No. 19-8130

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RAQIB ABDUL AL-AMIN

PETITIONER

VS.

BRYAN P. STIRLING, ET. AL.

RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

RAQIB ABDUL AL-AMIN PRO-SE
430 OAK LAWN ROAD
PELZER, SOUTH CAROLINA 29669

QUESTION(S) PRESENTED

ISSUE ONE:

CERTIORARI SHOULD ISSUE TO CORRECT SOUTH CAROLINA'S ERRONEOUS DENIAL OF EXTRAODINARY WRIT CHALLENGING THE SOUTH CAROLINA'S INADEQUATE POST CONVICTION RELIEF; CORRECTIVE PROCESS THAT HAS DEPRIVED PETITIONER AND PETITIONER SIMILARLY SITUATED OF THEIR ONE AND ONLY COLLATERAL CHALLENGE TO THEIR STATE COURT CONVICTION OF VIOLATIONS OF FEDERAL CONSTITUTIONAL GUARANTEES.

ISSUE TWO:

CERTIORARI SHOULD ISSUE TO CORRECT THE MANIFEST MISCARRIAGE OF JUSTICE OF AN ACTUAL INNOCENT STATE COURT PRISONER WHO STANDS CONVICTED AND SENTENCED TO LIFE WITHOUT PAROLE FOR A MURDER SOMEONE ELSE CONFESSED TOO.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Bryan P. Stirling, Director, S.C. Department of Corrections,

and Scott Lewis, Warden, Perry Correctional Institution.

Respondents.

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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 _____ to the petition and is

[ ] reported at C/A No. 0:10-2023-CMC-PJG; 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at C/A No. 0:10-2023-CMC; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] 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 APPELLATE NUMBER 2019-001510; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the IN THE OF COMMON PLEAS court appears at Appendix B to the petition and is

[ ] reported at CASE NO. 2004-CP-40-05551; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DECEMBER 20, 2011. 458 FED. APPX. 290(4TH CIR.)

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 132 S.CT. 1931(2012), 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was OCT. 29, 2019
A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: MARCH 12, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES OF AMERICA
THE BILL OF RIGHTS (AMENDMENTS TO THE CONSTITUTION)

AMENDMENT VI

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

AMENDMENT XIV

NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

STATEMENT OF THE CASE

PETITIONER IS PRESENTLY CONFINED IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO COMMITMENT OF THE RICHLAND COUNTY CLERK OF COURT. PETITIONER WAS INDICTED AT THE DECEMBER 1997 TERM OF THE RICHLAND COUNTY GRAND JURY FOR MURDER (1997-GS-40-25414). PETITIONER WAS REPRESENTED BY DOUGLAS E. STRICKLER OF THE RICHLAND COUNTY PUBLIC DEFENDER'S OFFICE. ON FEBRAURY 18, 2000, PETITIONER PROCEEDED TO TRIAL BEFORE THE HONORABLE JAMES C. WILLIAMS, JR., AND IN WHICH THE JURY ULTIMATELY CONVICTED PETITIONER AS INDICTED AND JUDGE WILLIAMS SENTENCED PETITIONER TO CONFINEMENT FOR PERIOD OF LIFE WITHOUT PAROLE.

A TIMELY NOTICE OF APPEAL WAS FILED AND THE APPEAL WAS PERFECTED BY DANIEL T. STACY OF THE SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE. THE SOUTH CAROLINA COURT OF APPEALS AFFIRMED THE CONVICTION AND SENTENCE. SEE STATE V. AL-AMIN, OP. 3602 (S.C. CT. APP. FILED MARCH 3, 2003). A TIMELY REHEARING WAS FILED AND PETITION FOR WRIT OF CERTIORARI WAS SUBMITTED TO THE SOUTH CAROLINA SUPREME COURT BY WAY OF WRITTEN ORDER DATED OCTOBER 21, 2004, THE S.C. SUPREME COURT DENIED CERTIORARI. SEE ALSO STATE V. AL-AMIN, 353 S.C. 405, 578 S.E.2D 32 (2003).

POST CONVICTION RELIEF ("P.C.R.")
(2004-CP-40-5551)

ON NOVEMBER 30, 2004, PETITIONER FILED A PRO-SE APPLICATION FOR POST CONVICTION RELIEF (C/A No. 2004-CP-40-5551) ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL; PROSECUTORIAL MISCONDUCT; INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL; AND ADDITIONAL CLAIM

WAS PRESENTED AS THAT OF "NEWLY DISCOVERED EVIDENCE" TO WIT:(A CONFESSION TO THE CRIME, THUS EXONERATING PETITIONER) PURSUANT TO S.C. CODE ANN. §17-27-45(C).

ON JUNE 6, 2007, AN EVIDENTIARY HEARING WAS CONVENED INTO THE MATTER BEFORE THE HONORABLE J. MICHELLE CHILDS. PETITIONER WAS PRESENTED AND WAS REPRESENTED BY CHARLIE JOHNSON, ESQUIRE AND THE STATE WAS REPRESENTED BY ROBERT L. BROWN, ASSISTANT ATTORNEY GENERAL. SEE ATTACHED (EXHIBIT (C)).

ON NOVEMBER 19, 2007, JUDGE CHILDS ISSUED A WRITTEN ORDER OF DISMISSAL DENYING THE APPLICATION AND DISMISSING WITH PREJUDICE. SEE ATTACHED EXHIBIT (B).

ON DECEMBER 17, 2019, PCR COUNSEL FILED A TIMELY NOTICE OF INTENT TO APPEL.

THE SOUTH CAROLINA OF INDIGENT DEFENSE APPOINTED ELIZABETH FRANKLIN-BEST TO HANDLE THE PCR APPEAL. OM JUNE 26, 2008, FRANKLIN-BEST SUBMITTED A PETITION FOR WRIT OF CERTIORARI ON PETITIONER'S BEHALF. SEE ATTACHED EXHIBIT (D). ON FEBRUARY 11, 2010, THE SOUTH CAROLINA COURT OF APPEALS DENIED CERTIORARI AND REMITTITUR WAS HANDED DOWN APRIL 22, 2010.

0:10-2023-CMC-PJG

PETITIONER SUBSEQUENTLY FILED A PRO-SE PETITION FOR HABEAS CORPUS UNDER 28 U.S.C. §2254 ON JULY 30, 2010 (C/A No. 0:10-2023-CMC-PJG). RESPONDENT FILED ITS RETURN AND MOTION FOR SUMMARY JUDGMENT ON DECEMBER 8, 2010. THE HONORABLE PAIGE J. GOSSETT, UNITED STATES MAGISTRATE JUDGE, ISSUED ON JULY 12, 2011 A REPORT AND RECOMMENDATION FOR RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BE GRANTED. THE HONORABLE CAMERON MCGOWAN CURRIE UNITED

STATES DISTRICT JUDGE, DENIED PETITIONER'S PETITION AND ACCEPTED THE REPORT AND RECOMMENDATION SUPPORTING SUMMARY JUDGMENT. SEE AL-AMIN V. STEVENSON No. 0;10-2023-CMC-PJG. 2011 WL 3439411 (D.S.C. AUG. 5, 2011). PETITIONER APPEALED; THE FOURTH CIRCUIT COURT OF APPEALS DISMISSED PETITIONER'S APPEAL ON DECEMBER 20, 2011, AND THE UNITED STATES SUPREME COURT DENIED CERTIORAI. AL-AMIN V. STEVENSON, 458 FED. APP. 290 (4TH CIR 2011), CERT. DENIED, 132 S.CT. 1931 (2012).

