M. Burrese], See Appendix B.

PCR counsel was ineffective for not imploring and presenting experts testimony, nor did the state, Magistrate Court or District Court granted evidentiary hearing to expore this concern. Cf. *Brown V. French* 147 F.3d 599 (4th Cir. 1998).

Under the standard of decency and Six amendment right to effective assistance of counsel protect petitioner from counsel professional conduct was compromised by dementia and where scientific and medical advancements confirm severe cognitive dysfunction and a degenerative medical condition could go undetected for a period of time. Among other things: The signs of memory lose, deteriate the mind and it only progresses. It cause extreme mental or emotional disturbance. Cause antisocial behavior. Personality disorder; anyone of these could interfere with trial counsel ability to conform to the professional norms dictated by *Strickland* and *Cronic*, supra.

In *Re Estate of Flower* 88 N.E.3d 599 (6th Cir 2017) " That evidence of a lack of testamentary capacity must be relevant to competency on or near the day the testamentary act was made. In *re Estate of Marsh*, 2d Dist.Greene No. 2010 CA78, 2011-Ohio-5554,

2011 WL 5137235 ¶18 quoting Bustinduy, 2d Dist. Champaign No. 98-CA-21, 1998 WL 87912 at 2. Evidence of dementia alone is insufficient to establish a lack of testamentary capacity; there must be evidence of how the dementia impacted the person's testamentary capacity. Boland, 2015-Ohio-1712. 33 N.E. 3d 551 at ¶15. Incompetency can be established by an expert witness and also by a law witnesses who observed the mental state of the person was of sound mind to make a testamentary two of the syllabus, 72 N.E.2d 245.

Moreover, the Magistrate and District Court erred when there is no record to determine the extent of trial counsel level of his condition. Nor did it inquire if counsel was suffering e.g., hallucinations, delusion or paranoid belief. The Lower Court refused to address this symptom or deficiency under the clearly establish law. CF. State v. Nance, 320 S.C. 501 (1996); Nance v. Ozmint, 367 S.C. 547 (2006).

It is easily to believe that trial counsel suffered from this variant frontotemporal dementia both currently and at the time of petitioner's trial. The State put up no evidence to rebut this fact in evidence demonstrate trial counsel possessed sufficient mental acuity to actively and intelligently participate in his defense or been competent to testify at his P.C.R. hearing.

Second, the Lower Court erred when the record is clear to that at P.C.R. trial counsel showed substantial amount of memory lapses and confusion.

Petitioner claims that counsel impending incompetency places trial counsel in the categorical of unreasonable preformance that prejudice petitioner of a fair trial. The Magistrate and District Court did not consider whether the evidence in this case is conflicting or where reasonable minds might differ as to the in-

ferences to be drawn from it, consider the weight of the evidence and consider the credibility of counsel to determine if the lower court lost its way and created such a manifest miscarriage of justice that the petitioner's judgment must be reversed and a new trial ordered.

#### CONCLUSION

Accordingly, Petitioner request this Court to GRANT WRIT and VACATE his current sentence and conviction.