ON AUGUST 30, 2019, PETITIONER PETITION TO THE SOUTH CAROLINA SUPREME COURT TO ENTERTAIN A PETITION FOR WRIT OF HABEAS CORPUS IN [ITS] ORIGINAL JURISDICTION FOR A FINAL ADJUDICATION ON THE MERITS ON JUDGE CHILDS WRITTEN ORDER OF DISMISSAL (C/A No. 2004-CP-40-5551), DATED NOVEMBER 19, 2007. SEE EXHIBIT (B),

ON OCTOBER 29, 2019, THE SOUTH CAROLINA SUPREME COURT DENIED PETITIONER'S BUTLER'S PETITION. SEE BUTLER V. STATE, S.C. ,397 S.E.2D 87 (S.C. 1990). PETITIONER FILED A MOTION TO RECONSIDER ON NOVEMBER 8, 2019. MOTION WAS DENIED MARCH 12, 2020.

REASON FOR GRANTING THE PETITION

As noted in the statement of the case supra., Petitioner timely filed his application for post-conviction relief Id., "all application are entitled to a full and fiar opportunity to present all ... their claims in one PCR application. Odom v. State, 337 S.C. 256, 261 S.E.2d 753, 755 (1990).

After the PCR hearing concluded evidence, exhibits and testimony considered Judge Childs by way of written order denied the application and dismissed with prejudice. A timely notice of appeal was filed and the PCR appeal was prefected by Elizabeth Franklin-Best of the South Carolina office of Indigent defense. Franklin-Best presented two issues in the petition for Writ of certiorari: **(1) Al-Amin is entitled to a new trial because evidence that the state characterized as "third party guilt", but was really evidence related to the quality of the state's investigation of Al-Amin was improperly excluded: and (2); this court should order the DNA in this case to be entered into the NCIC system to remove any doubt that Wakeel Rasheed committed this murder when, at Al-Amin's PCR hearing, Rasheed confessed to the murder and gave a very exacting description of both the crime crime and the location."** However, as a result of Franklin-Best's inadequacies and lack of understanding of the South Carolina Appellate Court Rules, Petitioner was denied and thwarted any and all opportunity to properly have the merits of the PCR Court's denial addressed or reviewed by the South Carolina Supreme Court because Franklin-Best failed to property present the claims to the South carolina Supreme court. (emphasis supplied and added).

THE RESPONDENTS IN THEIR RETURN PETITION FOR WRIT OF CERTIORARI (APPENDIX EXHIBIT (E)), RECOGNIZED AND CAPITALIZED ON FRANKLIN-BEST'S MISUNDERSTANDING OF THE SOUTH CAROLINA APPELLATE COURT RULES AND THEREBY ADVANCED THE FOLLOWING GROUND IN THEIR RETURN: **"WHETHER, PRE SCACR 227(A), THIS COURT SHOULD DENY THE PETITIONER'S REQUESTED RELIEF BECAUSE THE PETITIONER HAS FAILED TO RAISED ANY ERRORS MADE BY THE PCR COURT RELATED TO PCR?** SUBSEQUENTLY, THE CERTIORARI WAS DENIED AND PETITIONER'S PCR APPEAL NEVER BEEN ADJUDICATED OR PROPERLY REVIEWED BY THE SOUTH CAROLINA SUPREME COURT.

THE DUTY IS ON THE PETITIONER TO SHOW A DUTY OF CARE WAS OWED TO HIM. RAYFIELD V. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 297 S.C. 95, 105-06, 374 S.E.2D 910, 916 (CT. APP. 1988), CERT. DENIED, 298 S.C. 109, 379 S.E.2D 133 (1989).

AN AFFIRMATIVE LEGAL DUTY MAY BE CREATED BY A STATUTE, CONTRACT RELATIONSHIP, STATUS, PROPERTY INTEREST, OR SOME OTHER SPECIAL CIRCUMSTANCE. ARTHURS V. AIKEN, 338 S.C. 253, 525 S.E.2D 542, 547 (S.C. CT. APP. 1999).

THE AFFIRMATIVE LEGAL DUTY HERE IS CREATED HERE BY SOUTH CAROLINA CONSTITUTION ARTICLE I § 3; AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2D 395 (1997)("A APPLICANT HAS [A] RIGHT TO AN APPELLATE COUNSEL'S ASSISTANCE IN SEEKING REVIEW OF THE DENIAL OF AN APPLICATION FOR POST-CONVICTION RELIEF") AND POST-CONVICTION RELIEF ACTIONS RULE 71.1(G), SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

THE SOUTH CAROLINA PROVISIONS HERE CREATE A LIBERTY INTEREST IN THE ASSISTANCE OF PCR APPELLATE COUNSEL AS CREATED AND

DETERMINED BY REFERENCE TO SOUTH CAROLINA LAW. THESE LAWS MAKE IT CLEAR THAT "ONE BITE AT THE APPLE" INCLUDES THAT THE APPOINTMENT OF PCR APPELLATE COUNSEL IS A MATTER OF RIGHT IN APPEALING AND BRIEFING THE ADVERSE RULING AND/OR A APPLICANT'S FIRST AND ONLY (FEDERAL CLAIMS) IN POST-CONVICTION APPLICATION, AND THE APPOINTMENT OF PCR APPELLATE COUNSEL (POST-CONVICTION RELIEF ACTION RULE 71.1(G), SCACR) IS NOT DISCRETIONARY.

THE BOAST OF THE LAW IS THAT THERE CAN NOT BE NO WRONG WITHOUT A REMEDY. S.C. CONST. ART. I § 9; MESSERVY V. MESSERVY, 82 S.C. 559, 64 S.E.2D 753, 754 (1909); SEE ALSO PAGE V. WINTER, 240 S.C. 516, 126 S.E.2D 570, 574 (1962)(JUSTICE BUSSEY AND LAWS DISSENTING: "THE RIGHT TO HABEAS CORPUS IS TOO IMPORTANT TO BE PARTIAL." U.S. CONST. ART. I § 9 AND S.C. CONST. ART. V § 5 AND THE OVERARCHING CONCERN OF THE JUDICIAL SYSTEM IS TO DO JUSTICE, NOT PROTECTING CONVICTIONS)(EMPHASIS ORIGINAL).

I. QUESTION ONE

CERTIORARI SHOULD ISSUE TO CORRECT SOUTH CAROLINA'S ERRONEOUS DENIAL OF EXTRAODINARY WRIT CHALLENGING THE SOUTH CAROLINA'S INADEQUATE POST CONVICTION RELIEF; CORRECTIVE PROCESS THAT HAS DEPRIVED PETITIONER AND PETITIONER'S SIMILARLY SITUATED OF THEIR ONE AND ONLY COLLATERAL CHALLENGE TO THEIR STATE COURT CONVICTION OF VIOLATIONS OF FEDERAL CONSTITUTIONAL GUARANTEES.

AS NOTED SUPRA., JUDGE CHILDS ISSUED A WRITTEN ORDER OF DISMISSAL (EXHIBIT (B)) DENYING THE PCR APPLICATION AND IN SO DOING JUDGE CHILDS ORDER STATED THE COURT REVIEWED THE TESTIMONY, EVIDENCE AND LEGAL ARGUMENTS OF COUNSEL PURSUANT TO S.C. CODE §17-27-80 (1985), AND THE COURT RULED ON THE PETITIONER'S ISSUES AS PRESENTED:

(1). That trial counsel, Douglas Strickler, failed to raised a Alibi defense or requested an Alibi charge at Petitioner's trial[s] "when he gave the police a statement concerning his alibi, but never admitted to the murder." See appendix B. Order of Dismissal page 3-4, ll. 18-19; page 7-8.

(2). "That appellate counsel was ineffective for allowing incorrect statements get into the record, such as, blood being on the [Petitioner's] hands and the victim and the [Petitioner] were left **"alone"** in his apartment when 'no evidence' to support such statements, by the state or appellate's brief, and they were prejudicial." See appendix B. Order of Dismissal at page 4; Opinion No. 3602 and State v. al-amin, 353 S.C. 405, 578 S.E.2d 32 (2003). [It should be noted that the S.C. Court of Appeals interjected **'onus probandi'** into the silent record that "Darryl Cunningham **'professed'** he saw Al-Amin with the victim in Al-Amin's apartment around 2:30 pm on the day in question and that Al-Amin and the victim were 'alone' when Cunningham left.I The jury never heard this testimony; and

(3). Newly Discovered evidence. A confession from Wakeel Rasheed a/k/a DeAngelo Williams. See Appendix B and I. Order of dismissal at page 5-7.

However, as previously noted, supra., the South Carolina Office of Indigent defense a appointed Elizabeth Franklin-Best to represent Petitioner in appealing the PCR Court's denial of Petitioner's claims. On June 26, 2008, franklin-Best raised two grounds in the petition for Writ of Certiorari. Neither issue raised by Franklin-Best on Petitioner's behalf was considered by the South Carolina Supreme Court because the issues as presented

DID NOT COMPORT TO THE SOUTH CAROLINA APPELLATE COURT RULES. THE RESPONDENTS QUICKLY RECOGNIZED FRANLIN-BEST DEFICIENCY AND THAT POSITION BEFORE THE SOUTH CAROLINAS SUPREME COURT WHICH ULTIMATELY RESULTED IN PETITIONER'S PCR APPEAL (PETITION OF CERTIORARI) TO BE DISMISSED WITHOUT CONSIDERATION ON THE MERITS. (EMPHASIS ADDED AND SUPPLIED).

CASE VS. STATE OF NEBRASKA CLEARLY ESTABLISH LAW

PETITIONER'S STATE COLLATERAL PROCEEDING WAS "PROPERLY FILED" FOR THE STATUTORY TOLLING PROVISION OF 28 U.S.C. §2244(D)(2) TO APPLY. PACE V. DIGUGLIELMO, 544 U.S. 408, 414, S.CT. (2005)(QUOTING CAREY V. SAFFOLD, 536 U.S. 214, 236, 122 S.CT. 2134 (2002).

THE STATUTE OF LIMITATION UNDER S.C. CODE ANN. §17-27-45(A) WAS FIRMLY PART OF THE POST-CONVICTION RELIEF JURISPRUDENCE WHEN CONGRESS ENACTED AEDPA, I.E., U.S.C. §§2254(D) AND 2244(B)(1). THE PROVISIONS FOR FUTURE DISCOVERY OF CERTAIN MATTERS CONTAINED IN SECTION 17-27-45(B) AND (C) APPLY ONLY TO NEW MATTERS PROPERLY FILED AND RAISE WITHIN THE DATE OF ITS DISCOVERY TO NEW MATTER RAISED IN STATE'S P.C.R. ACTION.

PETITIONER FILE HIS PCR WITHIN ONE YEAR OF JUDGMENT. AFTER HIS DIRECT APPEAL, WITHIN ONE YEAR OF THE APPELLATE COURT DECISION. S.C. CODE ANN. §17-27-45(A). PETITIONER STATED ALL HIS GROUNDS FOR RELIEF IN HIS APPLICATION. SEE S.C. CODE ANN. §17-27-90. I.E., INEFFECTIVE ASSISTANCE OF COUNSEL; PROSECUTORIAL MISCONDUCT; INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND NEW DISCOVERED EVIDENCE.

PETITIONER'S NEWLY DISCOVERED EVIDENCE WHERE WAKIL RASHEED CONFESSED UNDER OATH TO THE CRIME OF MURDER WAS FILED WITHIN ONE-YEAR DEADLINE.

THE STATUTE OF LIMITATIONS PERIOD WAS TOLLED PURSUANT TO 28 U.S.C. §2244(D)(2), WHICH WAS TIMELY FILED IN ACCORDANCE WITH S.C. CODE ANN. §17-27-45(C) IN THAT TIME THE PETITIONER'S DISCOVERED THE FACTUAL PREDICATE OF HIS CLAIM; WAS BROUGHT WITHIN REASONABLE TIME. THE SIXTH AND FOURTEENTH AMENDMENT GUANRANTEE'S A RIGHT TO COUNSEL AND COMPENANT REPRESENTATION.

AS EXTRADINARY CIRCUMSTANCE, THE SOUTH CAROLINA APPELLATE DEFENSE OFFICE APPOINTED FRANKLIN-BEST. THE STATE APPOINTED COUNSEL FAILED TO RAISED ANY --FEDERAL CLAIM THAT WAS ALLEGED WITHIN PETITIONER'S INITIAL PCR HEARING, APPENDIX C OR RULED UPON BY THE PCR COURT ORDER, APPENDIX B. FRANKLIN-BEST STRATEGY OR COURSE OF CONDUCT WAS DIRECTLY PROHIBITED BY "WELL-ESTABLISH" LAW OR WAS NOT REQUIRED BY "WELL-ESTABLISH" LAW; IN SUCH CASE DEFIED PETITIONER APPELLATE REVIEW ON THE MERITS.

THE SOUTH CAROLINA SUPREME COURT WILL ONLY CONSIDER CLAIMS SPECIFICALLY ADDRESSED BY THE P.C.R. COURT. AS A PROCEDURAL BY-PASS FOR PETITIONER SEEKING RELIEF BECAUSE STATE APPOINTED ATTORNEY FAILED TO "SQUARELY" AND "PROPERLY" RAISE THE CLAIMS AT THE APPROPRIATE TIME IN STATE COURT. PETITIONER STILL HAD MEANS TO DO SO IN STATE HABEAS PETITION TO EXHAUST THOSE CLAIMS. SEE ROSE V. LUNDY, 455 U.S. 509, 515, 102 S.CT. 1198 (1982) AND BUTLER V. STATE, 302 S.C. 466, 397 S.E.2D 87 (1990).

PETITIONER PETITION FOR WRIT OF HABEAS CORPUS IN SOUTH CAROLINA ORIGINAL JURISDICTION [SUPREME COURT] BECAUSE HE HAD

EXHAUSTED [ALL] HIS AVAILABLE REMEDIES I.E., DIRECT APPEAL, POST-CONVICTION AND FEDERAL HABEAS CORPUS. THE SUPREME COURT OF SOUTH CAROLINA DISMISSED THE PETITION WITHOUT A HEARING AND FILED NO OPINION. TO REFUSE TO CONSIDER AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, PROPERLY RAISED PROPERLY RULED UPON OR/AND ADDRESS A CONFESSION OF PROBATIVE NATURE WOULD ENDORSE A FUNDAMENTAL MISCARRIAGE OF JUSTICE BECAUSE IT WOULD REQUIRE THE PETITIONER WHO IS ACTUALLY INNOCENT TO REMAIN IMPRISONED. THEREFORE, SOUTH CAROLINA SUPREME COURT HAS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS AND THE UNITED STATES SUPREME COURT ON THE SAME MATTER. IT FAILED TO GRANT PETITIONER (PETITIONER SIMILARY SITUATED) HIS "ONE AND ONLY" RIGHT ON A IMPORTANT FEDERAL QUESTION IN A WAY THAT COMFLICT WITH THE DECISION OF THIS COURT IN CASE V. NEBRASKA, 381 U.S. 336, 86 S.CT. 1486 (MAY 24, 1965).

IN LIGHT OF CASE, THIS CONFLICT SATISFY A "SUBSTANTIAL SHOWING OF THE DENIAL OF CONSTITUTIONAL RIGHT[S]" UNDER THE SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. THIS PETITION RAISES AN IMPORTANT CONSTITUTIONAL QUESTION OF SIGNIFICANT NATIONAL IMPORTANCE TO HAVE THIS COURT DECIDE THE QUESTION AND LEGAL PRINCIPAL INVOLVED, AND THUS PROMOTE DEVELOPMENT OF THE LAW.

THE PETITION DOES NOT SEEK TO DECIDE A NEW QUESTION OF LAW, BUT TO SIMPLY CORRECT THE SOUTH CAROLINA SUPREME COURT'S DEMONSTRABLY ERRONEOUS APPLICATION OF FEDERAL LAW.

IN CASE, AS CONTROLING ESTABLISHED LAW, THE UNITED STATES SUPREME COURT DECIDE WHETHER THE 14TH AMENDMENT REQUIRES THAT THE STATE PRISONER SOME **ADEQUATE CORRECTIVE PROCESS** FOR THE

HEARING AND DETERMINATION OF CLAIMS OF VIOLATION OF FEDERAL CONSTITUTIONAL GUARANTEES.

SOUTH CAROLINA "ARTICULATED" THE PRINCIPLE POST-CONVICTION RELIEF, S.C. CODE ANN. §17-27-20 THROUGH 160) THAT SOUTH CAROLINA **MUST** AFFORD PRISONERS SOME "CLEARLY DEFINED METHOD BY WHICH THEY MAY RAISE CLAIMS OF DENIAL OF FEDERAL RIGHTS." **CF.** YOUNG V. RAGEN, 337 U.S. 235, 238-239, 69 S.CT. 1073, 1074-1075 (1949). ALSO MOONEY V. HOLONAN, 294 U.S. 103, 55 S.CT. 340 (1935)(IN STATING THAT PROPOSITION THE COURT NOTED: "THE DOCTRINE OF "EXHAUSTION" OF STATE REMEDIES, TO WHICH THIS COURT REQUIRED THE SCRUPULOUS ADHERENCE OF ALL FEDERAL COURT *** PRESUPPOSES THAT SOME ADEQUATE STATE REMEDY EXISTS."

ALTHOUGH SOUTH CAROLINA "ENACTED" THE POST-CONVICTION RELIEF, THIS CASE SHOWS THERE IS NO ADEQUATE AVENUE TO CORRECT THE PROCESS IN CHALLENGING PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS AND A GENUINE OPPORTUNITY TO TEST HIS CONSTITUTIONAL ISSUES AGAINST **WELL-ESTABLISHED** LAW. PETITIONER WAS DENIED HIS "ONE FULL BITE AT THE APPLE."PETITIONER ASKED THIS HONORABLE COURT TO REVISIT ITS OPINION IN CASE, SUPRA.

S.C. CODE ANN. §17-27-20(A), A PCR CLAIM IS PROPERLY PRESENTED AS A SIXTH AMENDMENT CLAIM FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

THE STANDARD OF EVIDENCE IN SOUTH CAROLINA FOR AN ALIBI DEFENSE IS [N]ORMALLY, ALIBI IS BASED PROOF ADVANCED BY THE DEFENDANT ATTEMPTING TO SHOW IMPOSSIBILITY OF BEING INVOLVED IN THE CRIME DUE TO ABSENCE FROM THE SCENE." (EMPHASIS ORIGINAL). STATE V. ANDER, 483 S.E.2D 780, REHEARING DENIED, REVERSED, 503

S.E.2D 443 (S.C. CT. APP. 1997).

IN SOUTH CAROLINA ALIBI IS A "NOTICE DEFENSE". ID. WHILE ALIBI IS AN AFFIRMATIVE DEFENSE BECAUSE THE STATE BEARS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE CRIME, THE DEFENDANT DOES NOT HAVE TO OFFER ANY EVIDENCE OF ALIBI. SEE STATE V. SIMMONS, 308 S.C. 80, 83-84, 417 S.E.2D 92, 94 (1992)(STATE BEARS THE BURDEN OF ESTABLISHING IDENTITY OF THE PERPETRATOR). STATE V. SCHROCK, 283 S.C. 129, 133, 322 S.E.2D 450, 452 (1984)(NOTING BY BRINGING THE CASE, THE STATE ASSUMES THE BURDEN OF PROVING THAT THE ACCUSED WAS AT THE SCENE OF THE CRIME "WHEN IT HAPPENED AND THAT HE COMMITTED THE CRIMINAL ACT"). IN ORDER TO HAVE THE JURY INSTRUCTED ABOUT ALIBI, HOWEVER, THE DEFENDANT **MUST** PRESENT EVIDENCE, EITHER THROUGH HIS OWN CASE OR THROUGH CROSS-EXAMINATION OF THE STATE'S WITNESSES, THAT HE WAS AT A SPECIFIC PLACE OTHER THAN THE SCENE OF THE CRIME AT THE TIME OF THE CRIME. SEE STATE V. DIAMOND, 280 S.C. 296, 297, 312 S.E.2D 550, 551 (1984)(NOTING THAT "[M]ERE DENIAL OF ONE'S PRESENCE AT THE SCENE OF THE CRIME DOES NOT CONSTITUTE ALIBI"); SEE ALSO STATE V. ROBBINS, 275 S.C. 373, 377, 271 S.E.2D 319, 321 (1980)(THAT EVIDENCE WAS SUFFICIENT TO SUPPORT CHARGING THE JURY WITH ALIBI DEFENSE WHERE DEFENDANT JESTIFIED THAT ALTHOUGH HE BEEN AT THE STORE EARLIER IN THE EVENING, HE WAS NOT THERE AT THE TIME OF THE ROBBERY, BUT INSTEAD WAS AT HOME").

TRIAL COUNSEL'S TESTIMONY DURING THE PCR HEARING THAT HE HAD **"NO RECOLLECTION"** OF WHY HE DID NOT PRESENT TESTIMONY FROM DARRYL CUNNINGHAM ("CUNNINGHAM") AS A WITNESS IS NOT **"SOME COGENT TACTICAL CONSIDERATION"** THAT JUSTIFIED THE FAILURE TO CALL CUNNINGHAM AS A WITNESS WHO'S STATEMENT TO INVESTIGATORS PROVIDED

AN AIR TIGHT ALIBI THAT HE RETURN TO THE HOUSE "BY HIMSELF". ALTHOUGH COUNSEL SUGGESTED HIS STRATEGY WAS TO CONTROL THE CLOSING ARGUMENT, COUNSEL'S "NON-RECOLLECTION" TESTIMONY IS CLEAR THAT HIS FAILURE WAS NOT MOTIVATED BY ANY JUSTIFICATION, BUT RATHER A POST HAVOC INVENTION.

SPECIFICALLY, COUNSEL TESTIFIED THAT CUNNINGHAM WAS "[THE] ONLY" PERSON WHO COULD PLACE PETITIONER EITHER AT THE SCENE OR NOT AT THE SCENE. HOWEVER, DURING CROSS-EXAMINATION , TRIAL COUNSEL UTTERLY FAILED TO SPECIFICALLY ASK CUNNINGHAM "IF PETITIONER ALSO RETURNED TO THE SCENE WITH HIM" WAS THE 'LINCH-PIN' OF PETITIONER'S ALIBI DEFENSE. COUNSEL TESTIFIED THAT HE CROSS-EXAMINED CUNNINGHAM REGARDING HIS STATEMENT TO INVESTIGATORS, BUT COUNSEL FAILURE TO UTILIZED THE INVESTIGATOR'S NOTES. SEE APPENDIX EXHIBIT (F)(INVESTIGATOR REPORT BY ALLEN D. CALDWELL DATED 9/25/97); EXHIBIT (G)(INVESTIGATOR REPORT BY ALLEN D. CALDWELL DATED 9/30/97); EXHIBIT (H)(INVESTIGATOR REPORT L.E. MCNEELY P.I. DATED 12/15/98), WHICH WOULD HAVE SUPPORTED AN AIR TIGHT ALIBI THAT CUNNINGHAM DID IN FACT RETURN TO THE HOUSE "BY HIMSELF". (EMPHASIS ADDED AND SUPPLIED).

"AN ATTORNEY'S FAILURE TO PRESENT EXCULPATORY EVIDENCE IS ORDINARILY DEFICIENT" UNLESS SOME "COGENT TACTICAL" OR OTHER "CONSIDERATION JUSTIFIED IT". GRIFFIN V. WARDEN MD. CORR. ADJUSTMENT CTR, 970 F.2D 1355, 1358 (4TH CIR. 1992)(QUOTING WASHINGTON V. MURRAY, 952 F.2D 1472, 1476 (4TH CIR. 1991). IN GRIFFIN, THE PETITIONER ARGUED HIS TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OFFER CERTAIN ALIBI WITNESSES, ID. AT 1357. THE FOURTH CIRCUIT CONCLUDED THAT GRIFFIN'S COUNSEL FAILURE TO CALL THOSE WITNESSES WAS NOT BASED ON "SOME COGENT TACTICAL"

CONSIDERATION GIVEN THAT 'NO REASON' FOR THE FAILURE APPEARED IN THE RECORD AND HELD:

> STRICKLAND AND IT'S PROGENY CERTAINLY TEACH INDULGENCE OF THE ON-THE-SPOT DECISIONS OF DEFENSE ATTORNEYS. ON THE OTHER HAND HAVE MADE, BUT PLAINLY DID NOT. THE ILLOGIC OF THIS "APPROACH" IS PELLUCIDLY DEPICTED BY THE CASE, WHERE AN ATTORNEY'S INCOMPETENT PERFORMANCE DEPRIVED HIM OF THE OPPORTUNITY TO EVEN MAKE A TACTICAL DECISIONS ABOUT PUTTING [THE ALIBI WITNESS] ON THE STAND. A COURT SHOULD EVALUATE THE CONDUCT FROM COUNSEL'S PERPECTIVE AT THE TIME.

ID. AT 1358-1359. (INTERNAL CITATIONS OMITTED)(QUOTING STRICKLAND, 466 U.S. AT 689; CITING KIMMELMAN V. MORRISON, 477 U.S. 365, 386-389; HARRIS V. REED, 894 F.2D 8771, 8768 (7TH CIR. 1990)(FAILURE TO CALL WITNESSES TO CONTRADICT EYEWITNESS IDENTIFICATION OF DEFENDANT WAS INEFFECTIVE ASSISTANCE). THE FOURTH CIRCUIT HELD THAT COUNSEL'S CONDUCT WAS ALSO PREJUDICIAL AND THEREFORE REVERSED AND REMAND WITH INSTRUCTIONS TO GRANT THE WRIT. ID. AT 1359-1360.

UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, CRIMINAL PROSECUTIONS MUST COMPORT WITH PREVAILING NOTIONS OF FUNDAMENTAL FAIRNESS. THE SUPREME COURT INTERPRETED THIS STANDARD OF FAIRNESS TO REQUIRE THAT CRIMINAL DEFENDANTS BE AFFORDED A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. CALIFORNIA V. TROMBETTA, 467 U.S. 479, 485 (1984). IN TAYLOR V. WILLIAMS, 484 U.S. 400 (1988), THE COURT HELD "[F]EW RIGHTS ARE MORE FUNDAMENTAL THAN THAT OF AN ACCUSED TO PRESENT WITNESSES IN HIS OWN DEFENSE". ID AT 408.

IN THIS CASE COUNSEL OFFERED NO "COGENT TACTICAL" CONSIDERATIONS THAT JUSTIFIED HIS FAILURE TO CALL CUNNINGHAM AS A DEFENSE WITNESS; PUT THE STATE ON NOTICE OF PETITIONER'S ALIBI AND PRESENT AN ALIBI DEFENSE; REQUEST AN ALIBI INSTRUCTION OR UTILIZE THE INVESTIGATOR'S REPORT AND SPECIFICALLY QUESTION

UTILIZE THE INVESTIGATOR'S REPORT AND SPECIFICALLY QUESTION CUNNINGHAM AS TO WHETHER OR NOT PETITIONER WENT BACK TO THE HOUSE WITH HIM WAS UNDULY PREJUDICIAL. FN.1.

ALTHOUGH COUNSEL SUGGESTED HIS FAILURE WERE TO CONTROL CLOSING ARGUMENT, HIS **"NON-RECOLLECTION"** TESTIMONY AND COMPLETE FAILURE TO AVANCE AND USE EXHIBIT (F, G, H) TO ESTABLISH CUNNINGHAM'S TESTIMONY WAS HIGHLY QUESTIONABLE MAKES IT CLEAR THAT IT WAS NOT MOTIVATED BY ANY JUSTIFICATION. HE TESTIFIED HE HAD **"NO RECOLLECTION"** WHY HE DIDN'T CALL CUNNINGHAM AS A DEFENSE WITNESS BUT DREW A **'SHARP CONTRAST'** AS TO WANTING TO CONTROL THE CLOSING ARGUMENT. MOREOVER, THE LACK OF ANY EXPLAINATION DISTINGUISHED THIS CASE FROM THE FACTS OF UNITED STATES V. TERRY, 366 F.3D 312 (4TH CIR 2004), WHERE OUR FOURTH CIRCUIT CONCLUDED THAT TRIAL COUNSEL'S HAD OFFERED COGENT REASON FOR NOT OFFERING **EXCULPATORY** WITNESSES, EVEN THOUGH TRIAL COUNSEL'S EXPLAINATION WAS NOT IDEA IN IT'S SPECIFICTY. **ID** AT 317. FAR FROM IDEAL COUNSEL'S EXPLAINATION IN THIS CASE WERE **'NON-EXISTENT'** WITH RESPECT TO CUNNINGHAM ACTUALLY RETURNING TO THE HOUSE **"BY HIMSELF"** WITHOUT THE NEED TO DRAW **INFERENCE** RATHER USING EXISTING FACTS THAT ARE

FN.1. THE TRIAL COURT WAS LIKEWISE **REMISS** IN NOT CHARGING THE JURY ON ALIBI IN THIS CASE SINCE THE PETITIONER TESTIFIED HE WAS **ELSEWHERE** AND NOT AT THE SCENE AND THE STATE COULD NEVER PLACE HIM THERE. "A JUDGE **MUST** CHARGE THE JURY ON MATERIAL ISSUE RAISED BY THE EVIDENCE." FRASIER V. STATE, 305 S.C. 158410 S.E.2D 572 (1991). THE LAW TO BE CHARGE IS DETERMINED BY THE EVIDENCE PRESENTED AT TRIAL. STATE V. GOURDINE, 472 S.E.2D 241, 242 (1996). THE COURT **MUST** CHARGE ALIBI IF NOT REQUESTED TO DO SO, IF THE DEFENDANT'S DEFENSE IS EFFECTIVELY DENIAL OF PRESENCE. STATE V. BESALIN, S.C. , 23 S.E.2D 752 (1943). THE **ABSENCE** OF ALIBI GIVES RISE TO A CONCLUSION BY THE JURY THAT IT IS IMPERMISSIBLE FOR THEM TO CONSIDER ALIBI AS A DEFENSE. RIDDLE V. STATE, 308 S.C. 361, 481 S.E.2D 308 (1992). SEE ALSO STATE V. ROBBINS, 275 S.C. 373, 271 S.E.2D 319 (1980); ROSEBORO V. STATE, 317 S.C. 287, 454 S.E.2D 312 (1995) AND WALKER V. STATE, 397 S.C. 226, 723 S.E.2D 610 (2010). TRIAL COUNSEL ADMITTED AT PCR HEARING THAT "THERE WAS EVIDENCE AND TESTIMONY THAT PETITIONER WAS NOT AT THE SCENE." SEE APPENDIX EXHIBIT D.

"ESTABLISHED BY CLEAR CONVENCING EVIDENCE".

ACCORDINGLY, TRIAL COUNSEL'S FAILURE TO OFFER **EXCULPATORY** EVIDENCE FOR THE PURPOSES OF DEMONSTRATING AN ALIBI FOR THE TIME OF THE CRIME WAS DEFICIENT UNDER **STRICKLAND.**

AS IMPERFECT AS THE STATE'S CIRCUMSTANTIAL EVIDENCE MAY HAVE BEEN. AND ACKNOWLEDGING THE CREDIBILITY PROBLEMS OF IT'S WITNESS, AS EVIDENCE BY COUNSEL DURING THE PCR HEARING, THAT TESTIMONY WAS ALL THE JURY HAD UPON WHICH TO BASE IT'S DECISION. WHILE COUNSEL ATTEMPTED TO POKE HOLES IN CUNNINGHAM'S TESTIMONY, THE JURY WAS LEFT WITH AN **"INFERENCE"** THAT PETITIONER'S DID NOT RETURN WITH CUNNINGHAM, MAKING THE CONVICTION INEVITABLE. HAD COUNSEL OFFERED CUNNINGHAM AND THE TWO INVESTIGATOR'S REPORTS, EXHIBIT F, G, H, THERE WOULD HAVE BEEN TWO COMPELLING SETS OF TESTIMONY: ONE FROM CUNNINGHAM AND THE CONTRADICTING INVESTIGATOR'S ACCOUNTS. ALTHOUGH NOT ENSURING A DIFFERENT OUT-COME, THAT DIRECTLY COMPETING EVIDENCE GIVES RISE TO A **REASONABLE PROBABILITY** THAT AT LEAST ONE JUROR WOULD HAVE 'REASONABLE DOUBT' AS TO PETITIONER'S GUILT.

THE FOURTH CIRCUIT EXPLAINED IN GRIFFIN, **SUPRA.**, (WHERE TRIAL COUNSEL FAILED TO OFFER THE TESTIMONY OF MULTIPLE, AVAILABLE WITNESSES). OUR CONFIDENCE IN THE OUTCOME IS VERY MUCH UNDER-MINDED." AS NOTED BY TRIAL COUNSEL CUNNINGHAM'S TESTIMONY HAD SUBSTANTIAL CREDIBILITY PROBLEMS. THE PREJUDICE TO PETITIONER RESULTED FROM COUNSEL'S FAILURE TO PRESENT AN ALIBI DEFENSE IS FURTHER EVIDENCE BY COMPARING THE RELATIVE CREDIBILITY OF PETITIONER'S ALIBI EVIDENCE WITH THE STATE'S WITNESSES. IN LIGHT OF THE SHARP CONTRAST BETWEEN CUNNINGHAM'S TRIAL TESTIMONY AND THE TWO INVESTIGATOR'S REPORTS, THERE IS ONLY ONE CONCLUSION THAT

CAN BE DRAWN: IT IS REASONABLE PROBABLE THAT THE JURY WOULD HAVE BELIEVED THE INVESTIGATOR'S AND THERE REPORTS EXPLOITING CUNNINGHAM'S INCONSISTENT STORIES OVER CUNNINGHAM'S TRIAL TESTIMONY. AT A MINIMUM, IT IS "REASONABLY PROBABLE" THE JURORS WOULD HAVE BELIEVED THAT CUNNINGHAM RETURNED TO THE HOUSE **"WITHOUT PETITIONER"** AND WOULD HAVE BELIEVED PETITIONER'S ALIBI ENOUGH TO ESTABLISH REASONABLE DOUBT.

TRIAL COUNSEL'S FAILURE TO PRESENT AN ALIBI DEFENSE WAS PREJUDICIAL AND THE PCR COURT'S APPLICATION OF **STRICKLAND'S** PREJUDICE PRONG WAS "OBJECTIVELY UNREASONABLE". PETITIONER'S IS ENTITLED TO A NEW TRIAL.

II. QUESTION TWO

CERTIORARI SHOULD ISSUE TO CORRECT THE MANIFEST MISCARRIAGE OF JUSTICE OF AN ACTUAL INNOCENT STATE COURT PRISONER WHO STANDS CONVICTED AND SENTENCED TO LIFE WITHOUT PAROLE FOR A MURDER SOMEONE ELSE CONFESSED TOO.

THIS ISSUE WAS RAISED DURING PETITIONER'S FIRST PCR; EXHIBIT C AND RULED ON BY THE PCR COURT; EXHIBIT B. HOWEVER, AS NOTED **SUPRA.** AT PAGE 4-5 OF THIS PETITION, APPOINTED PCR APPELLATE COUNSEL'S LACK OF UNDERSTANDING OF THE APPELLATE COURT RULES PREVENTED THIS ISSUE FROM PROPERLY BEFORE THE SOUTH CAROLINA SUPREME COURT; EXHIBIT ND AND WAS QUICKLY POINTED OUT AND CAPITALIZED ON BY RESPONDENT; EXHIBIT E WHICH ULTIMATELY RESULTED IN CERTIORARI BEING DENIED WITHOUT A REVIEW ON THE MERITS. PETITIONER WOULD FURTHER SUBMIT THAT NOT ONLY DID PCR APPELLATE COUNSEL FAILED TO RAISE THE ISSUES AS ANY ERRORS MADE BY THE PCR COURT RELATED TO THE PCR IN ACCORDANCE WITH RULE 227(A), SCACR, BUT ALSO PRESENTED THE ISSUES IN A MANNER WHOLLY UNRELATED TO

PETITIONER'S FEDERAL CLAIMS AS IT WAS PRESENTED TO THE PCR COURT ALTOGATHER. EXHIBIT B.

IN THE INITIAL PCR, PETITIONER RAISED A CLAIM OF 'NEWLY DISCOVERED EVIDENCE' IN THE FORM OF A CONFESSION BY WAKIL RASHEED ("RASHEED"), CLAIMED TO HAVE COMMITTED THE MURDER FOR WHICH PETITIONER IS INCARCERATED. RASHEED TOOK THE STAND AND FULLY REALIZED HE WAS SUBJECTING HIMSELF TO A MURDER CHARGE. A REPRESENTATIVE OF THE SOLICITOR'S OFFICE WAS PRESENT AS WELL.

RASHEED CONFESSED TO THE MURDER AND TESTIFIED THE VICTIM DIED DURING A PHYSICAL ALTERCATION. RASHEED SAID THE VICTIM OWED HIM MONEY AND THAT HE FOUND HER AT THE APARTMENTS AND WAS ATTEMPTING TO PUT HER ON A PAYMENT PLAN. RASHEED TESTIFIED HE ULTIMATELY ENTERED PETITIONER'S APARTMENT WHERE THE VICTIM WAS AND THEY ENDED UP IN A FIGHT AND HE HIT HER WITH THE WEAPON AND THEN HIDE THE WEAPON BEFORE LEAVING THE APARTMENT.

RASHEED TESTIFIED TO VERY EXACTING DESCRIPTIONS OF PETITIONER'S APARTMENT AND HIS TESTIMONY WAS CORROBORATED BY THE FACTS. HE SAID WHEN HE FIRST APPROACHED THE APARTMENT HE HAD TO **"HIDE"** UNDER THE STAIRS CASE BECAUSE SOMEONE WHOM HE DIDN'T KNOW WAS AT THE DOOR OF THE APARTMENT TALKING TO THE VICTIM AND HE OVERHEARD THE PERSON SAY HE CAME BACK TO GET HIS RADIO, (WHICH ALSO INTERLOCKS WITH DARRYL CUNNINGHAM RETURNING TO THE APARTMENT..."**ALONE**")(EMPHASIS ADDED AND SUPPLIED). RASHEED EVEN DREW A PICTURE OF THE INSIDE OF THE APARTMENT WHEN REQUESTED BY THE STATE. RASHEED'S DESCRIPTIONS WERE UNCONTESTED BY THE STATE.

DURING THE HEARING, THE STATE SOUGHT TO DISCREDIT RASHEED'S TESTIMONY BY CALLING MICHAEL STOBBE FROM INMATE RECORDS FROM SCDC. ACCORDING TO THE RECORDS, RASHEED WAS AT PALMER CORRECTIONAL INSTITUTION ON THE DATE OF THE MURDER. RASHEED WAS

PURPORTEDLY WORKING THE LAUDRY DETAIL AT THE TIME, BUT STOBBE ADMITTED THAT IT WAS POSSIBLE THE RECORDS COULD BE INACCURATE.

EVENING ASSUMING RASHEED WAS SERVING A PRISON SENTENCE AT THE TIME, WHICH RASHEED ALSO DISPUTES, THAT FACT ALONE DOES NOT SUPPORT THE CONCLUSION THAT IT WAS IMPOSSIBLE FOR RASHEED TO HAVE COMMITTED THE MURDER. PALMER PRE-RELEASE IS **NOT** AN ENCLOSED FACILITY AND OFFERS PROGRAMS THAT ALLOW INMATES TO LEAVE THE GROUNDS. SEE WEB CITE QUOTED AT EXHIBIT D, PAGE 21. **FN. 2.** EVEN DIRECTOR JON OZMINT CONCEDED THAT "THE AGENCY HAS HAD STAFF OR TERMINATED STAFF FOR ASSISTING INMATES LEAVING AND RETURNING BACK TO VISIT LOVED ONES." SEE WEB CITED QUOTED, EXHIBIT D AT PAGE 21-22.

ASIDE FROM SCDC RECORDS, THE STATE DID NOT PRODUCE ANY OTHER EVIDENCE TO SHOW THAT RASHEED WAS LYING REGARDING HIS CONFESSION TO THE MURDER.

THE PCR COURT ULTIMATELY DENIED RELIEF. EXHIBIT B.

PETITIONER SUBMITS HE ENJOYS THE "RIGHT TO THE ASSISTANCE OF PCR APPELLATE COUNSEL (POST-CONVICTION RELIEF ACTION RULE 71.19G), SCRCP) IN PRESENTING THE PCR COURT'S ADVERSE RULING ON

FN. 2. THE STATE PRODUCED MICHAEL STOBBE, RECORDS CUSTODIAN AT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, TO TESTIFY INCONCLUSIVELY, THAT WAKIL RASHEED, WHO CONFESSED TO THE MURDER AT THE PCR HEARING WAS AN INMATE IN THE DEPARTMENT OF CORRECTIONS ON AUGUST 25, 1997, THE DATE OF THE MURDER. HOWEVER, UNEXPLAINED WAS HIS INFORMATION THAT RASHEED WAS **'MYSTERIOUSLY'** TRANSFERED FROM PALMER WORK-RELEASE (AN **"OPEN"** FACILITY) ON SEPTEMBER 11, 1997 TO EVANS CORRECTIONAL INSTITUTION (A **"VERY SECURE"** FACILITY) PENDING AN INVESTIGATION RIGHT AFTER THE HOMICIDE. WAS THIS 'INVESTIGATION' RELATED TO HIS ABSENCE (AWOL) FROM PALMER ON AUGUST 25, 1997? UNEXPLAINED BY STOBBE AND PROOF WAS NEVER FORTH-COMING, THE PCR COURT ISSUED ITS ORDER OF DISMISSAL IN ITS ABSENCE AND APPELLATE COUNSEL NEVER CHALLENGED THIS GRIEVIOUS INJUSTICE.

THIS CLAIM TO SOUTH CAROLINA SUPREME COURT AS PART OF HIS "ONE FULL BITE AT THE APPLE". HOWEVER, AS NOTED **SUPRA.**, PCR APPELLATE COUNSEL'S FAILURE TO BRIEF THIS ISSUE PROPERLY; PETITIONER HAS NEVER HAD A REVIEW ON THE MERITS OF THE NEWLY DISCOVERED EVIDENCE.

STANDARD FOR AFTER NEWLY DISCOVERED EVIDENCE

IN STATE v. CASKEY, 273 S.C. 325, 256 S.E.2D 737 (1979); S.C. CODE §17-27-45(C), THE SOUTH CAROLINA COURT HELD: A PETITIONER **MUST** SHOW THE NEWLY DISCOVERED EVIDENCE:

1. IS SUCH AS WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WAS HAD.
2. HAD BEEN DISCOVERED SINCE THE TRIAL.
3. COULD NOT BY THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED BEFORE TRIAL.
4. IS MATERIAL TO THE ISSUE OF GUILT OR INNOCENCE; AND
5. IS NOT MERELY CUMULATIVE OR IMPEACHMENT.

CASKEY, **SUPRA.**, SEE ALSO STATE v. SPANN, 334 S.C. 618, 513 S.E.2D 98 (1999)(CITATIONS OMITTED).

ANYONE FOUND COMPETENT CAN BE A WITNESS IN SOUTH CAROLINA. SEE RULE 609(A), SOUTH CAROLINA RULES OF EVIDENCE, WHICH STATES: EVERY PERSON IS COMPETENT TO BE A WITNESS EXCEPT AS OTHERWISE PROVIDED BY STATUTE OR THESE RULES.

IN MAKING THE DETERMINATION OF WHETHER OR NOT RASHEED IS CREDIBLE, FIRST, AFTER BEING FOUND COMPETENT TO BE A WITNESS; SECOND, THE COURT EVALUATE WHETHER IT IS LIKELY THAT RASHEED'S CONFESSION WAS TRUE BY COMPARING HIS SWORN TESTIMONY TO THE **[ACTUAL FACTS OF THE CRIME]** AND, THREE, IS IT CONSISTENT WITH THE

PHYSICAL EVIDENCE. THE ANSWER TO ALL THREE IS ..."YES!"

IT IS NOT LIKELY THAT RASHEED'S CONFESSION WAS SOMEHOW MOTIVATED BY EXPECTATIONS OF REWARD AND SELF-SERVING PRESERVATION. SOUTH CAROLINA LAW RECOGNIZED, AND COMMON SENSE DICATES THAT SELF-SERVING STATEMENTS ARE INHERENTLY LESS RELIABLE THAN ARE SELF INCULPATORY STATEMENTS. SEE RULE 804(3), SCRE (PROVIDING EXCEPTION TO RULE AGAINST HEARSAY WHERE THE DEFENDANT'S PECUNIARY OR PROPRIETARY INTEREST, THE RATIONAL BEING THE ASSUMPTION THAT PERSON DO NOT MAKE STATEMENTS WHICH ARE DAMAGING TO THEMSELVES UNLESS THEY ARE SATISFIED THAT THE STATEMENTS ARE TRUE).

THE SOUTH CAROLINA COURT **MUST** ASSES RASHEED'S TESTIMONY AGINST THE FACTS OF THE CASE; WITH THE INTERLOCKING EVIDENCE FROM EXHIBIT F, G, H.

IN THIS CASE RASHEED AND DARRYL CUNNINGHAM DID NOT KNOW EACH OTHER, NOR EVEN MET, YET RASHEED'S CONFESSION INTERWEAVES WITH THE FACTS CUNNINGHAM'S TESTIMONY AND EXHIBIT F, G, H INVESTIGATOR'S REPORTS; ALL WHICH INTERLOCKS WITH THE CONFESSOR'S CLAIMS. FACTS ONLY A PERSON PRESENT AT THE SCENE DURING THE MURDER WOULD HAVE KNOWN.

IT IS BELIEVABLE, THAT IS PROBABLE THAT AT LEAST ONE JUROR WOULD FIND RASHEED CREDIBLE GIVEN HIS **CONSISTENT** FACTS OF THE EVIDENCE AND OTHER **DETAILS** OF THE CRIME, ESPECIALLY WHEN CONSIDERED WITH ALL THE EVIDENCE. TO DENY PETITIONER'S A NEW TRIAL IN THE FACE OF A **CONFESSION** TO THE MURDER BY SOMEONE WHO UNDER OATH GIVING SWORN TESTIMONY ADMITTEDLY WAS PRESENT AND TESTIMONY HE COMMITTED THE MURDER WOULD CONSTITUTE A **DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE.**

BUTLER V. STATE, 302 S.C. 466, 468, 397 S.E.2D 87, 88 (1990)(CITATIONS AND QUOTES OMITTED).

IN JOHNSON V. CATOE, JUSTICE WALLER HELD: "I BELIEVE TO DENY **JOHNSON** A NEW TRIAL IN THE FACE OF A CONFESSION BY SOMEONE WHO WAS ADMITTEDLY PRESENT WHEN THE MURDER WAS COMMITTED WOULD CONSTITUTE 'A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE [UNIVERSAL SENSE OF JUSTICE'] JUDICIAL." JOHNSON V. CATOE, 345 S.C. 387, 401, 548 S.E.2D 587, 593 (2001). WALLER J. DISSENTING QUOTING BUTLER V. STATE, **SUPRA.**

USING THIS STANDARD, THIS HONORABLE COURT SHOULD HAVE NO PROBLEM ARRIVING AT THE CONCLUSION THAT OUR SYSTEM OF JUSTICE DICTATES THAT BEFORE PETITIONER SPENDS THE REST OF HIS NATURAL LIFE INCARCERATED AND DIES IN IN PRISON, HE SHOULD BE GIVING THE OPPORTUNITY TO PRESENT SUCH EVIDENCE TO A JURY OF HIS PEERS.

IT MUST BE REMEMBERED THAT THE QUESTION OF WHETHER A CONFESSION IS VOLUNTARY IS ONE WHICH IS ADDRESSED TO THE COURT IN THE FIRST INSTANCE. IF THERE IS AN ISSUE OF FACT AS TO THE VOLUNTARINESS OF A CONFESSION, IT SHOULD BE ADMITTED AND THE JURY UNDER PROPER INSTRUCTIONS, ALLOWED TO MAKE THE ULTIMATE DETERMINATION AS TO ITS VOLUNTARY CHARACTER AND ALSO ITS TRUTHFULLNESS. UNITED STATES V. SHEFFER, 523 U.S. 303, 313, ((1998).; ACCORDING TO UNITED STATES V. DORSEY, 45 F.3D 809, 815 (4TH CIR. 1995)(THE EVALUATION OF WITNESS CERDIBILITY IS A DETERMINATION USUALLY WITHIN THE **"JURY" EXCLUSIVE PERVIEW).** PETITIONER HAS MET THE REQUIREMENTS FOR A NEW TRIAL, SUCH THAT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WERE GRANTED AND THE JURY WERE TO HERE THE NEWLY DISCOVERED EVIDENCE ... **"RASHEED'S CONFEESION".**

IN SUMMARY

APPELLATE COUNSEL'S DURING THE APPELLATE PROCESS REDUCED THE PETITIONER FEDERAL CLAIMS TO A **'MOCKERY OF JUSTICE'**; JUST AS APPELLATE COUNSEL'S DEFICIENT PERFORMANCE COMPROMISED THE APPELLATE PROCESS TO SUCH A DEGREE AS TO UNDERMINE CONFIDENCE IN THE FAIRNESS AND CORRECTNESS OF THE APPELLATE RESULT.

THE DENIAL OF THE SOUTH CAROLINA SUPREME COURT CONSTITUTES **NO** PART OF A **OPINION** UPON THE MERITS, THEREFORE, THE FINDINGS BY THE SUPREME COURT IS UNSUPPORTED BY SUFFICIENT EVIDENCE. THE CORRECTIVE PROCESS BY THE STATE COURT IS DEFECTIVE.

CONCLUSION

THEREFORE, FOR ALL THE REASONS SET FORTH, THE JUDGMENT BELOW CANNOT STAND. PETITIONER HAS ALLEGED FACTS SHOWING PRIMA FACIE VIOLATION OF HIS CONSTITUTIONAL RIGHT TO COUNSEL, AND HE HAS BEEN UNCONSTITUTIONALLY DENIED A HEARING ON HIS CLAIMS BY THE SOUTH CAROLINA SUPREME COURT. THE JUDGMENT SHOULD BE REVERSED, OR VACATED, AND REMANDED WITH DIRECTIONS THAT BY SOME PROCEDURE THE PETITIONER'S CLAIMS BE ADEQUATELY ADJUDICATED.

RESPECTFULLY SUBMITTED,

/S/ _____

RAQIB ~~ABDUL~~ AL-AMIN, PRO-SE

DATE: March 19, 2020.